



**CALLED CITY COMMISSION MEETING
AGENDA FOR DECEMBER 17, 2019
5:30 PM
CITY HALL COMMISSION CHAMBERS
300 SOUTH FIFTH STREET**

*Any member of the public who wishes to make comments to the Board of Commissioners is asked to fill out a Public Comment Sheet and place it in the box located at the end of the Commissioner's desk on the left side of the Commission Chambers. The Mayor will call on you to speak during the **Public Comments** section of the Agenda.*

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

ADDITIONS/DELETIONS

EMPLOYEE INTRODUCTIONS Human Resources Director Stefanie Suazo & Records Clerks Sabrina Miller and Mary Farrell

PRESENTATION Christmas Parade Awards

Items on the Consent Agenda are considered to be routine by the Board of Commissioners and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the Consent Agenda and considered separately. The City Clerk will read the items recommended for approval.

	I.	<u>CONSENT AGENDA</u>
		A. Approve Minutes for December 10, 2019
		B. Receive & File Documents
		C. Personnel Actions
		D. Approval of Contract with Midtown Alliance of Neighbors for Operating Funds and Provision of Affordable Housing Construction and Repairs (\$140,000) - T TRACY
		E. Declaration and sale of surplus property at 164 Clements Street - T TRACY
	II.	<u>ORDINANCE(S) - ADOPTION</u>
		A. Approve a Budget Amendment to move General Fund Reserve Funds in the amount of \$687,900 to the Ohio River Reconstruction Project - R MURPHY
		B. Approve Brockenborough Rotary Health Park Spray Pad Restroom Project Change Order No. 1 for an increase of \$16,951.32- M THOMPSON
		C. Authorize a Promissory Note Release for Paxton Park Golf Municipal Golf Course - J ARNDT

		D. Establish a Creative & Cultural Council - L PARISH
		E. Agreement to accept property from P & L Railroad - S KYLE
		F. Authorize Contract with Commonwealth Economics for professional services for the TIF program (\$43,824.80 plus direct expenses) - T TRACY
		G. Consolidate the Urban Renewal And Community Development Agency (URCDA) with the Paducah Planning Commission - T TRACY
		H. Amend Code of Ordinances Chapter 42 related to Junk Vehicles - G CHERRY
	III.	<u>ORDINANCE(S) - INTRODUCTION</u>
		A. Paducah Parks and Recreation Master Plan Change Order #1 (\$5,000) - M THOMPSON
		B. Repeal and Replace Chapter 22 - Cable Communications - P SPENCER
	IV.	<u>DISCUSSION</u>
		A. Quarterly Financial Report - J ARNDT & J PERKINS
	V.	<u>COMMENTS</u>
		A. Comments from the City Manager
		B. Comments from the Board of Commissioners
		C. Comments from the Audience
	VI.	<u>EXECUTIVE SESSION</u>

December 10, 2019

At a Regular Meeting of the Board of Commissioners, held on Tuesday, December 10, 2019, at 5:30 p.m., in the Commission Chambers of City Hall located at 300 South 5th Street, Mayor Harless presided, and upon call of the roll by the City Clerk, the following answered to their names: Commissioners McElroy, Watkins, Wilson and Mayor Harless (4). Commissioner Abraham joined the meeting at 5:31 p.m.

INVOCATION:

Commissioner McElroy led the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Harless led the pledge.

CONSENT AGENDA

Mayor Harless asked if the Board wanted any items on the Consent Agenda removed for separate consideration. There were no items removed. Mayor Harless asked the City Clerk to read the items on the Consent Agenda.

I(A)	Approve Minutes for the November 26, 2019 Board of Commissioners Meeting
I(B)	Receive and File Documents <i>Deed File:</i> <ol style="list-style-type: none">1. Quitclaim Deed – City of Paducah to Cappock – Closure of a portion of Mayfair Place between Sherwood Road and Marlborough Way - ORD 2019-9-85922. Quitclaim Deed – City of Paducah to McKeown – Closure of a portion of Mayfair Place between Sherwood Road and Marlborough Way – ORD 2019-9-8592 <i>Contract File:</i> <ol style="list-style-type: none">1. Expanded Jurisdiction Renewal Application – MO #23022. Contract Amendment #2 for the HDR Engineering, In. for Greenway Trail Phase IV – ORD 2019-11-85993. KOHS Grant Procurement Checklist and Legal Signature Authorization – MO #23014. Aquatic and Community Center Feasibility Study – October 2019 - Lose Design MO #2281 <i>Financials File:</i> <ol style="list-style-type: none">1. Paducah Water Works – Month ended October 31,2019
I(C)	Personnel Actions
I(D)	A MUNICIPAL ORDER ACCEPTING THE DONATION OF REAL PROPERTY LOCATED AT 2028 CLAY STREET FROM IRENE SALEMI TO THE CITY OF PADUCAH, AND AUTHORIZING THE MAYOR TO EXECUTE THE DEED CONSIDERATION CERTIFICATE (MO 2307; BK 11)

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Mayor Harless offered motion, seconded by Commissioner McElroy, that the consent agenda be adopted as presented.

Adopted on call of the roll, yeas, Abraham, McElroy, Watkins, Wilson and Mayor Harless (5).

ORDINANCE(S) – ADOPTIONS

ALLEY CLOSURE AT BROADWAY SOUTH 6TH & KENTUCKY AVENUE

Commissioner Abraham offered motion, seconded by Commissioner McElroy that the Board of Commissioners adopt an Ordinance entitled, “AN ORDINANCE PROVIDING FOR THE CLOSING OF A PORTION OF AN ALLEY BETWEEN 600 & 606 BROADWAY, 105 & 111 SOUTH 6TH STREET AND 603 KENTUCKY AVENUE, AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATING TO SAME.” This ordinance is summarized as follows: The City of Paducah does hereby authorize the closure of a portion of an alley between 600 & 606 Broadway, 105 & 111 South 6th Street and 603 Kentucky Avenue and authorizes, empowers and directs the Mayor to execute a quitclaim deed from the City to the property owners in or abutting the public ways to be closed. (ORD 2019-12-8601; Book 35)

Adopted on call of the roll, yeas, Abraham, McElroy, Watkins, Wilson and Mayor Harless (5).

ORDINANCE(S) – INTRODUCTION

BUDGET AMENDMENT – GENERAL FUND RESERVE FUNDS – OHIO RIVER RECONSTRUCTION PROJECT

Commissioner McElroy offered motion, seconded by Commissioner Abraham, that the Board of Commissioners introduce an Ordinance entitled, “AN ORDINANCE AMENDING ORDINANCE NO. 2019-6-8578, ENTITLED, “AN ORDINANCE ADOPTING THE CITY OF PADUCAH, KENTUCKY, ANNUAL OPERATING BUDGET FOR THE FISCAL YEAR JULY 1, 2019, THROUGH JUNE 30, 2020, BY ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE OPERATION OF CITY GOVERNMENT” AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT TO THE UNITED STATES ARMY CORPS OF ENGINEERS LOUISVILLE DISTRICT” This Ordinance is summarized as follows: That the annual budget for the fiscal year beginning July 1, 2019, and ending June 30, 2020, Ordinance No. 2019-6-8578, be amended by the following re-appropriation: Transfer \$687,900 from the FY2020 General Fund Reserve to the Floodwall Cash Match (FW0016) Project Account. Further, this ordinance authorizes the Finance Director to make Payment to the United States Army Corps of Engineers Louisville District in the amount of \$687,894.00 in accordance with the Project Partnership Agreement for the City of Paducah’s Local Flood Protection Project.

BROCKENBOROUGH ROTARY HEALTH PARK SPRAY PAD RESTROOMS PROJECT CHANGE ORDER #1

Commissioner Watkins offered motion, seconded by Commissioner Wilson, that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE AUTHORIZING A CONTRACT AMENDMENT WITH EVRARD STRANG CONSTRUCTION COMPANY IN AN AMOUNT OF

December 10, 2019

\$16,951.32 FOR THE PAT AND JIM BROCKENBOROUGH ROTARY HEALTH PARK PHASE 2 PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAME.” This Ordinance is summarized as follows: the Mayor is authorized to execute a Contract Amendment with Evrard Strang Construction Company for an increase in the amount of \$24,451.32 and a decrease in the amount of \$7,500 for a net increase to the contract in an amount of \$16,951.32 for the Paducah Health Park Phase 2 Project. Prior to amending the contract, the Mayor must receive lien waivers provided by the contractor from each and every subcontractor hired to perform labor or provide materials for the Paducah Health Park Phase 2 Project.

PROMISSORY NOTE FORGIVENESS PAXTON PARK GOLF MUNICIPAL GOLF COURSE

Commissioner Wilson offered motion, seconded by Commissioner Watkins, that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE AUTHORIZING AND APPROVING THE FORGIVENESS OF A LOAN OWED BY THE PADUCAH GOLF COMMISSION AND REPEALING ORDINANCE NO. 2013-12-8109 AND ORDINANCE NO. 2015-1-8208, WHICH AUTHORIZED AND MODIFIED THE LOAN BETWEEN THE CITY OF PADUCAH AND THE PADUCAH GOLF COMMISSION FOR CAPITAL IMPROVEMENTS TO PAXTON PARK MUNICIPAL GOLF COURSE.” This Ordinance approves the forgiveness of a certain promissory note owed by Paducah Golf Commission, also known as Paxton Park Municipal Golf Course Board, to the City of Paducah for certain capital improvements needed for the preservation of the Paxton Park Municipal Golf, a City owned municipal park and repeals the initial ordinances approving the financial assistance. The forgiveness is necessary due to current financial challenges encountered by the Golf Commission due to inclement weather. This Ordinance also approves and authorizes the Mayor to execute and deliver to the Golf Commission the Forgiveness of Debt Agreement which evidences this forgiveness.

ESTABLISH CREATIVE & CULTURAL COUNCIL

Commissioner Abraham offered motion, seconded by Commissioner McElroy, that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE ESTABLISHING THE PADUCAH CREATIVE AND CULTURAL COUNCIL.” This ordinance is summarized as follows: This ordinance establishes the Paducah Creative and Cultural Council (“Council”) by adding sections 2-581, 2-582, 2-583, and 2-584 to the Paducah Code of Ordinances. The Council shall be composed of 5 citizens, the Paducah Director of Planning, the Paducah Neighborhood Project Planner and the Paducah Grants Administrator. This ordinance outlines the method by which Council members shall be appointed and the role and function of the Council. Council members shall serve without compensation and shall not incur any indebtedness to be paid by the City.

ACCEPT PROPERTY FROM P&L RAILROAD

Commissioner McElroy offered motion, seconded by Commissioner Abraham, that the Board of Commissioners introduce an Ordinance entitled , “AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT WITH PADUCAH & LOUISVILLE RAILWAY, INC.” This Ordinance authorizes the Mayor to execute a Purchase Agreement with the Paducah & Louisville Railway for conveyance of the property located near Adams Street, Jackson Street, and Tennessee Street whereby the Paducah & Louisville Railway will convey such property to the City of Paducah. Following satisfactory inspection, environmental assessment and zoning certification, the Mayor is further authorized to execute a quitclaim deed for conveyance of the property, together with all other documentation necessary to effectuate transfer of the Property.

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AUTHORIZE CONTRACT WITH COMMONWEALTH ECONOMICS

Commissioner Watkins offered motion, seconded by Commissioner Wilson , that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH COMMONWEALTH ECONOMICS PARTNERS, LLC IN AN AMOUNT OF \$43,824.80 PLUS DIRECT EXPENSES IN AN AMOUNT NOT TO EXCEED \$4,000 FOR CONSULTING SERVICES RELATED TO THE TAX INCREMENT FINANCING (TIF) PROGRAM FOR THE PADUCAH RIVERFRONT DEVELOPMENT PROJECT.” This Ordinance authorizes the Mayor to execute a professional services agreement with Commonwealth Economics Partners, LLC, for the Tax Increment Financing (TIF) Program. This agreement is in the amount of \$19,824.80 for services rendered since June 2019, plus \$4,000 per month not to exceed \$24,000, for a total base contract amount of \$43,824.80 plus direct expenses in an amount not to exceed \$4,000.

CONSOLIDATE THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY (URCDA) WITH THE PADUCAH PLANNING COMMISSION

Commissioner Wilson offered motion, seconded by Commissioner Watkins, that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE REGARDING THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY AND DESIGNATING MEMBERS OF THE PADUCAH PLANNING COMMISSION TO SERVE AS JOINT MEMBERS ON BOTH AGENCIES.” This ordinance is summarized as follows: The Urban Renewal and Community Development Agency (URCDA) was established by Resolution on February 23, 1960. This ordinance creates a new section in Chapter 34, Article VI of the Paducah Code of Ordinances to establish the URCDA in said Code of Ordinances. The URCDA will be combined with the Planning Commission in that the 5 members appointed to the URCDA shall be members of the Planning Commission with the remaining members of the Planning Commission serving as alternate members. This ordinance further appoints the following members of the Paducah Planning Commission to the URCDA: Cathy Crecelius, David Morrison, Valerie Pollard, Lorraine Schramke and Bob Wade. The powers, functions and duties of the URCDA and its authority shall be in conformity with KRS Ch. 99.330 to 99.510, as amended from time to time.

AMEND CODE OF ORDINANCES CHAPTER 42 RELATED TO JUNK VEHICLES

Commissioner Abraham offered motion, seconded by Commissioner McElroy, that the Board of Commissioners introduce an Ordinance entitled “AN ORDINANCE AMENDING CHAPTER 42 OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH.” This ordinance is summarized as follows: This ordinance amends Chapter 42 of the Code of Ordinances to address the nuisance of junked motor vehicles. Junk Motor Vehicles which are apparently abandoned or apparently inoperable as defined by the ordinance shall be fined at a rate of \$100 for the first occurrence (30 days after final order or waiver of hearing) and be subject to tow at owner’s expense for the second occurrence (60 days after final order or waiver of hearing). Exceptions shall include classic or collector vehicles. Compliance by removal of a vehicle by the owner within seven (7) days after receipt of the notice of violation from the city shall be considered compliance and no further action or fine shall be imposed against the owner. The full text of each section that imposes fees shall be published in accordance with KRS 83A.060.

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CITY MANAGER COMMENTS

- City Employee Christmas Party will be Thursday, December 12th from 11 a.m. to 2 p.m. at the Robert Cherry Civic Center
- Lōse Design meeting on the Wellness Center will be Wednesday, December 11th from 9 a.m. to noon in the Team Room
- Computer Aided Dispatch (CAD) system – 911 goes Live next Tuesday. Testing is being done now. Tyler will be onsite Tuesday.

COMMISSION COMMENTS

- Commissioner McElroy commented on how great the Christmas parade was Saturday
- Mayor Harless – commented that there were close to 100 floats in the parade. Awards will be given out next Tuesday, December 17, at the Commission meeting.
- Commissioners Abraham and Watkins and Mayor Harless made comments on the lack of animal control services in the City, especially on weekends. There is only one animal warden for both the City and the County.

PUBLIC COMMENTS

- Randy Beeler had a question about access after alley closure between Broadway and Kentucky Avenue at Sixth Street.

ADJOURN

Mayor Harless offered motion, seconded by Commissioner Wilson, to adjourn the meeting. All in favor.

Meeting ended at approximately 6:27 p.m.

ADOPTED: December 17, 2019.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

December 17, 2019

Deed File:

1. Deed of Conveyance – Sabrina, Inc. to City of Paducah 831 Campbell Street (MO #2298)
2. Commissioner’s Deed – 2706 Ohio Street

Contract File:

1. Interlocal Cooperative Agreement – McCracken County PVA and City of Paducah (ORD 2019-11-8596)
2. Agreement between City of Paducah and the Emerald Foundation “Fit For Duty” assessments – First Responders – Signed by Michelle Smolen – Acting City Manager on behalf of James Arndt – City Manager
3. Municipal Advisory Services Agreement – Robert W. Baird & Co. bond advisor (ORD 2019-11-8598)

Financials File:

1. Barkley Regional Airport Authority – Years ended June 30, 2019 and 2018
2. Luther F. Carson Four Rivers Center, Inc. – Year Ended June 30, 2019

CITY OF PADUCAH
December 17, 2019

Upon the recommendation of the City Manager, the Board of Commissioners of the City of Paducah order that the personnel changes on the attached list be approved.



City Manager's Signature

12/12/19

Date

**CITY OF PADUCAH
PERSONNEL ACTIONS
December 17, 2019**

NEW HIRE - FULL TIME (F/T)

<u>FIRE SUPPRESSION</u>	<u>POSITION</u>	<u>RATE</u>	<u>NCS/CS</u>	<u>FLSA</u>	<u>EFFECTIVE DATE</u>
Yarbrough, Aiden	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020
Hakeem, Tyler	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020
Spillane, Rodney	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020
Guess, Joshua	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020
Harrell, Seth	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020
Gossum, Michaela	Firefighter	\$13.23/hr	NCS	Non-Ex	January 9, 2020

TERMINATIONS - FULL TIME (F/T)

<u>EPW-SOLID WASTE</u>	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
Arant, Brandon	Laborer	Termination	November 26, 2019

TERMINATIONS - PART-TIME (P/T)/TEMPORARY/SEASONAL

<u>PARKS SERVICES</u>	<u>POSITION</u>	<u>REASON</u>	<u>EFFECTIVE DATE</u>
Brannon, Charles B.	Temp Pump Operator	Deceased	December 9, 2019

Agenda Action Form Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Approval of Contract with Midtown Alliance of Neighbors for Operating Funds and Provision of Affordable Housing Construction and Repairs (\$140,000) - **T TRACY**

Category: Municipal Order

Staff Work By: Tammara Tracy

Presentation By: Tammara Tracy

Background Information: One of the most basic and daunting challenges the City of Paducah faces is the provision of affordable housing. From it flows a high quality of life, stable property values, consumers and workers that fuel an active, vibrant commercial area, and a pool of capable workers.

To increase the pace of providing affordable housing and the options for funding it, a Community Housing Development Organization (CHDO) designated by the Commonwealth adds a significant dimension to the city's response to this need. To become a CHDO, efficiencies and expertise must be proven. Consequently, as a preferred eligible partner, a CHDO can more easily secure state funds and is eligible for more administrative monies.

Over the past decade, Midtown Alliance of Neighbors has been a reliable partner in providing safe and affordable housing in the city and county, including homes in the Fountain Avenue project area.

The City is assisting our reliable partner, Midtown Alliance of Neighbors, to achieve this status which will magnify our efforts and ultimately yield better and faster results. The contract is an investment in Midtown Alliance of Neighbors providing for critical personnel (construction manager and financial manager). It also provides assistance for the repair and maintenance as needed for City-owned properties.

It is anticipated that similar funding may be needed for another year or two to allow time for alternative funding to be secured.

Investment Fund 2400-0401-580680	\$120,000
Project CD0040	\$ 20,000
Total	\$140,000

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): N-2 Encourage, incentivize and/or support more housing options throughout the City

Funds Available: Account Name: Midtown Alliance
Fountain Ave

Account Number: 2400-0401-580680
CD0040

Staff Recommendation: Approve and authorize the Mayor to execute the agreement with Midtown Alliance

of Neighbors

Attachments:

1. Municipal Order
2. CONTRACT 2019 Midtown Alliance3

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR SERVICES WITH MIDTOWN ALLIANCE OF NEIGHBORS IN AN AMOUNT OF \$140,000 FOR OPERATING FUNDS AND AFFORDABLE HOUSING CONSTRUCTION AND REPAIR

BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the Mayor is hereby authorized to execute a contract with Midtown Alliance of Neighbors in the amount of \$140,000, to be paid in three installments, for performance of services as outlined in said Contract. This contract shall expire June 30, 2020.

SECTION 2. This expenditure will be charged in the amount of \$120,000 to Investment Fund Account No. 2400-0401-580680 and in the amount of \$20,000 to Project No. CD0040.

SECTION 3. This Municipal Order shall be effective from and after the date of its adoption.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, December 17, 2019
Recorded by Lindsay Parish, City Clerk, December 17, 2019
\\mo\contract-midtown alliance of neighbors FY20

CONTRACT FOR SERVICES

This Contract for Services, effective this _____ day of December, 2019, by and between the **CITY OF PADUCAH** (“City”) and the **MIDTOWN ALLIANCE OF NEIGHBORS**.

WITNESSETH:

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS strives to create strong neighbors and neighborhoods through education, community activities, and home rehabilitation within the City of Paducah;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS since its founding in 2008 as a 501(c)(3) non-profit organization has maintained close ties with the local community in which it serves and includes those neighbors on its Board of Directors;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS provided safety, security, accessibility, maintenance, or weatherization repairs to 27 low-income families between July 1, 2018, and June 30, 2019, through its volunteer-led Repair Affair program;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS completed emergency repairs for 14 disabled, elderly, and/or low-income households between July 1, 2018, and June 30, 2019, including 5 roof replacements (1 with additional structural work); 5 HVAC systems; 3 electrical re-wires; 3 repairs to deteriorated floor structures with new floor coverings and related work; and 2 bathroom repairs. And also reserved funds for emergency repair projects to be completed for 11 homeowners in late 2019;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS provides reentry opportunities for men from the local halfway house who perform community service work as well as the local Lifeline's addiction recovery program;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS has been an exceptional partner in the Fountain Ave project, completely renovating five houses and providing cleanout and basic maintenance on many homes as requested;

WHEREAS, many of these projects have been completed using grant funds that awarded from a variety of sources with strict guidelines, such as the Federal Home Loan Bank of Cincinnati, Kentucky Housing Corporation, and Kentucky Heritage Council's Historic Tax Credits;

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS in the past year has developed a Homebuyer Program and received a grant from the Kentucky Housing Corporation for the construction of three new affordable homes (a necessary capacity-building step for them to become a Community Housing Development Organization);

WHEREAS, the MIDTOWN ALLIANCE OF NEIGHBORS in the past year has participated in discussions related to single-family and multi-family development of housing the Northside Opportunity Zone;

WHEREAS, the City of Paducah desires to help build the capacity of the MIDTOWN ALLIANCE OF NEIGHBORS to become a CHDO certified by the Commonwealth;

WHEREAS, safe and high quality affordable housing is critically needed in Paducah; and

WHEREAS, the City of Paducah needs a reliable, locally-connected partner in providing affordable housing.

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants as herein set forth, the parties do covenant and agree as follows:

SECTION 1: TERM

The term of this contract for services shall be from the effective date of the contract until June 30, 2020.

SECTION 2: TERMINATION

Either party may terminate this Contract for Services upon failure of any party to comply with any provision of this agreement provided any such party notifies the other in writing of such failure and the breaching party fails to correct the breach within thirty (30) calendar days of the notice.

SECTION 3: OBJECTIVES AND SERVICES

To advance their capacity to fulfill the mission of providing safe and affordable housing in the City of Paducah, the MIDTOWN ALLIANCE OF NEIGHBORS shall specifically:

- Hire and employ one full-time construction manager to handle the actual renovation and construction activities, and one full-time equivalent staff capable of fulfilling record management and financial accountability standards as outlined in 24 CFR 84.21, "Standards for Financial Management Systems";
- Provide assistance in the renovation, rehabilitation and construction of safe and affordable housing in the City of Paducah focusing on the needs of senior, disabled and low-income residents;
- Provide as needed emergency repairs and maintenance to city-owned properties in the Fountain Avenue area as requested;
- Maintain their 501(c) tax-exempt status and maintain a record of good standing; and
- Continue building sufficient capacity to meet the KHC's eligibility requirements for a CHDO.

SECTION 4: PAYMENT

In consideration of the MIDTOWN ALLIANCE OF NEIGHBORS meeting the objectives and services indicated in Section 3 and compliance with this Contract, the City shall pay the MIDTOWN ALLIANCE OF NEIGHBORS an amount not to exceed ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000) to be disbursed in three (3) installments. The first installment shall be on or after November 1st; second installment on or after February 1st; and

third installment on or after June 1st. In the event that this contract for services is terminated, the City shall not be obligated to make any further payments.

SECTION 5: ACCOUNTING

- A. For payment under Section 4, the MIDTOWN ALLIANCE OF NEIGHBORS shall supply documentation demonstrating the employment of requisite personnel, such as W-2 forms, and shall supply an annual financial audit to the City.
- B. Further, the MIDTOWN ALLIANCE OF NEIGHBORS shall provide a periodic summary of activities that meet the objectives and services prior to the installment dates indicated in Section 4.

SECTION 6: ENTIRE AGREEMENT

This contract for services embodies the entire agreement between the parties and all prior negotiations and agreements are merged in this agreement. This agreement shall completely and fully supersede all other prior agreements, both written and oral, between the parties.

SECTION 7: WITHDRAWAL OF FUNDS

Notwithstanding any other provision in this Contract for Services, in the event it is determined that any funds provided to the MIDTOWN ALLIANCE OF NEIGHBORS are used for some purpose other than in furtherance of the services described herein, the City shall have the right to immediately withdraw any and all further funding and shall immediately have the right to terminate this Contract for Services without advance notice and shall have the right to remedies provided in the law to seek reimbursement for all monies not properly accounted.

Witness the signature for the parties as of the year and date first written above.

CITY OF PADUCAH

MIDTOWN ALLIANCE OF NEIGHBORS

Brandi Harless, Mayor

Janel Tate, President

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Declaration and sale of surplus property at 164 Clements Street - **T TRACY**

Category: Municipal Order

Staff Work By: Nancy Upchurch

Presentation By: Tammara Tracy

Background Information: Located in the Farley Place neighborhood, a dilapidated house on 164 Clements Avenue was demolished in December 2012 and the City took title by Commissioners Deed December 10, 2013. The lot is not in a designated revitalization area and, at the time of acquisition, the City had no plans for development.

Generally-speaking, it is in the community's best interest to transfer ownership of such property to a responsible citizen, which puts the property back on the tax rolls and eliminates the maintenance and liability costs by the City.

Consequently, this property was listed on the Fall Surplus Sale. A legal ad ran in the Paducah Sun on October 13, 2019 and notice was posted on the property requesting sealed bids. The only bid submitted was from the adjacent property owner, James Hardin. The proposal is to clean up the lot, add a fence to expand the adjacent yard. The offer is \$350 for the property.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): I-9 Downsize the City's ownership in real estate.

Funds Available: Account Name:
Account Number:

Staff Recommendation: Determine and declare that the property is surplus, accept the bid of \$350.00, and transfer the property to James Hardin.

Attachments:

1. Municipal Order
2. 164 Clements Transfer Report

MUNICIPAL ORDER NO. _____

A MUNICIPAL ORDER DECLARING THE REAL PROPERTY LOCATED AT 164 CLEMENTS STREET TO BE SURPLUS PROPERTY, ACCEPTING THE BID OF JAMES HARDIN IN THE AMOUNT OF \$350.00 FOR PURCHASE OF SAID REAL PROPERTY AND AUTHORIZING THE MAYOR TO EXECUTE THE DEED AND ALL DOCUMENTS RELATED TO SAME

WHEREAS, pursuant to Section 2-668 of the Code of Ordinances of the City of Paducah, Kentucky, a written determination has been made that the City does not have any use at this time or in the future for property located at 164 Clements Street, which constitutes surplus real estate; and

WHEREAS, the City advertised for bids on October 13, 2019, and one (1) bid was received and opened on October 28, 2019; and

WHEREAS, the City desires to accept the bid of James Hardin who proposes to clean up the lot and add a fence to expand his yard.

NOW THEREFORE, BE IT ORDERED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Board of Commissioners hereby declares the property located at 164 Clements Street to be surplus property as it relates to the operations of the City. Further, the Board of Commissioners hereby accepts the bid of James Hardin in the amount of \$350.00 for the purchase of real property located at 164 Clements Street.

SECTION 2. The Mayor is hereby authorized to execute a deed and any necessary documents relating to same to complete the sale of the real property approved in Section 1 above.

SECTION 3. This Order shall be in full force and effect from and after the date of its adoption.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Adopted by the Board of Commissioners, December 17, 2019
Recorded by Lindsay Parish, City Clerk, December 17, 2019
\\mo\prop sale-164 Clements Street



STAFF REPORT & DETERMINATION

DISPOSITION OF ASSETS

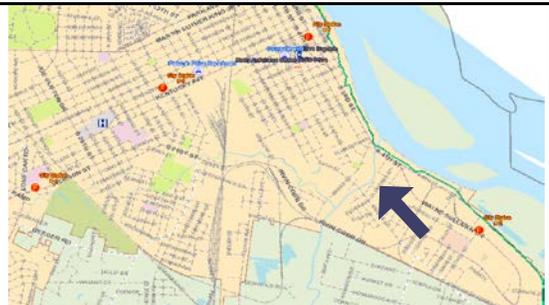
SOA 2019-237 12/10/2019

General Information

The disposition of surplus or excess property is governed by City Code Section 2-668; the sealed bid procedure is set out in City Code Section 2-645.

The disposition of any property requires a written determination that includes: a description of the property; its intended use at the time of acquisition; the reason why it is in the best interest of the city to dispose of the item; and the method of disposition to be used.

Property Description & Information

ADDRESS	164 Clements Street	 <p>General Vicinity Map</p>
CASE No.	SOA 2019-237	
SIZE OF PROPERTY	40' by 130' approx.	
IMPROVEMENTS	None	
ZONING	R-3 (Residential)	
COMPREHENSIVE PLAN	Neighborhood Conservation	
FLOODPLAIN	Protected by Levee	





Acquisition of the Property

The residential structure was dilapidated and subsequently demolished in December 2012 at a cost of \$2600.00. The lot was then acquired by Commissioners Deed December 10, 2013. The lot is not in a revitalization area. The City had no plans for development at the time of acquisition.

Disposition of the Property

It is in the best interest of the City to transfer ownership of this property to a responsible citizen placing the property back on the tax rolls and eliminating the maintenance and liability costs.

Bid Information

In accordance with these regulations, a legal ad ran in the Paducah Sun on October 13, 2019 requesting interested parties to submit a sealed bid on or before 4 PM on October 28, 2019. Notice was also posted on the property requesting sealed bids. Only one bid was submitted.

BID #1	James Hardin	Bid Amount: \$350.00
	Mr. Hardin proposes to clean up the lot and add to existing fence to enclose the lot.	

Staff Recommendation

The site is located just off Wayne Sullivan Drive. Clements Street extends to Bridge Street. This area does not experience a great deal of traffic. To monitor the property and easily care for the property, an adjacent or nearby property owner is a preferred recipient.

The bidder owns other the adjacent property. The intended use is for extension of yard for his personal residence.

Therefore, it is recommended to determine that the property is surplus, accept the bid of \$350.00, and transfer the property to James Hardin.

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Approve a Budget Amendment to move General Fund Reserve Funds in the amount of \$687,900 to the Ohio River Reconstruction Project - **R MURPHY**

Category: Ordinance

Staff Work By: James Arndt, Rick Murphy, Melanie Townsend
Presentation By: Rick Murphy

Background Information:

The City of Paducah entered into a Project Partnership Agreement (PPA) with the United States Army Corps of Engineers (USACE) for the reconstruction of the City of Paducah's Local Flood Protection Project (LFPP). This agreement is entitled,... "For the Construction of the Ohio River Shoreline Reconstruction Project...: and was approved by Ordinance No. 2017-05-8484.

The total project has been authorized at \$31,246,900. This agreement requires a 65% Federal Cost Share (\$20,309,000.00) and a 35% Local Cost Share (\$10,936,100.00) of which 5% (\$1,562,300.00) of total project cost must be in cash. To date the City has provided cash in the amount of \$874,406 leaving an obligation cash draw balance of \$687,894.

Ohio River Shoreline Reconstruction Project Cost Share

\$ 31,246,000.00	Total Project Cost (TPC)
\$ 20,309,000.00	Federal Cost Share (65%)
\$ 10,936,100.00	Local Cost Share (35%)

\$ 10,936,100.00	Total Local Cost Share
\$ 9,393,974.00	Total In-kind Cost Share (30% TPC)
\$ 1,562,300.00	Local Cash Cost Share (5% TPC)

\$ 1,562,300.00	Local Cash Cost Share
\$ 874,406.00	Cash Paid to Date
\$ 687,894.00	Cash Requested
\$ 0.00	Cash Obligation Requirement Met For Current PPA

\$ 9,393,974.00	Local In-kind Remaining
------------------------	--------------------------------

At this time, USACE is requesting the remaining cash draw of \$687,894 applied to the current draw balance of \$687,894. Under the current agreement and payment of this draw request, the City of Paducah will satisfy the 5% cash match and will retain the obligation to meet the in-kind obligations of \$9,373,800 as required by the PPA.

This ordinance authorizes a budget amendment in the amount of \$687,900 from the General Fund Reserve to the Floodwall Cash Match Project Account (FW0016) to cover the current cash draw

request.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): Repair of the Paducah Floodwall provides the backdrop for the successful completion of all other Strategic Objectives.

Funds Available: Account Name:
Account Number:

Staff Recommendation: Authorize the Finance Director to transfer funds in the amount of \$687,900 from the FY20 General Fund Reserve to Floodwall Cash Match Project Account (FW0016) and to render payment for same to the USACE Louisville District.

Attachments:

1. Ordinance
2. 2017-05-8484

ORDINANCE NO. 2019-____ - _____

AN ORDINANCE AMENDING ORDINANCE NO. 2019-6-8578, ENTITLED, “AN ORDINANCE ADOPTING THE CITY OF PADUCAH, KENTUCKY, ANNUAL OPERATING BUDGET FOR THE FISCAL YEAR JULY 1, 2019, THROUGH JUNE 30, 2020, BY ESTIMATING REVENUES AND RESOURCES AND APPROPRIATING FUNDS FOR THE OPERATION OF CITY GOVERNMENT” AND AUTHORIZING THE FINANCE DIRECTOR TO MAKE PAYMENT TO THE UNITED STATES ARMY CORPS OF ENGINEERS LOUISVILLE DISTRICT

WHEREAS, the City of Paducah entered into a Project Partnership Agreement with the United States Army Corps of Engineers for reconstruction of the City of Paducah’s Local Flood Protection Project by adoption of Ordinance No. 2017-05-8484; and

WHEREAS, pursuant to the Project Partnership Agreement, the Corps of Engineers is requesting a cash draw of \$687,894.00; and

WHEREAS, KRS prohibits expenses to exceed the budget in any department and it is therefore necessary to amend the City’s FY2020 budget.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the annual budget for the fiscal year beginning July 1, 2019, and ending June 30, 2020, as adopted by Ordinance No. 2019-6-8578, be amended by the following re-appropriations:

- Transfer \$687,900 from the FY2020 General Fund Reserve to the Floodwall Cash Match (FW0016) Project Account

SECTION 2. That the Finance Director is hereby authorized to make payment to the United States Army Corps of Engineers Louisville District in the amount of \$687,894.00 in accordance with the Project Partnership Agreement for reconstruction of the City of Paducah’s Local Flood Protection Project. This expenditure shall be charged to the Floodwall Cash Match (FW0016) Project Account.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, _____

Adopted by the Board of Commissioners, _____

Recorded Lindsay Parish, City Clerk, _____

Published by The Paducah Sun, _____

\ord\finance\budget amend 2019-20 - December 2019 (2nd Amendment)

ORDINANCE NO. 2017-5-8484

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROJECT PARTNERSHIP AGREEMENT (PPA) BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF PADUCAH FOR THE CONSTRUCTION OF THE OHIO RIVER SHORELINE, PADUCAH, KENTUCKY, RECONSTRUCTION PROJECT; AND TO AUTHORIZE THE FINANCE DIRECTOR TO PROVIDE THE NON-FEDERAL SPONSOR'S 5% CASH OBLIGATIONS TO THE U.S. ARMY CORPS OF ENGINEERS AS FEDERAL LEGISLATION/APPROPRIATIONS ARE AWARDED

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute a Project Partnership Agreement between the Department of the Army, represented by the District Engineer, United States Army Engineer District, Louisville and the City of Paducah, Kentucky, for construction of the Ohio River Shoreline, Paducah, Kentucky, Reconstruction Project.

SECTION 2. The City authorizes the Finance Director to provide the Non-Federal Sponsor's 5% cash obligations to the U.S. Army Corps of Engineers as Federal Legislation/Appropriations are awarded.

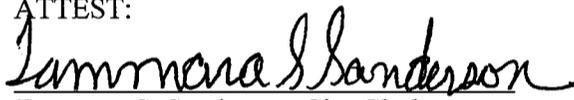
SECTION 3. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.



Mayor

ATTEST:


Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, April 25, 2017
Adopted by the Board of Commissioners, May 9, 2017
Recorded by Tammara S. Sanderson, May 9, 2017
Published by The Paducah Sun, May 12, 2017
\\ord\eng\agree-army corps - floodwall - ohio river shoreline

Agenda Action Form Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Approve Brockenborough Rotary Health Park Spray Pad Restroom Project Change Order No. 1 for an increase of \$16,951.32- **M THOMPSON**

Category: Ordinance

Staff Work By: Mark Thompson
Presentation By: Mark Thompson

Background Information: The Brockenborough Rotary Health Park Project Phase 2 has included the development of restrooms and a Spray Pad. Evrard Construction was awarded the contract 150-day contract totaling \$515,000.00. After negotiations with the contractor a fair settlement increasing the project by \$16,951.32. This was one of the wettest construction seasons on record and the City agrees to allow 78 weather days on the project and the following would be agreed upon:

1. Evrard Construction is responsible for 30 days delay causing \$7,500 in damages.
2. City responsible change orders of \$24,451.32. List attached.

The sum total of changes is \$16,951.32. This would make the total project \$531,951.32.

Does this Agenda Action Item align with a Strategic Plan Action Step? No
If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name: Health Park Construction Phase 2

Account Number: PA0113 000-22000-22010

Staff Recommendation: Authorization of Change Order #1 for the Brockenborough Rotary Health Park Splash Pad Restroom Project for a total increase in the budget of \$16,951.32.

Attachments:

1. Ordinance
2. Brockenborough Rotary Health Park CO1 12052019
3. Brockenborough Rotary Health Park Spray Pad project Contract Addm 12032019

AN ORDINANCE AUTHORIZING A CONTRACT AMENDMENT WITH EVRARD STRANG CONSTRUCTION COMPANY IN AN AMOUNT OF \$16,951.32 FOR THE PAT AND JIM BROCKENBOROUGH ROTARY HEALTH PARK PHASE 2 PROJECT AND AUTHORIZING THE MAYOR TO EXECUTE ALL DOCUMENTS RELATED TO SAME

WHEREAS, on November 19, 2018, the City of Paducah, Kentucky (hereinafter referred to as “City”) entered into a contract (a/k/a as an “Agreement”) whereby Evrard Strang Construction Company (hereinafter referred to as Contractor) agreed to furnish all the necessary labor, materials, tools and services necessary for the construction of the Pat and Jim Brockenborough Rotary Health Park Phase 2 Project (hereinafter the “Project”); and

WHEREAS, some disputes arose as to certain payments and certain weather related days leading to a delayed completion date on the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is authorized to enter into a Contract Amendment with Contractor which will finalize all final payments for any and all change orders as well as assessing liquidated damages against Contractor. This Contract Amendment shall consist of change orders in the amount of Twenty-Four Thousand Four Hundred Fifty-One Dollars and 32/100 (\$24,451.32) for which City shall pay Contractor. Additionally, this Contract Amendment shall include liquidated damages which have been assessed against Contractor in the amount of Seven Thousand Five Hundred Dollars and no/100 (\$7,500.00) which shall be paid by Contractor to City. In sum, this Contract Addendum will provide that a final payment of Sixteen Thousand Nine Hundred Fifty-One Dollars and 32/100 (\$16,951.32) will be made by City to Contractor to satisfy all payment obligations of City and Contractor. A copy of this Contract Amendment is attached hereto. This expenditure shall be charged to the Health Park Construction Phase 2 Account PA0113 000-22000-22010.

SECTION 2. Prior to amending the contract as aforesaid, the Mayor must first receive lien waivers provided by Contractor from each and every subcontractor hired to perform labor or provide materials for the Paducah Health Park – Phase 2 Project.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

BRANDI HARLESS, MAYOR

ATTEST:

CITY CLERK

Introduced by the Board of Commissioners _____

Adopted by the Board of Commissioners _____

Recorded by City Clerk _____

Published by *The Paducah Sun* _____

Ordinance Prepared by Denton Law Firm – A. Blackwell
ord\parks\Evrard Strang Contract Amendment 1 Dec. 2019

Health Park Phase 2 - Changes included in Change Order #1

Item Changed	Cost Change	Reasoning
Add urinal and wall hydrant	\$3,560.91	State required
Deduct for Soil Removal by City	-\$3,650.00	Cost saving measure by City
Omit restroom amenities	-\$133.16	City to provide
Add 911 Landline	\$1,485.19	State required, City preferred land line
Change to lock hardware	\$2,466.51	Changed from a digital lock and hinge system
Add Presusure Reducing Valve for Sprayground	\$2,020.62	Required due to high pressure
Omit seed and straw	-\$100.94	City to Sod
Change to reorder hand dryers and mirrors; Additional GFCI breakers, pipe, wire; Sub-Contractor requested or 2nd month rentals due to holdup on State decision on master vent trap	\$10,382.12	State required change after original approval
Add State required Master Vent Trap	\$5,274.02	State required change after original approval
Add for work stopped at drain inlet at road	\$3,146.05	City stoped work and changed design; Contractor had custom pipe already delivered and workers and equipment on site to perform the originally designed work.
Subtotal Change Orders	\$24,451.32	

ADDENDUM TO CONTRACT

The following Addendum is made to the Contract for Paducah Health Park – Phase 2 Project, that was executed on November 19, 2018, (hereinafter referred to as the “Agreement”), Rodney Evrard as President of Evrard Company (hereinafter referred to as “Evrard”), Inc. and City of Paducah (hereinafter referred to as “Paducah”):

This addendum is for the purpose of modifying the agreement regarding the remaining payments to be made to Evrard by City and the liquidated damages assessed against Evrard by the City. Said Agreement is hereby modified to include the following sections:

1. Liquidated Damages. Evrard shall be liable to City for Seven Thousand Five Hundred Dollars and no/100 (\$7,500.00) for delays in the completion of the project, as liquidated damages.
2. Change Order. City owes Evrard Twenty-Four Thousand Four Hundred Fifty-One Dollars and 32/100 (\$24,451.32) for additional items and additional work required for the project.
3. Payment. Payment shall be made by City to Evrard in the amount of Sixteen Thousand Nine Hundred Fifty-One Dollars and 32/100 (\$16,951.32). This amount shall represent the liquidated damages owed to City by Evrard, credited from the change order amounts owed by City to Evrard. Following this payment, no party shall be obligated to the other party for any work, damages, costs, and expenses, and the Agreement shall be paid in full.
4. Warranty. No changes included in this Addendum shall have any effect on any warranties on the materials or labor used on Phase 2 Project for the Paducah Health Park.
5. Lien Waivers. This Agreement shall be subject to Evrard obtaining lien releases from each and every contractor and/or subcontractor which Evrard retained to perform work on

Phase 2 Project for the Paducah Health. In the event that Evrard fails to obtain lien waivers from each and every aforementioned party, this Agreement shall be voided and nullified in full.

6. Mutual Release. In consideration of this Agreement, City does hereby release Evrard from any and all claims, demands, or causes of action which City has or may have against Evrard for any prior act or omission taken by Evrard in connection with Paducah Health Park – Phase 2 Project. This release shall not include a release of any warranties referenced above in Section 4 of this Agreement.

In consideration of this Agreement, Evrard does hereby release City from any and all claims, demands, or causes of action which Evrard has or may have against City for any prior act or omission taken by Evrard in connection with Paducah Health Park – Phase 2 Project.

This Addendum effective this _____ day of December, 2019.

Evrard Company, Inc.

**CITY OF PADUCAH PARKS
DEPTARMENT**

Rodney Evrard
President

Brandi Harless
Mayor, City of Paducah

STATE OF KENTUCKY)

COUNTY OF McCRACKEN)

The foregoing was acknowledged, subscribed, and sworn to before me this ____ day of _____, 2019 by Brandi Harless, Mayor, on behalf of the City of Paducah.

My commission expires: _____.

Notary Public, State at Large

STATE OF _____)

COUNTY OF _____)

The foregoing was acknowledged, subscribed, and sworn to before me this ____ day of _____, 2019 by Rodney Evrard, President of Evrard Company, Inc.

My commission expires: _____.

Notary Public, State at Large

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Authorize a Promissory Note Release for Paxton Park Golf Municipal Golf Course - **J ARNDT**

Category: Ordinance

Staff Work By: James Arndt, Mark Thompson, Jonathan Perkins, Lindsay Parish
Presentation By: James Arndt

Background Information:

On February 7, 2014, the Paducah Golf Commission dba Paxton Park Municipal Golf Course Board made, executed and delivered to the City of Paducah, a Promissory Note, in the principal amount of \$225,000.00 for the purpose of financing Golf Course facility improvements and equipment purchases.

On January 13, 2015, the Board of Commissioners adopted an ordinance to modify the promissory note to reduced monthly principal installment payments plus accrued unpaid interest for 12 consecutive monthly installment payments.

The loan was used by the Municipal Golf Course to purchase city-owned equipment and make capital improvements to the city-owned facility. This loan was originally intended to be repaid over a 10 year period but lower patron volume and weather issues have resulted in reduced monthly payments being made. While monthly payments have been made in a timely manner, the facility has had difficulty during the last few years bringing in enough operating funds to properly maintain the facility. This action of releasing the promissory note would allow the Golf Course to operate the city-owned facility with lessened financial strain.

Does this Agenda Action Item align with a Strategic Plan Action Step? No

If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name: Fleet Lease Trust Fund

Account Number:

Staff Recommendation: Staff recommends adoption of an ordinance to release the Paxton Park Golf Course Board Promissory Note.

Attachments:

1. Draft Ordinance & Release 2019
2. Ordinance 2015 - Paxton Park Modification Agreement
3. Ordinance 2013 - Paxton Park Promissory Note

ORDINANCE NO. 2019-_____

AN ORDINANCE AUTHORIZING AND APPROVING THE FORGIVENESS OF A LOAN OWED BY THE PADUCAH GOLF COMMISSION AND REPEALING ORDINANCE NO. 2013-12-8109 AND ORDINANCE NO. 2015-1-8208, WHICH AUTHORIZED AND MODIFIED THE LOAN BETWEEN THE CITY OF PADUCAH AND THE PADUCAH GOLF COMMISSION FOR CAPITAL IMPROVEMENTS TO PAXTON PARK MUNICIPAL GOLF COURSE

WHEREAS, on December 17, 2013, the City adopted Ordinance No. 2013-12-8109, entitled “*An Ordinance authorizing the Mayor to enter into a loan agreement between the City of Paducah and Paxton Park Municipal Golf Course Board,*” authorizing certain financial assistance to Paducah Golf Commission (doing business under the assumed name Paxton Park Municipal Golf Course Board) (the “Golf Commission”), a duly created and existing recreational commission established by the City of Paducah pursuant to Chapter 70 Article IV of the *City’s Code of Ordinances*, for certain capital improvement projects need for the preservation of the Paxton Park Municipal Golf located on City owned real property, situated within the boundaries of the City of Paducah, which furthers the public purposes of the City to do whatever is necessary for the health, safety, and welfare of its residents (the “Public Project”); and

WHEREAS, such financial assistance is evidenced by a certain Promissory Note dated February 7, 2014, in the original principal amount of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), which promissory note was subsequently modified by Promissory Note Modification Agreement dated January 15, 2015 entered into by and between the City and the Golf Commission, which modification agreement was authorized and approved by the City Commission through the adoption, on January 13, 2015, of Ordinance No. 2015-1-8208, entitled “*An Ordinance of the City of Paducah, Kentucky, authorizing the Mayor to enter a Promissory Note Modification Agreement between the City of Paducah and the Paxton Park Municipal Golf Course Board*” (the aforesaid Promissory Note and the Promissory Note Modification Agreement shall be collectively referred to as the “Note”); and

WHEREAS, the Golf Commission is ordered by City Ordinances to cover all expenses associated with the operations of the golf course through revenues generated through the Public Project; and

WHEREAS, the Golf Commission is currently undergoing financial challenges associated with two straight years of inclement weather during peak golf seasons; and

WHEREAS, the annual costs of the debt service payments paid by the Golf Commission to the City in connection with the Note for capital improvements to the City’s Public Project causes a hardship on the Golf Commission and contributes to its current financial challenges; and

WHEREAS, City Staff recommends to the Board of Commissioners that it is in the best interest of the City, the Golf Commission, and its residents to forgive the Golf Commission from the liability and obligation to repay the remainder of its debt owed to the City under the terms of

the Note, which has an estimated balance of \$176,250.00 and repeal Ordinance No. 2013-12-8109 and Ordinance No. 2015-1-8208, all being effective as of December 31st, 2019.

NOW THEREFORE be it ordained by the City Commission of the City of Paducah as follows:

SECTION 1. Ordinance 2013-12-8109 and Ordinance No. 2015-1-8208 are hereby repealed in their entirety, effective December 31st, 2019.

SECTION 2. Effective as of December 31, 2019, the City hereby forgives the repayment of the Note; and the Note and all indebtedness and obligations due thereunder are hereby fully released, discharged, extinguished, and cancelled. Further, the City hereby approves the Forgiveness of Debt Agreement by and between the City and the Golf Commission (the "Agreement") in substantially the form attached hereto as Exhibit A and made part hereof. It is further determined that it is necessary and desirable and in the best interests of the City to enter into the Agreement for the purposes therein specified, and the Mayor of the City is hereby authorized to execute the Agreement, together with such other documents, instruments or certifications which may be necessary to accomplish the transaction contemplated by this Ordinance with such changes in the Agreement not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the official executing the same on behalf of the City. The approval of such changes by said official, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Agreement by such official.

Section 3. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 4. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 5. Effective Date. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Mayor Brandi Harless

ATTEST:

Lindsay Parrish, City Clerk

Introduced by the Board of Commissioners, _____

Adopted by the Board of Commissioners, _____

Recorded by Lindsay Parrish, City Clerk, _____

Published by The Paducah Sun, _____

\ord\ Paxton Park Golf Loan Release 2019

Ordinance Prepared By L Emmons – Denton Law Firm, PLLC

EXHIBIT A
FORGIVENESS OF DEBT AGREEMENT
SEE ATTACHMENT

222071

FORGIVENESS OF DEBT AGREEMENT

THIS FORGIVENESS OF DEBT AGREEMENT is made and entered into on this _____ day of December, 2019, by and between CITY OF PADUCAH, KENTUCKY, a city of the home rule class of the Commonwealth of Kentucky, (the “City”) and G.P.E.D.C., INC., doing business under the assumed name of PADUCAH GOLF COMMISSION (doing business under the assumed name Paxton Park Municipal Golf Course Board (hereinafter the “Commission” or “Borrower”) a duly created and existing recreational commission established by the City of Paducah, Kentucky pursuant to the laws of the Commonwealth of Kentucky.

RECITALS

WHEREAS, the City has previously provided certain financial assistance to Borrower for certain capital improvement projects need for the preservation of the Paxton Park Municipal Golf located within the boundaries of the City of Paducah, which furthers the public purposes of the City to do whatever is necessary for the health, safety, and welfare of its residents; and

WHEREAS, such financial assistance is evidenced by a certain Promissory Note dated February 7, 2014, in the original principal amount of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), which promissory note was authorized and approved by the City Commission through the adoption of Ordinance No. 2013-12-8109; and

WHEREAS, the terms of the aforesaid Promissory Note was subsequently modified by Promissory Note Modification Agreement dated January 15, 2015 entered into by and between the City and Borrower, which modification agreement was authorized and approved by the City Commission through the adoption of Ordinance No. 2015-1-8208 (the aforesaid Promissory Note and the Promissory Note Modification Agreement shall be collectively referred to as the “Note”); and

WHEREAS, it is mutually desirable, beneficial, agreeable and in the best interest of the parties hereto and the City residents that the City forgive the repayment of the Note as such forgiveness furthers the public purposes of the City.

NOW, THEREFORE, for and in consideration of the foregoing premises, and for other valuable consideration, the legal adequacy, sufficiency, and receipt of which is hereby acknowledged by all parties hereto, the parties do covenant and agree as follows:

1. Forgiveness. Effective as of December 31, 2019, the City hereby forgives the repayment of the Note; and the Note and all indebtedness and obligations due thereunder are hereby fully released, discharged, extinguished, and cancelled; and Borrower is fully released and discharged from any liability with respect to the Note and all indebtedness and obligations due thereunder.

2. Miscellaneous Provisions. This Agreement shall be binding upon the parties hereto, their successors, and assigns. In the event of any litigation concerning this Agreement, Borrower submits itself to the jurisdiction of the McCracken Circuit Court, and additionally, hereby waives its right of trial by jury.

IN TESTIMONY WHEREOF, this Forgiveness of Debt Agreement has been executed by the parties on the day and year first above written.

CITY OF PADUCAH, KENTUCKY

By _____
Mayor Brandi Harless

PADUCAH GOLF COMMISSION

By _____

Title _____

ORDINANCE NO. 2015-1-8208

AN ORDINANCE OF THE CITY OF PADUCAH, KENTUCKY,
AUTHORIZING THE MAYOR TO ENTER A PROMISSORY NOTE
MODIFICATION AGREEMENT BETWEEN THE CITY OF PADUCAH AND
THE PAXTON PARK MUNICIPAL GOLF COURSE BOARD

WHEREAS, on February 7, 2014, the Paducah Golf Commission dba Paxton Park Municipal Golf Course Board (the "Commission") made, executed and delivered to the City of Paducah, Kentucky (the "City"), one certain Promissory Note, in the original principal amount of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), which promissory note bears a final maturity of February 14, 2024 (the "Note"); and

WHEREAS, the City and the Commission have come to an agreement as to the modification of the Note (the "Modification Agreement") and do now desire to memorialize the Modification Agreement by this binding writing; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PADUCAH, KENTUCKY, AS FOLLOWS:

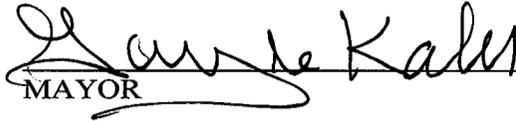
Section 1. Recitals and Authorization. The City hereby approves the Modification Agreement by and among the City and the Commission in substantially the form attached hereto as Exhibit A and made part hereof. It is further determined that it is necessary and desirable and in the best interests of the City to enter into the Modification Agreement for the purposes therein specified, and the execution and delivery of the Modification Agreement is hereby authorized and approved. The Mayor of the City is hereby authorized to execute the Modification Agreement, together with such other agreements, instruments or certifications which may be necessary to accomplish the transaction contemplated by the Modification Agreement with such changes in the Modification Agreement not inconsistent with this Ordinance and not substantially adverse to the City as may be approved by the official executing the same on behalf of the City. The approval of such changes by said official, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of the Modification Agreement by such official.

Section 2. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. Compliance With Open Meetings Laws. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

Section 4. Conflicts. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

Section 5. Effective Date. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.


MAYOR

ATTEST:


Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, December 16, 2014
Adopted by the Board of Commissioners, January 13, 2015
Recorded by Tammara S. Sanderson, City Clerk, January 13, 2015
Published by *The Paducah Sun*, January 17, 2015
\\ord\agree-loan-amendment-paxton park

EXHIBIT A
PROMISSORY NOTE MODIFICATION AGREEMENT

THIS PROMISSORY NOTE MODIFICATION AGREEMENT made on this _____ day of January, 2015, by and between CITY OF PADUCAH, KENTUCKY, a city of the second class of the Commonwealth of Kentucky, (the "City") whose mailing address is Post Office Box 2267, Paducah, Kentucky, 42002,; and PADUCAH GOLF COMMISSION (doing business under the assumed name Paxton Park Municipal Golf Course Board (hereinafter the "Commission" or "Borrower"), whose mailing address is 841 Berger Road, Paducah, Kentucky 42003.

W I T N E S S E T H :

WHEREAS, heretofore and under date of February 7, 2014, the Commission made, executed and delivered to the City, one certain Promissory Note, in the original principal amount of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), which promissory note bears a final maturity of February 14, 2024 (the "Note"); and

WHEREAS, it is mutually desirable, beneficial, and agreeable to the parties hereto that the repayment terms of said Note be modified as hereinafter set out;

NOW, THEREFORE, in consideration of the mutual benefits inuring to each other, it is understood and agreed, by and between the parties hereto, that the terms and conditions of the Note as above described, is hereby modified as follows:

1. **Modification to Note.** The Note shall be modified as follows:
 - (a) The interest rate under the Note shall remain variable and tied to the rate of interest earned on the City's pooled demand deposits account. Borrower shall pay reduced monthly principal installment payments of Five Hundred Dollars (\$500.00) plus accrued unpaid interest in twelve (12) consecutive monthly installment payments, with the first monthly installment to be paid on or before January 14, 2015 and the remaining monthly payments to be paid on or before the 14th day of each consecutive month thereafter, up to and including December 14, 2015.
 - (b) Effective January 14, 2016, Borrower shall pay ninety-seven (97) consecutive monthly principal installment payments of Two Thousand and Forty Dollars (\$2,040.00) plus accrued unpaid interest, with the first monthly installment to be paid on or before January 14, 2016 and the remaining monthly payments to be paid on or before the 14th day of each consecutive month thereafter, and a final monthly principal installment payment in the amount of \$2,370.00 plus accrued unpaid interest on or before the scheduled maturity date of February 14, 2024.

It is further agreed by and between the parties that except for the modifications set forth above, all other remaining terms and provisions of the Note shall remain in full legal force and effect in strict accordance with such terms and provisions. This modification agreement, and the terms and provisions as herein contained, shall supplant and supersede all inconsistent terms and provisions as set forth in the Note.

2. **Collateral Documents.** Any and all collateral documents heretofore executed by the Borrower or any other person to the City as collateral for the Note, and for any modifications made thereto, including but not limited to a Mortgage, shall continue to secure the Note, as modified and modified as provided herein, in strict accordance with the terms and provisions therein contained.

3. **Nonwaiver Provision.** Borrower expressly acknowledges and agrees that the execution of this agreement shall not in any manner be construed as a waiver or release of any right, claim, or privilege which the City has against the Borrower, or of any obligation which the Borrower owes to the City pursuant to the Note, or pursuant to any collateral document or lien interest created thereunder. Furthermore, the execution of this agreement shall not be construed

as a waiver or release of any rights and claims that the City has against any maker or guarantor or any other party to any collateral document. The Borrower executing this agreement expressly acknowledges consent to this agreement and the continuing obligations to the City under the Note and collateral documents which have been executed to the City.

4. Other Documents. As a condition to the City's execution and acceptance of this agreement, the City shall have the right to require the Borrower to execute any additional collateral document, or any other related document necessary for the perfection of same.

5. Miscellaneous Provisions. This modification agreement shall be binding upon the parties hereto, their heirs, successors, and assigns. In the event of any litigation concerning this agreement, the Note, or any collateral document, the Borrower submits itself to the jurisdiction of the McCracken Circuit Court, and additionally, hereby waives their right of trial by jury.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the day and year first above written.

CITY OF PADUCAH, KENTUCKY

By Gayle Kaler
Mayor Gayle Kaler

STATE OF KENTUCKY)

COUNTY OF McCracken)

On this ___ day of December, 2014, personally appeared before the undersigned, a Notary Public in and for the State and County aforesaid, Gayle Kaler, Mayor of the City of Paducah, Kentucky (the "City"), personally known to me and personally known by me to be such officer, and to be the same person who executed as such officer, respectively, the within and foregoing instrument, and such person duly acknowledged before the undersigned the execution of the same to be her act and deed and the act and deed of said City for the uses and purposes therein stated, duly authorized by Ordinance of the City.

WITNESS my signatures this ___ day of January, 2015.

My commission expires: _____

Notary Public, State at Large

PADUCAH GOLF COMMISSION

By _____

Its _____

STATE OF KENTUCKY)

COUNTY OF McCracken)

Subscribed, sworn, and acknowledged before me on this ___ day of January, 2015, by _____ of the PADUCAH GOLF COMMISSION, on behalf of said Commission.

My commission expires _____.

Notary Public

ORDINANCE NO. 2013-12-8109

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A LOAN AGREEMENT BETWEEN THE CITY OF PADUCAH AND PAXTON PARK MUNICIPAL GOLF COURSE BOARD

WHEREAS, the Paxton Park Municipal Golf Course Board is charged with daily oversight, operation and maintenance of the Paxton Park Golf Course; and

WHEREAS, the Board of Directors of the Golf Course Board have requested a loan from the City for the purpose of financing facility improvements and equipment purchases; and

WHEREAS, the City would like to enter into a loan agreement for the Capital Improvement Projects and Equipment Needs presented by the Golf Course Board.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

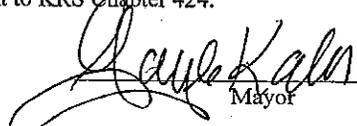
SECTION 1. That the City of Paducah is hereby authorizes the Mayor to enter into a loan agreement in the amount of \$225,000 with Paxton Park Municipal Golf Course Board for capital improvement project and equipment needs for the Paxton Park Municipal Golf Course. The City will make the loan from the Fleet Enterprise fund for a period of ten (10) years. Annual payment on the loan will be \$22,500, plus annual accrued interest at a rate that reflects the earning on City demand deposits, not to exceed 2.5%.

SECTION 2. Funding for said loan authorized in Section 1 above shall be from the Fleet Trust account.

SECTION 3. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

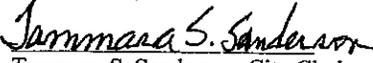
SECTION 4. Compliance With Open Meetings Laws. The City hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 5. This Ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.



Mayor

ATTEST:


Tammara S. Sanderson, City Clerk

Introduced by the Board of Commissioners, December 10, 2013
Adopted by the Board of Commissioners, December 17, 2013
Recorded by Tammara S. Sanderson, City Clerk, December 17, 2013
Published by *The Paducah Sun*, December 23, 2013
\\ord\agree-loan-paxton park

179,250

R & file

PROMISSORY NOTE

\$225,000.00

168303

February 7, 2014
Paducah, Kentucky

FOR VALUABLE RECEIVED, the undersigned, the PADUCAH GOLF COMMISSION (doing business under the assumed name Paxton Park Municipal Golf Course Board ("Commission"), whose mailing address is Post Office Box 7624, Paducah, Kentucky 42002-7624, does hereby promise and agree to pay to the order of the CITY OF PADUCAH, KENTUCKY ("City"), a municipal corporation of the second class existing under the laws of the Commonwealth of Kentucky, and a body politic and corporate whose mailing address is Post Office Box 2267, Paducah, Kentucky, 42002-2267, the principal amount of Two Hundred Twenty-Five Thousand and 00/100 Dollars (\$225,000.00), together with interest on the unpaid outstanding principal balance, in the manner as hereinafter set forth.

The term of this promissory note shall be a term of Ten (10) years. The interest rate on this promissory note shall be variable and tied to the rate of interest earned on the City's pooled demand deposits account on each one year anniversary date of this promissory note, which account is currently held by Independence Bank. The initial rate of interest shall be one percent (1%) per annum with the first interest change date on the 1st anniversary of this promissory note. Said variable rate is subject to change on each one year anniversary date of this promissory note, but under no circumstances will the interest rate exceed a rate of two and one half percent (2.5%) per annum or fall below a rate of one percent (1%) per annum. The interest rate change will not occur more often than each year. Interest on this promissory note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this promissory note is computed using this method.

Commission will pay this loan in one hundred and twenty (120) successive monthly principal installments of One Thousand Eight Hundred and Seventy-Five Dollars (\$1,875.00) plus accrued unpaid interest commencing on the 14th day of February, 2014, with a like principal installment payment plus accrued unpaid interest to be due and payable on the 14th day of each successive month thereafter, which installments it promises to pay when due. The final maturity date of this promissory note is February 14, 2024. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges.

In the event the undersigned fails to pay and satisfy any monthly installment within thirty (30) days following the monthly due date, such failure shall constitute an event of default under this note, in which event, the holder hereof shall have the right to declare the entire unpaid principal amount and all accrued interest due under this promissory note to be immediately due and payable, and shall have the further right to make written demand upon the undersigned for full payment of same.

Commission shall have the right to prepay this promissory note without penalty at any time.

FINANCE DEPARTMENT
FEB 10 2014

Commission agrees that it shall not enter into any agreement or arrangement with any person wherein such person assumes Commission's obligations under this promissory note. In the event Commission makes such an agreement or arrangement, such shall constitute an event of default under this promissory note, in which event the holder hereof shall have the right to declare the entire unpaid principal amount and all accrued interest, if any, due under this promissory note to be immediately due and payable, and shall have the further right to make written demand upon Commission for full payment of same.

In the event of default, the undersigned shall be liable to pay to the holder any and all costs and expenses incurred by the holder in the enforcement of this promissory note, including reasonable attorney fees.

The undersigned hereby waives presentment, demand, notice of dishonor, protest, notice of protest and nonpayment, and all exemptions to which it may be entitled under the laws of this or any other state of the United States, and further agree that the holder hereof shall have the right to grant any extension of time for payment of this promissory note or any other indulgence or forbearance whatsoever, may release any security for the payment of this promissory note and may modify the terms of any of the instruments referred to herein with the consent of the undersigned.

This promissory note shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

PADUCAH GOLF COMMISSION

By John W. Bell

Its Secretary

STATE OF KENTUCKY)

COUNTY OF McCRACKEN)

Subscribed, sworn, and acknowledged before me on this 7th day of February, 2014, by John W. Bell, Secretary of the PADUCAH GOLF COMMISSION, on behalf of said Commission.

My commission expires 2-7-15.

MARGARET A. TURNER
NOTARY PUBLIC
STATE AT LARGE, KENTUCKY
MY COMMISSION EXPIRES 02-07-2015
NOTARY ID #436613

Margaret Turner
Notary Public

Agenda Action Form Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Establish a Creative & Cultural Council - **L PARISH**

Category: Ordinance

Staff Work By: Lindsay Parish, Tammara Tracy

Presentation By: Lindsay Parish

Background Information: The City of Paducah developed and adopted a Strategic Plan with the Key Performance Area of Enhancing Arts & Culture in Paducah. The WIN (What's Important Now) Initiative for the Creative Industries area is to recruit and create a Creative and Cultural Council.

This ordinance establishes the Paducah Creative & Cultural Council. It will be composed five (5) citizens of the City of Paducah appointed by the Mayor with the consent of the Board of Commissioners. The Paducah Director of Planning, the Paducah Neighborhood Project Planner and the Paducah Grants Administrator will also serve as members of the Council.

The Roles and Functions of the Council will be as follows:

- (1) Acting as a resource for local artists and organizations.
- (2) Undertaking initiatives that support the creative economy and the arts and culture ecosystem of Paducah.
- (3) Uniting and connecting local partners to address community needs and make the community more healthy, vibrant and equitable.
- (4) Recognizing, promoting and encouraging creative industry growth.
- (5) Identifying funding and grant opportunities for local artists and arts & cultural organizations and assisting with the acquisition of said funding and grants.
- (6) Coordinating efforts between agencies and individual artists and educating the public regarding community arts opportunities.
- (7) Assisting with the installation of public art in neighborhoods, public places, and commercial corridors.
- (8) Performing assessments on the state of arts and culture in Paducah.

The Council will serve without compensation and cannot incur any indebtedness to be paid by the City of Paducah.

The creation of the Paducah Creative & Cultural Council will act as a launching point for many other projects related to promoting and enhancing Paducah's creative industries.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): A-1 Recruit and create a Creative and Cultural Council

A-2 Recognize, promote and encourage creative industry growth

A-6 Installation of public art in community gateways

A-9 Implement an annual assessment on arts and culture

Funds Available: Account Name:

Account Number:

Staff Recommendation: Adopt the ordinance establishing the Creative & Cultural Council.

Attachments:

1. Ordinance

ORDINANCE NO. 2019-____ - _____

AN ORDINANCE ESTABLISHING THE PADUCAH CREATIVE AND CULTURAL COUNCIL

WHEREAS, the City of Paducah developed and adopted a Strategic Plan with the key performance area of Enhancing Arts and Culture in Paducah; and

WHEREAS, the City of Paducah recognizes that arts and culture has a measurable impact on local economy, health and wellbeing, society and education; and

WHEREAS, it is the intent of the City of Paducah to establish and empower a Creative and Cultural Council to preserve, support and grow arts and culture in Paducah.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah, Kentucky hereby creates the Paducah Creative and Cultural Council by adding the following sections to Chapter 2 of the Paducah Code of Ordinances:

Sec. 2-581. – Establishment.

There is hereby created a board to be known as the Paducah Creative and Cultural Council.

Sec. 2-582. - Composition; appointment of members.

The Mayor with the consent of a majority of the City Commission, shall appoint the members of the Council to be called the Paducah Creative & Cultural Council. The board shall consist of five (5) citizens of the City of Paducah, the Paducah Director of Planning, the Paducah Neighborhood Project Planner and the Paducah Grants Administrator. Citizen members initially designated shall serve terms of three (3) years or until their successors are appointed and confirmed; provided, however, that initially, two (2) members shall be appointed for terms of one (1) year; two (2) members shall be appointed for terms of two (2) years; and one (1) member shall be appointed for terms of three (3) years. Each term, except for initial appointments, shall be for three (3) years each, and/or until their successors are appointed and qualified. No member may serve more than two (2) full three-year terms. Vacancies shall be filled in the same manner as in the original appointments and for the unexpired term of the vacancy. Board members shall

be appointed based in part on their professional competence of arts and culture and may include creative entrepreneurs, arts advocates and concerned members of the public.

Sec. 2-583. – Role & Function.

The duties of the Creative and Cultural Council shall be as follows:

- (1) Act as a resource for local artists and organizations.
- (2) Undertake initiatives that support the creative economy and the arts and culture ecosystem of Paducah.
- (3) Unite and connect local partners to address community needs and make the community more healthy, vibrant and equitable.
- (4) Recognize, promote and encourage creative industry growth.
- (5) Identify funding and grant opportunities for local artists and arts & cultural organizations and assist with the acquisition of said funding and grants.
- (6) Coordinate efforts between agencies and individual artists and educate the public regarding community arts opportunities.
- (7) Assist with the installation of public art in neighborhoods, public places, and commercial corridors.
- (8) Perform assessments on the state of arts and culture in Paducah.
- (9) Select its own Chairperson and Secretary.
- (10) Meet no less than quarterly.

Sec. 2-584. – Compensation and Debts.

Council members shall serve without compensation and shall not incur any indebtedness to be paid by the City.

SECTION 2. The provisions of this ordinance are severable. If any provision, section, paragraph, sentence or part thereof shall be held unconstitutional or invalid, such decision shall not affect or impair the remainder of this ordinance, it being the legislative intent to ordain and enact each provision, section, paragraph, sentence and part thereof separately and independent of each other.

SECTION 3. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, _____, 2019

Adopted by the Board of Commissioners, _____, 2019

Recorded by the City Clerk, _____, 2019

Published by *The Paducah Sun*, _____, 2019

Reviewed by KKHB

Ord\2-581 Establish Creative and Cultural Council

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Agreement to accept property from P & L Railroad - **S KYLE**

Category: Ordinance

Staff Work By: Steve Kyle

Presentation By: Steve Kyle

Background Information: The Fire Department currently has a training field on North 6th street that JSA needs for expansion. As a result, the Fire Department has been looking for and has located property that is owned by P&L Railroad and is a potential site location for a new drill field. P&L is willing to donate the property to the fire department through an agreement that is attached. In order to accept the property, an agreement is attached for acceptance pending environmental inspections, zoning certification, and appraisal of the property. This site, due to its location, can serve the Fire Department for years to come.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): P-8 Research and plan for a cooperative public safety training facility and grounds.

Funds Available: Account Name:

Account Number:

Staff Recommendation: Enter into agreement with P&L for acceptance of the property.

Attachments:

1. Ordinance
2. REAL ESTATE SALE AND PURCHASE AGREEMENT (00234889xDDD9A)
3. EXHIBIT A TO REAL ESTATE SALE AND PURCHASE AGREEMENT (00234888xDDD9A)

ORDINANCE NO. 2019-_____

**AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT
WITH PADUCAH & LOUISVILLE RAILWAY, INC.**

WHEREAS, the Paducah & Louisville Railway, Inc. owns real property located near Adams Street, Jackson Street, and Tennessee Street and wishes to convey that property to the City of Paducah at no cost, except for those costs and expenses associated with effectuating the conveyance;

WHEREAS, prior to acceptance or conveyance, the City must conduct an inspection including an environmental inspection, zoning certification and appraisal of the property;

WHEREAS, a Purchase Agreement between the City and Paducah & Louisville Railway, Inc. has been drawn up reflecting that, if the results of the inspection are satisfactory to the City, and reveal no significant abatement, zoning, or residential issues, Paducah & Louisville Railway, Inc. will convey the property to the City of Paducah, without charge, except that the City shall be responsible for payment of costs and expenses associated with such conveyance;

WHEREAS, it has been determined that, upon satisfactory inspection, it is beneficial to the City to agree to the Purchase Agreement with Paducah & Louisville Railway, Inc. for conveyance of real property.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City Commission hereby authorizes and approves the City of Paducah to enter into the Purchase Agreement with the Paducah & Louisville Railway for conveyance of the property located near Adams Street, Jackson Street, and Tennessee Street whereby the Paducah & Louisville Railway will convey such property to the City of Paducah.

SECTION 2. The Mayor is hereby authorized to execute the Purchase Agreement between the City and Paducah & Louisville Railway, Inc. for conveyance of the real property, subject to an inspection period and satisfactory environmental assessment and zoning certification.

SECTION 3. Following satisfactory inspection, environmental assessment and zoning certification, the Mayor is further authorized to execute a quitclaim deed for conveyance of the property, together with all other documentation necessary to effectuate transfer of the Property.

SECTION 4. If any section, paragraph or provision of this Ordinance shall be held invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions herein.

SECTION 5. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable Open Meetings laws.

SECTION 6. All ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed and the provisions of this Ordinance shall prevail and be given effect.

SECTION 7. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, _____, 2019

Adopted by the Board of Commissioners, _____, 2019

Recorded by the City Clerk, _____, 2019

Published by *The Paducah Sun*, _____, 2019

ord\fire\Accept P & L Property

234972

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Authorize Contract with Commonwealth Economics for professional services for the TIF program (\$43,824.80 plus direct expenses) - **T TRACY**

Category: Ordinance

Staff Work By: James Arndt, Tammara Tracy, Katie Axt
Presentation By:

Background Information: Since 2016, the City of Paducah has been working with Commonwealth Economics (CE) to research, analyze, and develop a TIF district. To that end, the City has successfully established a TIF district that has been given preliminary approval by the Kentucky Economic Development Finance Authority (KEDFA) with CE assistance.

As the City prepares for final review by KEDFA and eventually setting up the administration of the TIF accounts and reports, the consulting and compliance services of CE are sought.

CE has unique qualifications and experience in this area. They frequently advise local governments on Tax Increment Financing and have been engaged for its consulting and compliance services in Lexington, Louisville, Owensboro, Bowling Green, and a number of other cities across the Commonwealth.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): E-1 Encourage and assist local business retention and expansion

E-3 Promote occupancy in all downtown buildings

E-4 Continue developing the riverfront from the Carson Center to the Convention Center

E-5 Maintain all of our commercial corridors

I-1 Connect main commercial corridors by bike paths and/or bike lanes

I-9 Downsize the City's ownership in real estate

N-2 Encourage, incentivize, and/or support more housing options throughout the City

N-5 Evaluate, plan, partner, and create pedestrian access to parks from residential areas

Funds Available: Account Name: TIF

Account Number: DT0044

Staff Recommendation: Approval and authorization for the Mayor to enter into a professional services contract with Commonwealth Economics in an amount not to exceed \$43,824.80 plus direct expenses.

Attachments:

1. Ordinance
2. CONTRACT-CE-Paducah TIF Approval Process Compliance 2019-11 26

ORDINANCE 2019-____ - _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH COMMONWEALTH ECONOMICS PARTNERS, LLC IN AN AMOUNT OF \$43,824.80 PLUS DIRECT EXPENSES IN AN AMOUNT NOT TO EXCEED \$4,000 FOR CONSULTING SERVICES RELATED TO THE TAX INCREMENT FINANCING (TIF) PROGRAM FOR THE PADUCAH RIVERFRONT DEVELOPMENT PROJECT

WHEREAS, the Board of Commissioners approved Municipal Order No. 2111 with Commonwealth Economics in an amount not to exceed \$78,000; and

WHEREAS, it is now necessary to update the contract with Commonwealth Economics for additional consulting services related to the Tax Increment Financing Program for the Paducah Riverfront Development Project; and

WHEREAS, a written determination has been made by the City Manager that this constitutes a professional services purchase and will be a noncompetitive negotiation purchase, pursuant to KRS 45A.380(3).

NOW, THEREFORE, BE IT ORDAINED BY BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the Mayor is hereby authorized to execute a professional services agreement with Commonwealth Economics Partners, LLC, for the Tax Increment Financing (TIF) Program. This agreement supersedes and replaces the agreement with Commonwealth Economics dated June 2018.

SECTION 2. This agreement shall be in the amount of \$19,824.80 for services rendered since June 2019, plus \$4,000 per month not to exceed \$24,000, for a total base contract amount of \$43,824.80 plus direct expenses in an amount not to exceed \$4,000. This expenditure shall be charged to the TIF Project No. DT0044.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, _____

Adopted by the Board of Commissioners, _____

Recorded Lindsay Parish, City Clerk, _____

Published by The Paducah Sun, _____

\ord\plan\TIF Consultant Commonwealth Economics Dec 2019



**City of Paducah
Downtown Riverfront TIF Project:
TIF Consulting & Compliance Services**

Submitted To:
City of Paducah

Submitted By:
Commonwealth Economics Partners, LLC

November 2019



November 26, 2019

Dear Mayor Harless:

Commonwealth Economics Partners, LLC (“Commonwealth Economics” or “CE”) is pleased to provide the City of Paducah (“City” or “Paducah”) with a proposal for Tax Increment Financing (“TIF”) consulting and compliance services regarding its Downtown Riverfront TIF Project (“Project”). CE frequently advises local governments on Tax Increment Financing and has been engaged for its consulting and compliance services in Lexington, Louisville, Owensboro, Bowling Green, and a number of other cities across the Commonwealth.

Commonwealth Economics is a registered Municipal Advisor with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board.

I. PROPOSED SERVICES

Commonwealth Economics agrees to provide the following services:

- A. Presentation of the Project to State Government Officials, discussions with the State consultant and detailed review of their analysis, and negotiation of the terms of the deal with the State:** Commonwealth Economics will assist the Project throughout the required meetings and discussions with the Kentucky Economic Development Finance Authority (“KEDFA”) and the State’s third-party TIF consultant regarding the economic and fiscal impacts of the Project, and will work with the Project team members to negotiate and finalize the TIF incentive agreement with KEDFA.
- B. TIF Compliance Services:** Commonwealth Economics will use reasonable efforts to assist the City and Project team members with ongoing guidance, support, training, and representation during the term of the contract. Our services will be targeted to the tasks which are critical for the Projects to remain in compliance with the TIF agreements in place with KEDFA. These services include:
 - Working with the City and state to accurately set the state tax baseline for the TIF Project. Getting the state tax baseline set accurately from the beginning is a vital step, as the state Department of Revenue (“DOR”) and KEDFA will not amend their tax baseline once annual increment payments have begun. This process entails:

- ✓ Documenting the businesses operating within the state footprint during the baseline year.
 - ✓ Obtaining and compiling TIF business questionnaires from existing businesses within the state TIF footprint. These questionnaires are required by the state Department of Revenue (“DOR”).
 - ✓ Developing an internal estimate of the state tax baseline based on the information collected and other available information.
 - ✓ Completing and submit the required Old Revenues form, with related TIF questionnaires and tax estimates for each business, to KEDFA and working with them and DOR to ensure their list of businesses included in the baseline calculation match the City’s, and state tax baseline calculated by DOR is reasonable based on the internal estimate.
 - ✓ CE will serve as a point of contact with DOR throughout the process, or as the City requests.
- Working with the City and Project construction managers to accurately report the capital investment related to the Project. Semi-Annual reporting of the capital investment is required by KEDFA through completion of the Project and is subject to an independent audit at up to three different milestones. This process entails:
 - ✓ Working with construction contractors to educate them on the information required and establishing a periodic submission schedule.
 - ✓ Collecting and compiling detailed capital investment (including public infrastructure) information at periodic intervals from the Project’s construction manager.
 - ✓ Completing and submitting the required capital investment form the Project to KEDFA by January 30th and July 31st each year until the Project is completed.

- ✓ Working with the City to answer questions during the independent CPA audits of the Project's capital investment and public infrastructure.
- Working with the City and Project construction managers to collect and compile income tax withholdings on construction workers within the footprint. Once the Project's TIF has been activated, the income tax withholdings on construction workers are eligible to be recovered as part of the annual increment. This process entails:
 - ✓ Working with construction contractors to educate them on the information required and establishing a periodic submission schedule.
 - ✓ Obtaining and compiling TIF business questionnaires from each contractor and sub-contractor working on the Project within the state footprint.
 - ✓ Collecting and compiling periodic payroll reports or other detailed payroll information containing wage withholding information.
 - ✓ This information will be used as part of the annual request for increment.
- Working with the City to compile, review, and complete the annual Request for Disbursement. This process entails:
 - ✓ Documenting the businesses operating within the state footprint during the applicable calendar year.
 - ✓ Obtaining and compiling TIF business questionnaires from new businesses operating within the state footprint (for which TIF questionnaires have not previously been received).
 - ✓ Developing an internal estimate of the state tax revenues for the applicable year based on the information collected and other available information.
 - ✓ Completing and submitting the required Request for Disbursement form to KEDFA and DOR by April 30th of the following year.

- ✓ Working with DOR to ensure their list of businesses included in the annual increment calculation matches the City's, and the increment calculation by DOR is reasonable based on the internal estimate.
- ✓ CE will serve as a point of contact with DOR throughout the process, or as the City requests.
- CE will provide instructional training and advice to City staff assigned to work on TIF related matters throughout each of these processes. CE recommends that each of the processes discussed above be completed as a joint effort between CE and City staff, to use each as a hands-on training opportunity for City staff during the term of this contract.

II. FEES AND COMPENSATION

Compensation payable to Commonwealth Economics for all services rendered pursuant to this Agreement shall be as follows:

A. Section I (A - B):

\$19,824.80 will be due upon execution of this contract (for services rendered since June).

A flat fee of \$4,000.00 per month will then be billed and due each month.

Should the City elect to terminate this agreement prior to the total payment for services rendered under this contract reaching a total of \$43,824.80 (excluding expenses), the remaining balance to reach \$43,824.80 shall become immediately due.

- B.** Any direct expenses incurred, such as a trip to Paducah, a trip to Frankfort or printing expenses related to presentations, shall be reimbursed by Paducah. All expected expenses above \$500.00 must be pre-approved by Paducah management.
- C.** Payment shall be due within 15 days pursuant to an invoice presented upon reaching project milestones or monthly as expenses may occur, and such invoice shall indicate a description of any out of pocket and third-party expenses incurred over the prior month.

III. DURATION

- A. This Agreement shall be considered a professional service contract, which shall commence on November 1, 2019 and shall continue until notified of cancellation by either party as provided in the following section.
- B. This Agreement may be terminated by either party by submitting at least thirty (30) days written notice to the non-terminating party of such intent to terminate. In the event of termination, payment for services rendered up to and including the date of termination shall be based upon the work completed at the rates and conditions identified in this Agreement.
 - a. However, should the City elect to terminate this agreement prior to the total payment for services rendered under this contract reaching a total of \$43,824.80 (excluding expenses), the remaining balance to reach \$43,824.80 shall become immediately due.
- C. Upon notice of intent to terminate, Commonwealth Economics shall immediately discontinue performance of the service to the extent specified in the notice.
- D. Execution of this Agreement and payment of the fee set forth in *Section II (A)* shall constitute written notice to proceed.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that NO employer/employee relationship is created by this agreement nor does it cause Commonwealth Economics to be an officer or official of Paducah. Commonwealth Economics shall at all times be acting as an independent contractor in all matters related to this Agreement and shall have no authority to act as agent of Paducah and shall not hold itself out as such. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause the unlawful benefit or gain to be derived by either party.

V. CONFIDENTIALITY

Any reports, information, data, etc., provided to, prepared, or assembled by Commonwealth Economics shall be kept confidential and shall not be made available by Commonwealth Economics to any individual or organization other than the City without the prior written approval of Paducah. All documents, including but not limited to; studies, surveys, reports, date notes, computer files, and files and other documents prepared, developed or discovered in connection with providing any services under this Agreement, shall become the property of Paducah. The provisions of this section shall survive any termination of this Agreement.

VI. LIMITATIONS & DISCLAIMER

It is expressly acknowledged that Commonwealth Economics cannot guarantee the performance or success of any proposed project, bond issue, loan, grant or the ability to obtain funding from any source. Furthermore, Commonwealth Economics cannot guarantee: the availability of funds or a specified rate of return on any investment; the market value of any security; the future value of any investment or real property; the performance of any investment manager, advisor, municipal advisor, custodial firm or any other third-party consultant.

The services provided by Commonwealth Economics are based upon certain projections, judgments, and assumptions, in certain cases provided by third parties, for which Commonwealth Economics cannot guarantee. Circumstances may occur over the life of the contract and Projects that are counter to the assumptions, projections, and judgments and may affect the realized value from the Projects. Further, projections made and used are for multi-year periods; the results for individual years may vary significantly from forecasted values and there is no assurance that the actual impacts and revenues received will be sufficient to justify the proposed project or to repay any obligations, including TIF Revenue Bonds, which may be associated with the project.

The parties further acknowledge that Commonwealth Economics has not agreed with Paducah, in this Agreement or any other agreement, verbal or written, to offer or sell any security, act as an underwriter, placement agent, broker-dealer or market-maker in any security. The compensation paid to Commonwealth Economics herein



is not, and shall not be construed as, compensation for the offer or sale of any security or for the purpose of underwriting, making a market or acting as a broker-dealer or placement agent in any security, or the submission of an application to make a market in any security.

If this proposal meets your approval, please indicate by signing in the appropriate space below. Should you have any questions please feel free to contact us at (859) 246-3060.

Sincerely,

John R. Farris

Client Signature: _____

Title: _____

Date: _____

CE Signature: _____

Title: _____

Date: _____

Agenda Action Form Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Consolidate the Urban Renewal And Community Development Agency (URCDA) with the Paducah Planning Commission -**T TRACY**

Category: Ordinance

Staff Work By: Tammara Tracy

Presentation By: Tammara Tracy

Background Information: The URCDA, established in KRS as an option for communities to use for redevelopment work, has been instrumental during the height of various redevelopment projects that involved many parcels of land. As projects wind down, however, the utility and efficiency of a separate board handling these properties is greatly diminished.

By using the Planning Commission for this purpose, as authorized by KRS 100.181, requests and approvals can be handled faster and more routinely since the Planning Commission meets twice a month.

By authorizing the Planning Commission to act as the URCDA, the properties still listed under URCDA ownership do not need to be transferred, saving thousands of dollars.

Further, should the volume of individual property transfers increase again in the future, the URCDA can be separated into a stand alone agency again without causing undo delays.

No funds are required for this action.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): O-2 Create and sustain a customer centric culture aligned with our organizational values

E-2 Implement new zoning regulations

Funds Available: Account Name:
Account Number:

Staff Recommendation: Approve

Attachments:

1. Ordinance

CITY OF PADUCAH, KENTUCKY
ORDINANCE NO. 2019-____ - _____

AN ORDINANCE REGARDING THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY AND DESIGNATING MEMBERS OF THE PADUCAH PLANNING COMMISSION TO SERVE AS JOINT MEMBERS ON BOTH AGENCIES

WHEREAS, the City of Paducah developed and adopted a Strategic Plan with a key performance area of an Open, Smart & Engaged Government;

WHEREAS, the Urban Renewal and Community Development Agency of Paducah (hereinafter “URCDA”) was established by Resolution in 1960, pursuant to KRS 99.350, and has been operating since;

WHEREAS, the purpose of URCDA has been to facilitate efficient community redevelopment;

WHEREAS, the volume of matters coming before the URCDA has steadily declined because the Fountain Avenue Redevelopment process is concluding;

WHEREAS, because tasks of the Planning Commission and the URCDA tend to overlap, it is believed that the agencies can more effectively and efficiently conduct business through common members and joint meetings;

NOW, THEREFORE, BE IT HEREBY ORDAINED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF PADUCAH AS FOLLOWS:

SECTION 1. A New Section. A new section shall be created in Chapter 34, Article VI, of the Paducah Code of Ordinances as follows:

Article VI. Urban Renewal and Community Development Agency

Sec. 34-121. - Established.

The Urban Renewal and Community Development Agency of Paducah, hereinafter referred to as the URCDA, was established by Resolution on February 23, 1960.

Sec. 34-122. - Composition; Term and Meetings.

(a) Generally. The URCDA shall consist of a total of five (5) resident members who shall also be members of the Paducah Planning Commission, to be appointed by the Mayor with the approval of the Board of Commissioners in conformity with applicable law. The remaining members of the Paducah Planning Commission shall serve as alternate members.

(b) Terms. The Term of a URCDA member shall be the same as their term on the Paducah Planning Commission, which are staggered four (4) year terms as indicated in KRS 99.350. A member shall hold office until a successor has been appointed and qualified.

(c) Meetings. The URCDA shall hold its regular meeting on the same day as the regular meeting of the Paducah Planning Commission, which shall occur immediately before or after the Paducah Planning Commission meeting.

Sec. 34-123. – Powers and Authority.

The powers, functions and duties of the URCDA and its authority shall be in conformity with KRS Ch. 99.330 to 99.510, as amended from time to time.

SECTION 2. Board Member Removal and Appointment. The current board members of the URCDA are relieved of their duties. The following five (5) board members of the Paducah Planning Commission are hereby appointed to serve on the URCDA Board until the completion of their term on the Paducah Planning Commission at which time the vacancy will be filled pursuant to Paducah Code of Ordinances, Section 34-123:

Cathy Crecelius, David Morrison, Valerie Pollard, Lorraine Schramke, Bob Wade

SECTION 3. Severability. The provisions of this Ordinance are declared to be severable. If any section, phrase or provision shall for any reason be declared invalid, such declaration shall not affect the validity of the remainder of this Ordinance.

SECTION 4. Effective Date. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Paducah Board of Commissioners, December ____, 2019

Adopted by the Paducah Board of Commissioners, December ____, 2019

Recorded by the City Clerk, December ____, 2019

Published by the *Paducah Sun*, December ____, 2019

Ord\34-121 establish & consolidate the URCDA Urban Renewal with the Planning Commission

Agenda Action Form Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Amend Code of Ordinances Chapter 42 related to Junk Vehicles - **G CHERRY**

Category: Ordinance

Staff Work By: Greg Cherry

Presentation By: Greg Cherry

Background Information: The current ordinance addresses junk vehicles but does not give a good definition or clearly explain what happens to a vehicle once it has been written up and the property owner doesn't comply. The attached document clears up any discrepancies and clearly outlines compliance and penalty for non-compliance.

Does this Agenda Action Item align with a Strategic Plan Action Step? No

If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name:

Account Number:

Staff Recommendation: To approve this Ordinance as written.

Attachments:

1. Ordinance

ORDINANCE NO. 2019-_____

**AN ORDINANCE AMENDING CHAPTER 42
OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH**

WHEREAS, the City of Paducah wishes to eliminate the effects of the accumulation of damaged and inoperable vehicles which create blight, depress property values, generate health hazards, contribute to injury, damage the environment, provide breeding areas for pests such as rodents and mosquitoes, attract illegal dumping of other solid waste and hazardous substances, and contribute to the commission of crimes, detrimentally affecting the health and safety of neighborhoods within the City of Paducah;

WHEREAS, landowners have the right to the use and enjoyment of their property, consistent with State law and City Ordinances, where such use does not infringe on the rights of adjacent landowners;

WHEREAS, in instances in which an individual's actions infringe on the use and enjoyment rights of adjacent landowners, the City may act to abate a nuisance, consistent with KRS § 65.8840;

WHEREAS, the City has been unsuccessful in abating junk car nuisances with mere imposition of fines or liens and now wishes to have junk cars which are declared a nuisance removed from the public view;

WHEREAS, Chapter 42 of the Paducah Code of Ordinances must be amended to allow for the removal of junk motor vehicles which have been declared a nuisance.

BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. That the City of Paducah, Kentucky, hereby amends Chapter 42 of the Paducah Code of Ordinances by amending the following sections:

Sec. 42-32. – Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

[...]

Owner means a person, association, corporation, partnership or other legal entity having a legal or equitable title in real property, **or in the case of a motor vehicle, having legal or equitable title in a motor vehicle.**

[...]

Sec. 42-43. – Ordinance Fine Schedule.

- (a) If a citation for a violation of the Code is not contested by the person charged with the violation, the penalties set forth in this subsection may apply per inspection: If the Code Enforcement Officer is required to make inspections beyond the initial inspection and one (1) additional follow-up inspection, to determine if the required

corrections have been made, then the Code Enforcement Board shall assess the following fines not to exceed the value of the property as determined by the Property Valuation Administrator;

Inspections	Each Occurrence
Abandoned Vehicles and Appliances, Grass, Weeds, Litter, Solid Waste, Other Nuisances Defined by 42-50(a)(1)-(7).	\$100.00

<u>Inspections</u>	<u>First Occurrence – 30 days after final order or waiver of hearing</u>	<u>Second Occurrence – 60 days after final order or waiver of hearing</u>
<u>Junk Motor Vehicles</u>	<u>\$100.00</u>	<u>Motor Vehicle Subject to Tow at Owner’s Expense</u>

Inspections	3 rd Inspection	4 th Inspection	5 th Inspection and All Subsequent Inspections
Property Maintenance	\$250.00	\$350.00	\$500.00

- (b) If the citation is contested and a hearing before the Code Enforcement Board is required, the penalties may be doubled at the discretion of the Board per inspection not to exceed the value of the property as recorded by the Property Valuation Administrator, **or for a motor vehicle, not to exceed the fair market value of the motor vehicle as determined by reference to Kelley Blue Book, NADA or other appropriate Guides, whichever is greater.**

Sec. 42-48. – Vehicles and Appliances.

- (a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to this subsection, except where the context clearly indicates a different meaning:

Apparently abandoned means any motor vehicle which does not appear to have been moved or maintained, as determined by the Code Enforcement Officer, for at least sixty (60) days.

Apparently inoperable means a motor vehicle which does not appear to be capable of moving a distance of twenty (20) feet under its own power on a flat surface, or which does not comply with legal requirements for vehicles used or parked on public streets with regard to safety equipment such as brakes, lights, mirrors, and safety glass, tires, or with regard to vehicle licensing requirements, and which condition(s) last for at least sixty (60) days.

[...]

In the open means is upon land that may be viewed from a public street **or alley** or an adjoining property.

[...]

*Junked **motor*** vehicles means any vehicle, device or other contrivance, or parts thereof, propelled by human or mechanical power in, upon, or by which any person or property is or may be transported or drawn, including, without limitation, devices used exclusively upon stationary rails or tracks, motor vehicles, tractors, boats, motorboats, watercrafts, sailboats, boat and utility trailers, mobile homes, motor homes, campers, and off-highway vehicles, the condition of which is one (1) or more of the following:

- (1) Wrecked;
- (2) Dismantled;
- (3) Partially dismantled;
- (4) Inoperative **or apparently inoperative for a period of more than sixty (60) days;**
- (5) Abandoned **or apparently abandoned for a period of more than sixty (60) days;**
- (6) Discarded.

(b) Declaration of nuisance; exceptions.

[...]

(3) Classic or Collector Vehicles. A junk motor vehicle which is owned by a collector of antique, vintage, historic, classic, or muscle and special interest vehicles which is in the process of restoration, and which is recognized by national vehicle organizations such as The Vintage Motor Car Club of America or SEMA. Such vehicles, when located in public view prior to or during the restoration process, shall, upon request by a Code Enforcement Officer, be moved to a storage or work area not readily visible by the general public.

[...]

(d) Compliance by removal of vehicle or appliance **by Owner**. The **Owner's** removal of the vehicle or appliance declared to be a nuisance pursuant to this section from the premises within seven (7) days after receipt of notice of violation from the City shall be considered compliance with the provisions of this section and no further action shall be taken against **nor any fine imposed against** the owner of the vehicle or appliance or the owner or occupant of the premises. Written permission given to the Code Enforcement Officer for the removal of the vehicle or appliance by the owner of same or the owner or occupants of the premises on which it is located shall be

considered compliance with the provisions of this section on their part and no further action shall be taken against the one giving such permission, except for collection of towing charges or hauling costs for the removal of the nuisance.

- (e) **Compliance by removal of Junk Motor Vehicle by Owner within 30 days of Final Order or Waiver of Hearing. The Owner's removal of the vehicle declared to be a nuisance pursuant to this section from the premises between seven (7) and thirty (30) days after receipt of notice of violation from the City shall be considered compliance with the provisions of this section and no further action shall be taken against the owner of the vehicle or the owner or occupant of the premises except for the fine set forth in Sec. 42-43.(a). Written permission given to the Code Enforcement Officer for the removal of the vehicle by the owner of same or the owner or occupants of the premises on which it is located shall be considered compliance with the provisions of this section on their part and no further action shall be taken against the one giving such permission, except for collection of towing charges for the removal of the nuisance.**
- (f) **Removal of junk motor vehicles. Sixty (60) days following a final order finding a violation or waiver of a hearing as set forth in Sec. 42-40. and Sec. 42-41, the Code Enforcement Board shall provide notice to the owner of the real property where the junk motor vehicle is situated, as well as to the registered owner of the junk motor vehicle that has been declared to be a nuisance pursuant to this section, that such vehicle will be removed from the property and towed at the Owner's expense. Such Notice shall be mailed via certified mail no less than fourteen (14) days prior to the date the junk motor vehicle is to be towed from the property, and shall include the make, model, license number and vehicle identification number of the vehicle, and the location from where the vehicle will be towed. Neither the City of Paducah nor the Code Enforcement Board or its officers shall be liable for any damage or loss to the junk motor vehicle or its contents during or after towing.**
- (g) Right of entry. In the enforcement of this section, a Code Enforcement Officer, and duly authorized agents, assistants, employees, or contractors, may enter upon private or public property to examine the vehicle or appliance, or obtain information as to the identity of the vehicle or appliance and of the owner thereof, and to remove or cause removal of the vehicle or appliance declared to be a nuisance pursuant to this article.

SECTION 2. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

City Clerk

Introduced by the Board of Commissioners, _____, 2019

Adopted by the Board of Commissioners, _____, 2019

Recorded by the City Clerk, _____, 2019

Published by *The Paducah Sun*, _____, 2019

Ord\42-32 Junk Vehicles

230149

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Paducah Parks and Recreation Master Plan Change Order #1 (\$5,000) - **M THOMPSON**

Category: Ordinance

Staff Work By: Mark Thompson

Presentation By: Mark Thompson

Background Information: In the FY2019 budget \$102,500 was approved to complete the Parks and Recreation Master Plan. Bacon, Farmer & Workman of Paducah along with their partners Brandstetter/Carroll of Lexington and PFGW of Paducah were hired to provide the Master Plan. The plan included a statistically valid survey of City of Paducah residents. However, once the planning work began it was determined that the best course of action to get a true view of the City and County needs was to include non-City McCracken County residents in the statistically valid survey process. The cost of this additional work was \$5000. This change order will increase the total Master Plan budget to \$107,500.

Does this Agenda Action Item align with a Strategic Plan Action Step? Yes

If yes, please list the Action Step Item Codes(s): R-1, R-3, R-10, R-11

Funds Available: Account Name: Health Park

Account Number: PA0113 000-22000-22010

Staff Recommendation: Approval of Change Order #1.

Attachments:

1. Ordinance
2. Master Plan Update - Professional Services - Change Order #1 12102019

ORDINANCE 2020-____ - _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE CHANGE ORDER NO. 1 WITH BACON, FARMER AND WORKMAN ENGINEERING & TESTING, INC., IN THE AMOUNT OF \$5,000 FOR THE PADUCAH PARKS & RECREATION MASTER PLAN

WHEREAS, the City approved Municipal Order No. 2162 to enter into a contract with Bacon, Farmer and Workman Engineering & Testing, Inc. (BFW) in the amount of \$102,500 for the development of a Parks and Recreation Master Plan; and

WHEREAS, Change Order No. 1 is now needed in the amount of \$5,000 for the addition of McCracken County residents in the statistically valid survey.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF PADUCAH, KENTUCKY:

SECTION 1. The Mayor is hereby authorized to execute Change Order No. 1, in an amount of \$5,000 with Bacon, Farmer and Workman Engineering & Testing, Inc. for work related to the addition of McCracken County residents in the statistically valid survey for a new total contract amount of \$107,500.

SECTION 2. This expenditure shall be charged to the Health Park Account No. PA0113 000-22000-22010.

SECTION 3. This ordinance shall be read on two separate days and will become effective upon summary publication pursuant to KRS Chapter 424.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, December 17, 2019

Adopted by the Board of Commissioners, _____

Recorded by Lindsay Parish, City Clerk, _____

Published by The Paducah Sun, _____

\\ord\parks\chgord 1 Parks Master Plan BFW Bacon Farmer Workman



BACON | FARMER | WORKMAN

ENGINEERING & TESTING, INC.

December 10, 2019

Mark Thompson, Director
Paducah Parks & Recreation Department
P.O. Box 7265, 1400 H.C. Mathis Drive
Paducah, KY 42002-7265

Re: Parks Master Plan Update Contract Change Order #1

Mr. Thompson:

Please accept this letter as a request for Change Order to our professional services contract for the 2019 Parks Master Plan Update. The request for Change Order is made for the additional work involved with the addition of the county residents to the surveys of the project.

If accepted, the Change Order #1 add of \$5000 to our current contract amount, taking it from the original \$102,500.00 to a current contract amount of \$107,500.00.

Please contact me if you have any questions or comment.

Regards,

A handwritten signature in blue ink that reads "Kenneth D. McDaniel". The signature is fluid and cursive, written over a white background.

BFW Engineering & Testing, Inc.
Kenneth D. McDaniel, PE, Project Managers

500 South 17th Street
P.O. Box 120
Paducah, KY 42002-0120
phone: (270) 443-1995
fax: (270) 443-1904

1215 Diuguid Drive
Murray, KY 42071
phone: (270) 753-7307
fax: (270) 759-4950

966 Double Bridge Road
Lewisburg, TN 37091
phone: (931) 359-4882

907 Arrow Road, Ste. 2
Champaign, IL 61821
Phone: (217) 530-4283

403 North Court Street
Marion, IL 62959
phone: (618) 993-6700
phone: (618) 997-9190
fax: (618) 993-6717

Agenda Action Form

Paducah City Commission

Meeting Date: December 17, 2019

Short Title: Repeal and Replace Chapter 22 - Cable Communications - **P SPENCER**

Category: Ordinance

Staff Work By: Pam Spencer, James Arndt
Presentation By: Pam Spencer, James Arndt

Background Information:

This ordinance is to repeal and replace Chapter 22 of the Paducah Code of Ordinances regarding Cable Communications. Chapter 22 governs the operations of the City's current cable operator, Comcast, as well as any other cable providers which may seek to provide cable service within the City. As part of the non-exclusive Franchise negotiations with Comcast, the City and Comcast have been working to update and modernize Chapter 22. The Franchise agreement, which references Chapter 22 in several sections, will be brought before the Board early next year.

Chapter 22 addresses general operating requirements for cable systems including a procedure to obtain a cable franchise, consumer protection, customer service standards, technical standards, and extension of cable service to new developments.

Furthermore, Chapter 22 addresses operating requirements for cable operators including the provision of insurance and indemnification to the City, procedures for enforcement of the Ordinance and any cable franchise agreement granted by the City as well as procedures to be undertaken to consider a transfer of ownership of the cable operator and franchise renewal.

Does this Agenda Action Item align with a Strategic Plan Action Step? No

If yes, please list the Action Step Item Codes(s):

Funds Available: Account Name:
Account Number:

Staff Recommendation:

Attachments:

1. Ordinance
2. Chapter 22 - Cable Communications - Paducah(5850532.1)
3. Amended Ordinance Summary - Paducah(5873819.1)

ORDINANCE NO. 2020-____ - _____

AN ORDINANCE REPEALING CHAPTER 22 OF THE CODE OF ORDINANCES OF THE CITY OF PADUCAH, KENTUCKY WHICH GOVERNS CABLE COMMUNICATIONS AND REPLACING IT IN ITS ENTIRETY

WHEREAS, this Ordinance will repeal and supersede Chapter 22 of the *Code of Ordinances of the City of Paducah, Kentucky*, which governs Cable Communications; and

WHEREAS, this Ordinance will replace this chapter with a new Chapter 22, which will read as described below;

NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF PADUCAH AS FOLLOWS:

SECTION 1. Chapter 22 of the Code of Ordinances shall read as follows:

ARTICLE I. IN GENERAL

Title of Chapter.

This Chapter shall be known as “Chapter 22 Cable Communications of the City’s Code of Ordinances.”

Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

Access Channel. A Public, Educational or Governmental Access Channel which is carried on a Cable System, but which is not part of any institutional network.

Affiliate shall mean any Person controlling, controlled by or under common control of a Franchisee.

Annual Gross Revenues or *Gross Revenues* means any and all revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service. Cable Service revenue shall include, but is not limited to, revenues from Basic Cable Service, premium, pay-per-view, pay television, Franchise Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue (excluding advertising sales commissions paid to unaffiliated third parties), and

converter rental fees. Gross Revenue shall not include refundable deposits, actual bad debt write-offs, investment income nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental authority (a Franchise Fee is not such a tax, fee or assessment). The City acknowledges and agrees that Franchisee will maintain its books and records in accordance with GAAP.

Applicable Law means any and all local law, state or federal law, statute, charter, ordinance, regulation, code, franchise, permit, judgment or decree in accordance with state and federal law.

Authority. The City of Paducah Board of Commissioners.

Basic Cable Service. Any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

Board. The Board of Commissioners for the City of Paducah, Kentucky.

Cable Operator. Any Person or group of Persons, including a Franchisee, who:

provides Cable Service over a Cable System and directly or through one (1) or more affiliates owns a significant interest in such Cable System; or

otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

Cable Service or Service. (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6) and § 522(14).

Cable System or System. A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

a facility that serves Subscribers without using any Street or Public Way;

a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

an open video system that complies with 47 U.S.C. § 573; or

any facilities of any electric utility used solely for operating its electric utility systems.

Cable Television Channel or Channel. A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as “television Channel” is defined by FCC regulation).

City. The City of Paducah, Kentucky, and all the territory within its presently existing or future territorial corporate limits. Where appropriate, the term “City” shall refer to it as a corporate entity and also include its officers, employees and duly authorized representatives.

City Manager. The designated or acting City Manager of the City of Paducah, Kentucky.

Commonwealth. The Commonwealth of Kentucky.

Converter. Any electric or other device separate and apart from the Subscriber’s receiver that is capable of converting or changing signals to a frequency not intended to be susceptible to interference within the television or video receiver of a Subscriber, and by an appropriate Channel or other type of selector may also permit a Subscriber to view or otherwise use signals delivered at designated dial locations, or such other reception and use allocations as may be applicable and required for the practical use of the signal.

Drop. The cable that connects the ground block on the Subscriber’s residence or institution to the nearest feeder cable of the System.

FCC or Federal Communications Commission. The federal administrative agency, or lawful successor, authorized to oversee cable television regulation on a national level.

Franchisee. All Persons, natural or corporate, or any other entity having any rights, powers, privileges, duties, liabilities or obligations under this Chapter and the Franchise Agreement, and also all Persons having or claiming any power or interest in or to the System, whether by reason of the Franchise itself or any subcontract, transfer assignment, mortgage, pledge, hypothecation, security agreement, management agreement or operating agreement, or otherwise arising or created.

Franchise or Franchise Agreement. That separate agreement by which a Franchise is granted to the Franchisee as required by this Chapter. Franchise as defined herein shall not be inconsistent with 47 U.S.C. § 522(9).

Franchise Area or Service Area. The entire geographic area within the City as it is now constituted or may in the future be constituted.

Franchise Fee. Any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Franchisee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not

including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Franchisee for Public, Educational, or Governmental Access Facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

Normal Business Hours. The term “Normal Business Hours” means those hours during which most similar businesses in the community are open to serve customers. In all cases, “Normal Business Hours” must include some evening hours, at least one (1) night per week and/or weekend hours.

Normal Operating Conditions. Those Service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

Ordinance or Chapter. Chapter 22 Cable Communications of the City’s Code of Ordinances.

Pay Television. The delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or other programming services.

Person. Any individual, corporation, business trust, estate trust, partnership, association of two (2) or more Persons having a joint common interest, governmental agency or other legal entity, including the City.

PEG. Public, Educational or Governmental.

Public Way. All public Streets and utility easements, as those terms are defined in the City Code, now or hereafter owned by the City, but only to the extent of the City’s right, title, interest or authority to grant a license or franchise to occupy and use such Streets and easements for telecommunications facilities or Cable System.

Service Day. Any day or other twenty-four (24) hour period, other than a Sunday or a City-recognized holiday, in which employees of the Franchisee regularly respond to service requests and calls.

Service Interruption. The loss of picture or sound on one (1) or more Channels.

Standard Installation. Any residential or commercial installation which can be completed using a Drop of one hundred fifty (150) feet or less.

Street. The surface of and the space above and below any public Street, road, highway, freeway, lane, path, Public Way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the City, and includes other easements or rights-of-way as may be now or hereafter held by the City for the purposes of installing poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other devices or property as may be necessary for the construction, operation, and maintenance of a wire telecommunications system or Cable System.

Subscriber. A Person lawfully receiving Service delivered over a Cable System by either a Cable Operator or Franchisee.

Utility easement. Any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities or Cable System.

U.S.C. United States Code.

Video Programming. Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Franchisee May be Required to Pay Associated Costs.

In addition to any other rights the City may have under this Chapter, the City specifically reserves the right to charge the Franchisee for any and all costs incidental to the awarding or enforcing of the Franchise as provided for in a Franchise Agreement in accordance with Applicable Law. Under no circumstances shall the costs exceed two thousand five hundred dollars (\$2,500).

Fair Employment and Contracting.

Equal opportunity in employment shall be afforded by each cable entity to all qualified Persons, and no Person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

A Franchisee shall exercise its reasonable best effort to use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation and to encourage minority and female entrepreneurs to conduct business with all parts of its operation.

In addition to the provisions noted above, a Franchisee shall comply with all Commonwealth laws, FCC regulations, and 47 U.S.C. § 554 as they relate to equal employment and contracting opportunity within the cable industry.

Construction of Chapter.

This Chapter shall be construed in light of Applicable Laws and regulations governing cable practices in general and cable consumer practices in particular in accordance with Applicable Law.

Wherever possible, this Chapter shall be construed with as much flexibility as possible so that the City might be able to accomplish its goals of protecting the health, safety, and welfare of the citizenry.

Compliance with Federal, State and Local Laws.

If any federal or state law or regulation shall require or permit City or Franchisee to perform any service or act or shall prohibit City or Franchisee from performing any service or act which may be in conflict with the terms of this Ordinance, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Franchisee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

Effect on New and Existing Franchisees.

For Persons awarded a cable Franchise after the effective date, this Chapter shall have full effect and be enforceable in its entirety and for a Franchise existing on the date that this Chapter becomes effective, this Chapter shall have no effect during its present Franchise term.

Notwithstanding the above provisions, a Franchisee may file a written petition, at any time, seeking relief from one (1) or more provisions of this Chapter. The relief requested may specifically include the delay in implementation (as to the petitioning Franchisee only) of one (1) or more provisions of this Chapter.

In order to receive relief from one (1) or more provisions of this Chapter, a Franchisee must satisfactorily demonstrate to the City that one (1) of the following facts exist:

The provision and/or requirement is expressly prohibited by Applicable Law; or

The provision materially affects and is in conflict with an expressed right that is specifically noted in an existing Franchise Agreement; or

That the imposition of such provisions and/or requirements is commercially impracticable or will create such an undue economic hardship on the Franchisee so as to imperil or eliminate the economic benefits of providing Cable Service to a majority of current Subscribers; or

That the Franchisee has its own construction, maintenance, operation, customer service or equal employment opportunity (EEO) policy, practice or standard which is deemed comparable to or exceeding any provision and/or requirement from which the Franchisee seeks relief.

The City shall have the responsibility of determining whether a Franchisee's construction, maintenance, operation, customer service or EEO policy, practice or standard is comparable to or exceeds a similar provision in this Chapter.

In accordance with this Chapter, the City may charge the petitioning Franchisee with the incidental costs of processing an initial Franchise consistent with 47 U.S.C. § 542(2)(D).

Delegation of Power.

Unless prohibited by the Commonwealth, the City and/or Board of Commissioners may delegate its powers and authorities (except its ultimate franchising authority) with respect to cable to the Authority, or a duly authorized representative of the City, including the Mayor and City Manager, provided, however, the City and/or Board of Commissioners shall not delegate its powers and authority with respect to matters concerning, Franchise renewal, non-compliance or revocation of the Franchise unless otherwise agreed to by City and Franchisee.

City Ownership of Cable System.

In the event the City directly or indirectly through any legal means constructs, acquires, purchases, leases or otherwise owns or controls a Cable System, it shall, with the exception of those requirements pertaining to application for and obtaining a Franchise, be considered a Franchisee for purposes of this Chapter and shall be bound by and comply with all the requirements of this Chapter as if it were a Franchisee.

Secs. 22-10--22-30. Reserved.

ARTICLE II. FRANCHISE PROVISIONS

Sec. 22-31. Franchise Required.

Necessity of Franchise. Except as provided in subsections (b) and (c) of this section, to the maximum extent permitted under applicable law, no Person shall provide Cable Services nor operate or maintain a Cable System without having first obtained a Franchise, and then entering into a Franchise Agreement with the City.

Exception for City-owned or City-controlled Cable System. Under judicial interpretations of the Kentucky Commonwealth Constitution, a municipality may own and operate a Cable System. Consequently, should the City, directly or indirectly, through any legal means available to the City, decide to purchase, acquire, construct, lease, control or otherwise own a Cable System within the territorial limits of the City, then the City shall comply with all Applicable Laws in order to construct, operate and maintain a Cable System within the territorial limits of the City.

Contravention of Franchise; costs of litigation. The cost of any litigation incurred by the City to enforce this Chapter or the Franchise granted pursuant hereto, or any Franchise Agreement, or in relation thereto, or in relation to the cancellation or termination of a Franchise, shall be reimbursed to the City by the affected Franchisee if the City prevails in the litigation. In the event the Franchisee prevails, the cost of litigation incurred by the Franchisee shall be reimbursed to the Franchisee by the City. Such costs shall include, but not be limited to, filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee.

Term; Termination and Cancellation.

Maximum term. No Franchise granted hereunder, or any renewal thereof, shall be for a term of more than fifteen (15) years.

Term six years or less. If an initial Franchise or renewal Franchise is for a period of six (6) years or less, then the Franchise Agreement shall explain the reasons for granting the shorter Franchise term.

Reasons for term six years or less. The reasons for a shorter Franchise term may include, but are not limited to, the following:

Multiple or repeated documented material violations of the prior Franchise Agreement.

Multiple or repeated documented material violations of this Chapter.

Documented reckless disregard for the safety and welfare of the citizens of the City.

Failure to furnish any required annual reports.

Failure to comply with a specific, previously agreed upon construction schedule.

Failure to timely pay in their entirety any Franchise Fees or taxes or other charges due to the City.

Termination and cancellation of Franchise. In addition to all other rights and powers of the City by virtue of the Franchise or this Chapter, the City may, subject to and in accordance with appropriate terms of this Chapter and a Franchise Agreement, federal, and state law, terminate and cancel the Franchise and all rights and privileges of the Franchisee thereunder in the event that the Franchisee either:

Substantially violates any material provisions of the Franchise or this Chapter, or any legal rule, order or determination of the Board of Commissioners made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by Franchisee of written notice of said violation, except where such violation is due to excusable neglect or outside the control of the Franchisee;

Intentionally evades any of the provisions of this Chapter or the Franchise Agreement or practices any intentional fraud or deceit upon the City; or

Becomes insolvent, files bankruptcy or abandons the Franchise or, subject to Section 22-72, fails to pay any applicable Franchise Fee when due.

Such determination and cancellation shall be made by ordinance of the Board of Commissioners duly adopted after twenty (20) days' notice to the Franchisee and shall in no way affect any of the City's rights under the Franchise or any provisions of law; provided, however, that, before the Franchise may be terminated and canceled under this section, the Franchisee shall be provided with an opportunity to be heard at a public hearing before the Board of Commissioners, upon thirty (30) days' prior written notice to the Franchisee of the time and place of the public hearing; provided further that the notice shall affirmatively and with specificity cite the reasons alleged to constitute a cause for

revocation; and, provided further, that notice of the public hearing shall be published in a local newspaper of general circulation at least five (5) days before the hearing.

Performance evaluation provisions.

The City and Franchisee may hold scheduled performance evaluation sessions concerning the provision of Cable Services on the Cable System within thirty (30) days prior to the fifth (5th) and tenth (10th) anniversary dates of granting a Franchise or renewal of a Franchise. Franchisee shall fully cooperate with the City and shall provide, without cost and in a timely manner, such information and documents related to the operation of the Cable System as the City may reasonably request to perform the evaluation. All performance evaluation sessions shall be open to the public and will be announced by the City in a newspaper of general circulation at least five (5) days before each session.

Special performance evaluation sessions may be held at any time during the term of the Franchise; provided that both the City and the Franchisee shall mutually agree on the time, the place and the topics to be negotiated.

Selection of New Franchisee.

Request for proposal. In selecting a new Franchisee (not applicable to a proposed transferee) pursuant to this Chapter, the City shall prepare a request for proposal to seek bids for a Cable System to be established under a Franchise by the City. This request for proposal shall contain, among other things, detailed information and instructions relating to the preparation and filing of proposals; technical standards regarding the installation, operation and maintenance of a Cable System; financial ability and stability to construct, operate, and maintain a Cable System; history of legal compliance with other types of Franchise Agreements and commitment to comply with the legal requirements of the City; and the criteria to be used in evaluation of applicant proposals.

Criteria for selection of Franchisee. Applicants for a new Franchise shall be evaluated according to the following criteria:

Nonprofit ownership. A preference shall be given to applicants for a Franchise representing nonprofit organizations.

Service priorities. A preference shall be given to System capability in terms of no costs telecasting production facilities and Service available to municipal and educational institutions and community groups and individuals. Preference shall be given to System provisions for two-way nonvoice communications. Preference shall be given to the maximum total Channels provided by the System.

Installation plan. A preference may be given to an installation plan that would provide flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the Subscriber and the community immediately and in the future.

Financial soundness and capability. The evidence of financial ability required in the applicant's proposal shall be such as to assure ability to complete the entire System within a minimum of two (2) years from the date the Franchisee receives an FCC certificate of compliance and to operate a fiscally sound System throughout the term of the Franchise.

Demonstrated experience in operating a Cable System under City Franchise. Preference shall be given upon satisfactory evidence of the applicant's experience in operating a Cable System under a City Franchise, where such evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable Service to the potential public and users.

Educational program. A preference shall be given to a System which presents a program whereby the City's public schools may benefit, utilize and develop education programs for students and Subscribers.

Award of New Franchise; Hearing; Publication of Ordinances. The Board of Commissioners may award a new Franchise to an applicant only after a public hearing on the application and proposal, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days before the date of the hearing. Any Franchise that is granted shall be authorized by an ordinance of the Board of Commissioners, which ordinance shall be thereafter published in the manner prescribed by law in a local newspaper of general circulation.

Renewal of Franchise.

Any renewal of a Franchise shall be governed by and comply with the provisions of 47 U.S.C. § 546 of the Cable Act, as amended.

Franchise Conditions.

All Franchises granted pursuant to this Chapter shall be subject to, and shall expressly indicate that they are subject to, the following provisions:

Any Franchise granted hereunder shall be subject to the right of the City, by appropriate action of its Board of Commissioners, to revoke the Franchise, after notice and opportunity to cure for cause shown pursuant to the provisions of this Chapter or the applicable law of the Commonwealth of Kentucky or the United States of America.

Any Franchise granted hereunder shall be subject to all generally applicable provisions of City ordinances and any amendments thereto.

Any Franchise granted hereunder shall be subject to the right of the City:

To repeal the same for failure to comply with the provisions of this Chapter, or any other local, state or federal laws, or Federal Communication Commission rules or regulations.

To require proper and adequate extensions of the plant and service and maintenance thereof at the highest practicable standard of efficiency as provided for in a Franchise Agreement.

To establish reasonable standards of service and quality of products, and to prevent unjust discrimination in service or rates.

To require continuous and uninterrupted Service to the public in accordance with the terms of the Franchise throughout the entire period thereof.

To control and regulate the use of its Street, alleys, bridges and public places and the space above and beneath them. The Franchisee may be required by the City to permit joint use of its property and appurtenances located in the Streets, alleys, and public places of the City by the City insofar as such joint use may be reasonably practicable and upon payment of reasonable rent therefore; provided that, in the absence of agreement, upon application by any Franchisee, or the City, the dispute may be submitted and resolved as provided in Section 22-44(b).

Through its appropriately designated representatives, to inspect all construction work performed subject to the provisions of the Franchise and this Chapter, and make such other inspections as it shall find necessary to ensure compliance with the terms of the Franchise, this Chapter and other pertinent provisions of law.

At the expiration of the term for which the Franchise is granted, or upon the termination and cancellation as provided herein, to require the Franchisee to remove, within eighteen (18) months, at its own expense, the Cable System from the Public Ways within the City in accordance with Applicable Law.

To require a Franchisee to pay the cost of newspaper publication of a summary of this Chapter and any amendments thereto in accordance with generally applicable codes.

Franchise Agreement.

Every Franchisee shall enter into a Franchise Agreement with the City which details the rights, duties, responsibilities and liabilities of both parties, and which contains an acceptance on the part of the applicant or Franchisee to the terms of this Chapter and the Franchise Agreement. Moreover, a new Franchisee may not lay any cable until the Franchise Agreement is executed by both the new Franchisee and the City.

In addition to those matters required elsewhere in this Chapter to be included in the Franchise Agreement, it must contain the following express representations of the Franchisee that:

It accepts and agrees to all the provisions of this Chapter as to construction, technical standards, operation, and maintenance and rate structures, if permitted by law,

which the City may include in the Franchise Agreement. In the case of a Franchise renewal, the Franchise Agreement may include exceptions to this Chapter.

It has examined all the provisions of this Chapter.

It recognizes the right of the City to make reasonable amendments to this Chapter, consistent with the City's police powers, during the term of the Franchise upon thirty (30) days' written notice to the Franchisee.

It recognizes and agrees that it may be considered as a Franchisee for the purposes of this Chapter.

It expressly recognizes and agrees that it has considered all the provisions of this Chapter in regard to resolution of disputes, and agrees to be bound by same throughout the term of the Franchise.

No Franchise shall be exclusive and no Franchisee shall, through the grant of a Franchise, either written or verbal, be given an unfair competitive advantage over other franchised Cable Operators (including the City, to the extent required by Applicable Law) providing Cable Service in the City.

Every Franchise Agreement shall specifically set forth the specific standards which the Franchisee must maintain in respect to signal quality requirements and technical standards of construction, operation, and maintenance of the System.

The Franchise Agreement shall contain such further conditions or provisions as may be included in the request for proposal and/or negotiated between the City and the Franchisee. In the case of a conflict between any terms or provisions of the Franchise Agreement and this Chapter, the words of the Franchise shall be deemed to control.

Any application filed for an initial Franchise shall become a part of the Franchise Agreement and any representations, promises, commitments or volunteered parameters and/or standards shall become binding upon the Franchisee and its heirs and assigns.

Operational Standards.

State of the art; maintaining system to level of current technology. If a Franchise authorizes, the City may require a Franchisee, during the term of its Franchise, to construct, maintain and operate a Cable System that is at a level that reflects the current technology utilized within the industry.

Construction standards and technical requirements.

Methods of construction, installation, maintenance and repair of any Cable System shall comply with the National Electrical Safety Code.

It shall be the duty of a Franchisee to undertake a preventative maintenance of the Cable System in order to ensure that there is no material degradation of the Cable System

that would affect the citizens' health, safety or welfare, or negatively affect the quality of the Cable Services being provided.

All wires, conduits, cable, and other property and facilities of a Franchisee shall be so located, constructed, installed and maintained so as to not endanger or unnecessarily interfere with usual and customary use, traffic, and travel upon the Streets, rights-of-way, Easements, and Public Ways of the community.

In the event a Franchisee's System creates a hazardous or unsafe condition, or an unreasonable interference with public property, then, at its own expense, the Franchisee shall, with a reasonable time, voluntarily, or upon the written request of the City, correct or remove that part of the System that creates the hazardous condition from the subject property.

A Franchisee shall not place equipment where it will interfere with the rights of private property owners or with gas, electric or telephone fixtures, or with water hydrants or mains, or with wastewater lift stations, or any other service or facility in the Public Ways that benefits the City's or its residents' health, safety or welfare.

Subject to reasonable prior written notice, it shall be the responsibility of a Franchisee (acting alone or in conjunction with another Person) to locate and mark or otherwise visibly indicate and alert others to the location of underground cable (or its equivalent) and other utility lines before employees, agents or independent contractors of a Franchisee install cable in a marked-off area.

A Franchisee shall, on the request of any Person holding a building moving permit, temporarily remove, raise or lower the cable to allow the moving of the building. The expense of temporary removal shall be borne by the Person requesting it, and the Franchisee may require advance payment. The Franchisee shall be given not less than ten (10) days' advance written notice in order to facilitate the temporary cable changes.

A Franchisee, at either its own expense, or that of a private contractor, shall protect the Streets, rights-of-way and Easements, and support or temporarily disconnect, remove or relocate in the same Street or other Public Way any property of the Franchisee when necessitated by reason of: traffic conditions; public safety; a Street closing; Street construction or resurfacing; change or establishment of Street grade; installation of sewers, drains, water pipes, storm sewers, storm drains, lift stations, force mains, power or traffic signal lines; or any improvement, construction or repair related to the City's or its residents' health, safety, or welfare. If the City requests the relocation, removal or reinstallation of Franchisee's property in any of the Public Ways in the Franchise Area for the sole purpose of installing or providing Cable Services in competition with Franchisee, the cost of such relocation, removal or reinstallation shall not be borne by Franchisee but by the City.

Prior to a Franchisee's commencing to attach wire, cable (coaxial, fiber or its functional equivalent) or other fixtures and appurtenances to poles or towers located

within the City, it shall execute license agreements for pole attachments with the appropriate utility.

The Franchisee shall not discriminate nor permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Service Area. It shall be the right of all Persons to continuously receive all available Service provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Moreover, the City states that density, proximity and geography, and not economic status, should be the primary factors used to determine whether a Franchisee should provide Service to one (1) or more Persons within a part of a Franchisee's Franchise Area.

A Franchisee shall create, maintain and provide to the City upon written request, on an annual basis, Cable System route maps. Complete and accurate System maps, which shall include, but not be limited to, detail of trunks, distribution lines, and nodes shall be available at Franchisee's office for the City's review.

A Franchisee shall construct, operate, maintain, repair, remove, replace or restore the Cable System in strict compliance with all current generally applicable codes adopted by the City. The codes referred to specifically include, but are not limited to, construction, fire and safety codes.

A Franchisee shall obtain, at its expense, all permits and licenses (including pole attachment agreements) required by law, rule, regulation or local law, and maintain the same in full force and effect for as long as required. Franchisee shall at all times comply with the City Code, as may be amended from time to time.

Number of Channels.

The precise Channel capacity that a Franchisee must maintain during the term of the Franchise shall be detailed in the Franchise Agreement.

Use of Channels.

The City recognizes that pursuant to 47 U.S.C. § 531, the City has certain authority with respect to certain aspects for Public, Educational or Governmental Access Channel use.

To the extent permitted by law, and in order to fulfill the City's desired goal of achieving a PEG Access Channel policy that will facilitate the long-range needs of the City, the Board of Commissioners adopts the following:

At the time of an initial application or proposal, and unless otherwise provided in a Franchise Agreement or subsequent renewal Franchise Agreement, a Franchisee shall pledge to include the following:

A Franchisee shall provide, one (1) educational Access Channel that is available for providing non-commercial, educational programming.

A Franchisee shall provide, one (1) public Access Channel that is available for providing non-commercial public access, senior citizen, and library programming.

A Franchisee shall provide, one (1) governmental Access Channel that is available for providing noncommercial governmental programming.

If at any time eighty percent (80%) of the total time allocated for a required PEG Access Channel is consistently used eight (8) hours per day, five (5) days a week for a period of three (3) consecutive months with non-character generated, non-repetitive programming, then, upon one hundred twenty (120) days written request, the Franchisee shall provide one (1) additional PEG Access Channel.

All programming transmitted over PEG Access Channels shall be non-commercial in nature. Program material to be distributed on PEG Access Channels shall contain no advertising or commercial content for which consideration is received by City. Franchisee and City agree that City or the producer or distributor of such programming may include acknowledgments for Persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship information provided on the Public Broadcasting System (PBS).

Unless otherwise provided in a Franchise, a Franchisee shall provide:

Both mobile, portable and stationary equipment to be used for Access Channel programming, together with the aid of technical and production assistance provided by the Franchisee;

Equipment that can store programs for delayed cablecasting; and

Technical production assistance required for PEG access use that may extend to, but not exceed, fifty (50) actual production man-hours per year.

Unless otherwise specified in a Franchise, the City shall develop a plan for handling requests for use of PEG Access Channels, facilities or programming. Such a plan shall be nondiscriminatory in nature and should encourage joint or cooperative efforts on the part of potential users. However, the City recognizes that, while citizens enjoy considerable first amendment freedoms, these freedoms, nonetheless, must be weighed against the legitimate health, safety and welfare interests of all citizens in the Service Area. Consequently, when a request for access time is made by a culturally unpopular, politically controversial, or racially/ethnically/religiously intolerant organization, the City may require safeguards which minimize or lessen the possibility and probability that such espoused viewpoints will damage the community fabric. The City may declare the speech is culturally obscene in that it was or would be so morally devoid or culturally offensive that it either dramatically reduced the overall value of other services provided on the Cable System or posed a discernible risk of disrupting the spiritual, political or racial fabric of the community. However, the safeguards imposed may only be as much as is necessary to accomplish the City's objectives. The safeguards include restricting such programming to non-prime-time hours (before 7:00 p.m. and after midnight) and allowing the audio, but not video, of such programming to be provided over the PEG Access

Channel. For purposes of this Chapter, a culturally unpopular, politically controversial, or racially/ethnically/religiously intolerant organization is one whose viewpoints or displays have no redeeming social, historical or artistic value, and undermine the community fabric.

Public Service Installations.

Each Franchise granted by the City shall specify the Franchisee's commitment to public service installations and complimentary services.

Right of City to Purchase System.

Purchase upon expiration of term. Subject to Section 626 of the CCPA (47 U.S.C. § 546), other applicable law, and with the consent of Franchisee, upon expiration of the term of the Franchise, the City, at its selection, and upon payment to the Franchisee of a price equal to the fair market value of the System as a going concern and on the same terms and conditions as offered by other parties, including physical assets and intangibles, including good will, in accordance with the accepted and usual industry practices (except the valuation of the Franchise privilege itself), shall be given the opportunity to purchase the System.

Purchase upon default. Upon lawful termination of the Franchise rights as provided for by this section or by law occasioned by the substantial breach of provisions of the Franchise Agreement or this Chapter and with the consent of Franchisee, the City, at its selection and upon payment to the Franchisee of a price equal to the fair market value of the System as a going concern, including physical assets and intangibles, including good will, in accordance with accepted and usual industry practices (except that the valuation shall not include any valuation of the Franchise privilege itself), shall be given the opportunity to purchase the System. In the case of the City's purchase of the System and the circumstances, the Franchise shall transfer to the City possession and title to all facilities and property, real and personal, of the Cable System business, free from any and all liens and encumbrances. This provision, however, may be waived by the City at its option, in whole or in part.

Transactions Affecting Ownership or Control of Franchise Facilities.

In accordance with Applicable Law, to protect the interest of the City under any Franchise granted pursuant to this Chapter, the Franchisee shall not transfer, transfer control, or otherwise assign the Cable System or Franchise to a third party without adherence to the provisions of subsections (1) and (2) below:

Without the express approval of the Board of Commissioners, which shall not be unreasonably withheld; and

Without a written assent filed with the Board of Commissioners binding upon the Person in whom any right, power, privilege, duty, title, interest, claim or demand in or to the Franchise or the System is created or vested, to the effect that such right, power, privilege, duty, title, interest, claim or demand is and shall be held and exercised subject to all the terms and provisions of the Franchise, including this Chapter. The Board of Commissioners may require such written assent to be contained in any instrument or document creating or vesting such right, power, privilege, duty, title, interest, claim or

demand. Provided, however, that this subsection (a)(2) shall not apply to the disposition of worn-out or obsolete facilities or personal property in the normal course of carrying out the Cable System business.

Prior approval of the Board of Commissioners shall be required for any sale, transfer, exchange or assignment of stock in Franchisee, or Franchisee's parent corporation or any other entity having a controlling interest in Franchisee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 22-42. The term "controlling interest" as used herein is an acquisition of 51% or greater ownership interest in the Franchisee, but includes actual working control in whatever manner exercised.

No Franchise may be transferred unless such transfer is approved by the Board of Commissioners, by ordinance, after public hearing, such approval not to be unreasonably withheld. No such approval shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in a Franchise or the Cable System in order to secure indebtedness, or (ii) an internal transfer to an entity directly or indirectly owned or controlled by the parent corporation of Franchisee. The City shall process all requests in accordance with applicable FCC regulations and other Applicable Laws.

By its acceptance of a Franchise, the Franchisee specifically concedes and agrees that any acquisitions or transfers set forth in subsections (b) and (c) above, without prior approval of the Board as may be required, shall constitute a violation of the Franchise and this Chapter by the Franchisee.

Receivership; Foreclosure.

Any Franchise shall, at the option of the Board of Commissioners, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Franchisee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trustee shall have been vacated prior to the expiration of the one hundred twenty (120) days or unless:

The receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise, and the receivers or trustees within the one hundred twenty (120) days shall have remedied all defaults, if any, under the Franchise; and

The receivers or trustees shall, within the one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of a Franchise.

In the case of a foreclosure or other judicial sale of the plant, property, and equipment of the Franchise, or any part thereof, including or excluding the Franchise, the Board of Commissioners or its designee may serve written notice of termination upon the Franchisee and the successful bidder at such sale, in which event the Franchise and all rights and privileges of Franchisee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

The Board of Commissioners shall have approved the transfer of the Franchise as and in the manner in this Chapter provided; and

Unless the successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the Franchise.

City's Right of Intervention; Resolution of Disputes.

City's right of intervention. The Franchisee shall not oppose intervention by the City, at the City's expense, in any suit or proceeding to which the Franchisee is a party.

Resolution of disputes.

Intent. It is the intent of the City to provide for the orderly resolution of any controversy or dispute between the Franchisee and the City arising out of the enforcement or interpretation of any provision of this Chapter, the Franchise Agreement, or any rule, regulation or procedure relating to cable communication matters. Unless otherwise provided for in a Franchise Agreement, negotiation between the parties and fact finding shall be the means of resolving the great majority of such controversies or disputes. Neither fact finding nor mediation, however, shall be the first resort of the parties, but shall be undertaken only after a reasonable time has been taken to reach agreement by negotiation between the parties.

Fact finding. Any material controversy or dispute, upon the election of both the City and the Franchisee, may be submitted to an expert individual acceptable to both parties for an investigation of the facts and a report thereof. Such fact finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party. All reasonable fees and other expenses resulting from such fact finding shall be equally borne by both the City and the Franchisee.

Mediation. Any material controversy or dispute, upon the election of either the City or the Franchisee, may be submitted to an expert individual acceptable to both the Franchisee and the City for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party. All reasonable fees or expenses resulting from such mediation shall be equally borne by both the City and the Franchisee.

Fees and expenses. The reasonable fees of single experts as provided for above shall be jointly borne by the Franchisee and the City. In no event shall the City be obligated for more than one-half of the expenses.

Submission of Reports and Data.

Filings and communications with regulatory agencies. At any time the FCC or another federal or state agency requires or requests the submission of reports, data or other information by a Franchisee, then such Franchisee shall, upon reasonable written request, submit those reports, data or other information to the City. However, unless specifically authorized by state or federal statute, a Franchisee shall not be required to submit state or federal tax returns.

Reports. City shall have access to, and the right to inspect, during normal business hours, books and records of Franchisee related to the operation of the Cable System, necessary to ensure compliance with the terms of this Ordinance and a Franchise held by a Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) business days, that City inspect them at Franchisee's local area office. If any books or records of Franchisee are not kept in a local office or if unavailable electronically, Franchisee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.

Upon request, Franchisee shall provide City with a sample Cable Services bill, on a monthly basis. Cable Services bills associated with complimentary services accounts may satisfy this requirement.

Franchisee shall at all times maintain and allow City, with reasonable notice (minimum two (2) working days and maximum five (5) working days), access and the right to review a full and complete set of digital plans, records and maps compatible with ESRI Shape Files showing the approximate location of all Cable System equipment installed or in use in the City, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in the format described herein and provided to the City upon request as set forth above, but not more frequently than twice annually, for the City's use only.

The ability for City to obtain records and information from Franchisee is critical to the administration of this Ordinance and the Franchise. Therefore, Franchisee's failure to comply with the requirements of this Section may result in enforcement by City as permitted herein and under Applicable Laws.

Insurance; Bonds; Indemnification.

Liability and indemnification of City. The Franchisee shall indemnify and hold harmless the City at all times during the term of the Franchise and specifically agree that it will pay all damages and penalties which the City may be legally required to pay as a result of the Franchisee's actions or omissions as it relates to the construction, operation and maintenance of the Cable System. Such damages and penalty shall include, but not be limited to, damages arising out of copyright infringements, and other damages arising out of the installation, operation or maintenance of the Cable System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by the Franchise. In the case suit shall be filed against the City, either independently or jointly with the Franchisee, to recover for any claim or damages, the Franchisee, upon written notice to it by the City, shall defend the City

against the action and, in the event of a final judgment being obtained against the City, either independently or jointly with the Franchisee, solely by reason of the acts of the Franchisee, the Franchisee will pay the judgment and all costs and hold the City harmless therefrom. This provision is intended to address lawsuits brought by third parties related to the actions of the Franchisee and the City and not lawsuits independently brought by the City against Franchisee or independently brought by the Franchisee against the City.

Performance bond. Upon the effective date of the Franchise Agreement requiring System construction, the Franchisee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the initial sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). Upon completion of any System construction/upgrade the bond shall be reduced to Twenty-five Thousand and No/100 Dollars (\$25,000.00). The bond shall be conditioned that the Franchisee shall well and truly observe, fulfill and perform each and every term and condition of this Chapter and the Franchise Agreement, and that, in the case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and the surety, jointly and severally, thereof by the City for all damages resulting from the failure of the Franchisee to well and truly observe and perform any provisions of this Chapter or the Franchise Agreement. The aforesaid bond shall be maintained by the Franchisee throughout the term of the Franchise and written evidence of the payment of the required payments shall be filed and maintained both with the office of the City Manager and the Authority.

Insurance.

The Franchisee shall be required to maintain insurance in such forms and in such companies as shall be approved by the City, such approval not to be unreasonably withheld, to protect the City and the Franchisee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any aspect of the system. The amount of such insurance shall not be less than the following:

General liability insurance:

Bodily injury per Person: \$3,000,000.00.

Bodily injury per occurrence: \$5,000,000.00.

Property damage per occurrence: \$1,000,000.00.

Property damage aggregate: \$1,000,000.00.

Automobile insurance:

Bodily injury per Person: \$1,000,000.00.

Bodily injury per occurrence: \$3,000,000.00.

Property damage per occurrence: \$1,000,000.00.

Workmen's compensation insurance shall also be provided as required by the laws of the Commonwealth of Kentucky. All said insurance shall name the City as an additional insured and shall provide a ten (10) day notice to the City Clerk in the event of material alteration or cancellation of any coverage afforded in the policies prior to the date the material alteration or cancellation shall become effective. Copies of all policies required hereunder shall be furnished to and filed with the City Clerk and the Authority prior to the commencement of operations or the expiration of prior policies, as the case may be.

Nonwaiver. Neither the provisions of this section nor any bonds accepted by the City pursuant hereto, nor any damage recovered by the City hereunder, shall be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee under this Chapter or the Franchise for damages either to the full amount of the bond or otherwise.

Secs. 22-47--22-70. Reserved.

ARTICLE III. RATES AND CHARGES

Sec. 22-71. Rates, Charges and Refunds.

Rates subject to local regulation. City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by Applicable Law.

Rate changes; discrimination. In accordance with applicable law:

Access to Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides. However, nothing herein shall prohibit a Franchisee from denying Service based on location of a residence if that residence is outside either the defined Service Area or line extension criteria specified in a Franchise.

Equal opportunity in employment shall be afforded by a Franchisee to all qualified Persons and no Person shall be discriminated against in employment by a Franchisee because of race, color, religion, national origin, age or sex.

A Franchisee shall not, as to rates and charges or use of a Franchisee's facilities or equipment, allow or grant any undue preference or advantage on the basis of race, color, religion, national origin, age, sex or location of residence. Nothing herein shall prohibit a Franchisee from offering a promotional or incentive discount rate or charge or from offering customized bulk billing arrangements.

Franchise Fees.

The Franchisee shall pay to the City a Franchise Fee equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of Franchise Fee than any other video service provider providing Service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for computation of the Franchise Fees paid during that period.

Upon reasonable notice, the City shall have the right during Normal Business Hours to inspect the Franchisee's records relevant to the payment of Franchise Fees and the right to audit and to re-compute any amounts determined to be payable under a Franchise Agreement, this Ordinance and Applicable Laws. The audit period may not extend back beyond the maximum time period permitted under the applicable state statute of limitation for contracts (KRS 413.120) under the laws of the State of Kentucky. If, as a result of such audit, the City determines that the Franchisee has underpaid its fees to the City six percent (6%) or more, then: 1) the undisputed amount will be due to the City within thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report; and 2) in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional undisputed amount due to the City as a result of an audit shall be paid within thirty (30) days following written notice to Franchisee by the City.

Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Franchisee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

Nothing in this Ordinance shall in any way be construed to prohibit the City from collecting any fees, taxes or assessments as may be permitted by Applicable Laws, including Kentucky Revised Statutes and City hereby reserves any and all rights in accordance with Applicable Laws.

Secs. 22-73--22-90. Reserved.

ARTICLE IV. CUSTOMER PROTECTION AND SERVICE STANDARDS

Sec. 22-91. Notice of Rights and Responsibilities.

General policy.

The City recognizes that it is critical that a customer fully understands and realizes the rights and responsibilities of both the customer and Franchisee with respect to the provisions, maintenance and repair of Cable Service.

Further, the City believes that, if sufficient information is provided to a customer on certain customer service practices, such as rates, billing periods, and number and types of service provided, then that customer will have the information necessary to make an informed decision on what, if any, Cable Services to subscribe to and receive.

In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their and the Franchisee's rights and responsibilities with respect to the Cable System, a Franchisee must provide a customer with a written notice of a customer's and Franchisee's rights and responsibilities with respect to the provision of Cable Service.

Notifications to Subscribers. Franchisee shall provide printed or electronically available information on each of the following areas at the time of installation of Cable Service, at least annually to all Subscribers, and at any time upon request:

Products and Services offered;

Prices and options for programming Services and conditions of subscription to programming and other Services;

Installation and Service maintenance policies;

Instructions on how to use the Cable Service;

Channel positions of the programming carried on the System; and

Billing and complaint procedures, including the address and telephone number of the City.

Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing or electronically. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Franchisee. In addition, the Franchisee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 22-91. Franchisee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber. New Channels and services may be offered with less than the required notice so long as there is no additional charge or the Channel or service is sold on a subscription basis.

All programming decisions remain the discretion of Franchisee in accordance with the Franchise, provided that Franchisee notifies City and Subscribers in writing thirty (30) days prior to any Channel deletions or realignments directed to each Subscriber individually by any reasonable means available to and at the discretion of the Franchisee consistent with applicable law, and further subject to Franchisee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545.

Customer Service Office and Telephones.

Unless otherwise provided for in a Franchise Agreement, Franchisee shall maintain a convenient local customer service and bill payment location in the City for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. The Franchisee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of the Franchise, that impose higher or additional customer service standards on a Cable Operator.

Cable System office hours and telephone availability:

Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

Trained Franchisee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Franchisee representative on the next business day.

Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

Customer service center and bill payment locations will be open at least during Normal Business Hours.

Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution cable.

Excluding conditions beyond the control of Franchisee, Franchisee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24)

hours after the interruption becomes known. Franchisee must begin actions to correct other Service problems the next business day after notification of the Service problem. Franchisee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

The “appointment window” alternatives for Standard Installations, Service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Franchisee may schedule Service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)

Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

If Franchisee’s representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

Under Normal Operating Conditions, if Franchisee cannot perform installations within the times specified in applicable customer standards, the Subscriber shall, upon request, receive a credit equal to the charge for a Standard Installation. For any installation that is not a free installation or a Standard Installation, Franchisee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Franchisee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Franchisee is utilizing a phased introduction.

Special Requirements for the Disabled.

In addition to any other requirements mandated by this Chapter, or by federal or Commonwealth law, a Franchisee shall comply with the following special service requirements for blind, hearing-impaired or wheelchair customers:

Provide wheelchair accessibility to a Franchisee’s customer service office.

For any customer declared legally blind by the Commonwealth, a Franchisee must provide at a non-discriminatory cost, if requested by the customer, large-type, braille, voice-synthesized or functionally equivalent notices, bills and other pertinent information.

Provide, upon request, either: 1) assistance with identifying a consumer electronics source; or 2) at a reasonable, non-discriminatory cost, a device sufficient to enable closed-captioning services for a hearing-impaired Subscriber.

Provide, at a nondiscriminatory cost, a remote-control device and/or Converter for wheelchair Subscribers or Subscribers with a permanent medical or physical ambulatory impairment.

Where applicable, provide modified or special instructions for use of equipment by Subscribers who have physical impairments.

Reserved.

Restoration of Subscribers' Property.

At any time a Franchisee disturbs the yard, residence, or other real or personal property of a Subscriber, the Franchisee shall ensure that the Subscriber's yard, residence, or other real or personal property is returned, replaced and/or restored to a condition that is comparable to its condition immediately before the disturbance to the extent such corrective action cannot be accomplished. The Franchisee shall reimburse a Subscriber, or private property owner, for any damage caused by the Franchisee, subcontractor or independent contractor in connection with the disturbance of a Subscriber's or private property owner's property if Franchisee fails to perform the restoration work required herein.

The types of acts specifically included in this section are the following:

Removal of a Subscriber's sod, lawn, plants, shrubbery, flowers, trees, driveway or fence to install a trench or repair, replace, remove or locate cable or other equipment of the Franchisee.

Installation or removal of a cable or other equipment of the operator within a Subscriber's residence, or around a Subscriber's swimming pool or tennis court, or which requires drilling, excavating, plastering or the like on the part of the Franchisee.

Temporarily relocating or moving a piece of personal property of a Subscriber (such as a motor vehicle, fence, garden hose or the like) in order to perform some sort of construction or maintenance on the Cable System.

Permanently removing a Franchisee's cable or equipment due to either the revocation, termination or nonrenewal of a Franchise or the abandonment, withdrawal or cessation of Cable Service to any portion of the City.

The requirements for the Franchisee extend to any contractor that the Franchisee might employ to perform the tasks outlined.

In light of the foregoing, a Franchisee has the authority to trim trees of a private property owner (including a Subscriber) only to the extent necessary to prevent the branches of the tree from coming in contact with the Franchisee's wires and cables.

Emergency Alert and Availability of Parts and Personnel.

Emergency alert; standby power.

At all times a Franchisee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable Law and regulations including 47 CFR, Part 11, and any Kentucky Emergency Management requirements. The City may identify authorized

emergency officials for activating the EAS consistent with Kentucky Emergency Statewide Plan (“EAS Plan”). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Law and the EAS Plan.

In addition to any other requirements listed in this Chapter, a Franchisee shall cooperate with the City on the use and operation of the emergency alert override system.

As one method of providing continuity of services in the event of a natural, manmade or disaster emergency, a Franchisee shall, unless exempted by the City, maintain equipment capable of providing automatic standby power for a minimum of two (2) hours, strategically placed in locations along the Cable System trunkline in order to minimize the number of Subscribers affected by interruption of Service.

Availability of parts and personnel.

Except in times of natural, manmade or disaster emergency, a Franchisee shall make a reasonable effort at all times to keep and maintain a sufficient and adequate inventory of maintenance and repair parts and equipment for the Cable System, so that the Franchisee can respond to, and correct, all Subscriber interruptions within the specified time periods.

Except in times of natural, manmade, or disaster emergency or strike (whose duration has been more than seventy-two (72) hours), a Franchisee shall make a reasonable effort to have sufficient maintenance and repair personnel so that the Franchisee can respond to, and correct, all Subscriber Service Interruptions within the specified time periods.

Billing Practices; Billing Credit; Disconnection for Nonpayment of Charges.

Billing practices.

Bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

In case of a billing dispute, the Franchisee must respond to a written complaint from a Subscriber within thirty (30) days.

At all times Franchisee’s billing practices shall comply with 47 C.F.R § 76.1619.

Billing credit. A Franchisee shall provide a Subscriber, upon request, with credit for a Service outage exceeding twenty-four (24) hours and for substandard signal, picture or sound quality exceeding twenty-four (24) hours.

Disconnection for nonpayment. A Subscriber shall not be considered disconnect for non-payment until at least thirty (30) days after the posting of the bill to the Subscriber and payment has not been received by the Franchisee.

Voluntary Disconnection.

At any time, a Subscriber may request that a particular service tier, service cluster, Pay Television, premium Channel, informational service or the entire Cable Service be discontinued.

From the date that such a Subscriber makes such a request, the Franchisee shall have up to five (5) business days to disconnect the service tier, service cluster, Pay Television, premium Channel, informational service or entire Cable Service. In the event that a Franchisee does not disconnect Service within five (5) business days, a Subscriber's obligation to pay for such Service shall cease.

Notwithstanding the above provisions, and in order to reduce Subscriber abuse of this voluntary disconnection policy, a Subscriber shall be charged a minimum of one (1) month's full rate for any one (1) service (basic, premium, informational, cluster or tier) which is disconnected at least three (3) times in a span of one hundred eighty (180) days.

Unless damage has occurred or Franchisee's equipment has not been returned, no excessive, unreasonable or punitive fee may be passed on to a Subscriber for the actual disconnection of a Channel or Service if the disconnection involves a single residence with fewer than five (5) outlets.

Any refund due a Subscriber after disconnection (both for nonpayment and voluntary) shall be made within sixty (60) days after such disconnection.

Protection of Subscriber Privacy.

Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth above.

The Franchisee shall, at all times, comply with all applicable federal and state privacy law including Section 631 of the Cable Act and any regulations adopted pursuant thereto. The City shall have the right to enforce Franchisee's compliance with said privacy law to the maximum extent permitted under applicable laws.

Substandard Picture Quality.

The City recognizes that a cable Subscriber is a consumer. As such, there is no more important factor for the cable Subscriber in terms of enjoying the provision of video or other programming services offered by a Franchisee than the provision of good and acceptable picture and sound quality.

The City declares as one of its primary objectives to preserve, protect, and promote that all cable Subscribers within the City receive good and acceptable picture and sound quality.

At a minimum, the Franchisee must meet all FCC standards that relate to the reception of broadcast signals. Moreover, the Franchisee must provide sound and picture quality that does

not suffer from constant and/or recurring degradation or requires frequent (more than ten (10) times in one (1) year) adjusting or servicing by a Franchisee customer service technician or a Franchisee field service technician.

To prevent possible abuse, a Subscriber shall pay for all administrative and Franchisee costs associated with examining substandard picture and sound quality if it is administratively determined that the Subscriber's claim is unwarranted and without foundation.

The City reserves the right to develop and adopt comprehensive regulations on the technical aspects of signal quality should the FCC permit such.

Use and Return of Equipment; Security Deposits.

If needed for proper operation or requested by a customer, a Franchisee shall provide to a customer printed or electronic instructions on the proper use of the rented, loaned, leased or purchased equipment. A Franchisee may comply with this section (except in the case of sight- or hearing-impaired customers) by delivering the manufacturer's instructions to a customer.

A Franchisee is not required to seek a security deposit from a customer for the use or rental of a Franchisee's equipment.

When a security deposit is required from a customer by a Franchisee, the customer shall first receive a written statement from the Franchisee acknowledging that the equipment is in working order.

Continuity of Service.

The City declares that, as part of its right to establish cable customer service guidelines, it has the duty to ensure continuity of Cable Service for all Subscribers. In that light, the City also determines that it may take appropriate measures in order to ensure that no portion of the City is threatened or faced with a disruption, interruption or discontinuance of Cable Service due to the actions of any Franchisee.

In addition to the above principles and ideals, the City also expresses that its policy covers the following:

Providing for continuity of Cable Service in the event of acquisition by the City;

Providing for continuity of Cable Service in the event of a proposed abandonment, withdrawal or cessation of Cable Service by a Franchisee;

Providing for continuity of Cable Service in the event of the lawful revocation, termination or nonrenewal of a cable Franchisee;

Providing for continuity of Cable Service in the event of a transaction that affects the ownership of control of the Cable Operator or Franchisee;

Providing for continuity of Cable Service in the event of an expiration of a Franchise; and

Preventing disruption of Cable Service which would provide a hardship on those Subscribers who rely on Cable Service as their primary or secondary source for information.

Whenever any situation occurs (including those mentioned above) which threatens the City and Subscribers with loss or interruption in the continuity of Cable Service, then the City may direct the Franchisee and/or Cable Operator to do everything in its power to ensure that all Subscribers receive continuous, uninterrupted Cable Service.

During any interim period, the City shall work with the Franchisee in order to secure a new Cable System owner or rectify the problem, so that threat of loss of continuity is removed at the earliest possible time.

During any interim period in which the Franchisee continues to provide Cable Service to Subscribers, the Franchisee is entitled to all revenues collected, except for any sums owed (including Franchise Fees, Alternative User Charges and taxes) to the City or other Persons in accordance with Applicable Law.

Resolution of Complaints.

A Franchisee is required to develop a comprehensive complaint/inquiry resolution policy that is consistent with the policies outlined in these customer service practices.

A Franchisee's resolution policy shall be reduced to writing and such policy shall be available upon request to any Subscriber.

Date of Compliance.

Unless relief is granted by the City, or unless otherwise provided for in a Franchise Agreement, the Franchisee operating under a renewed Franchise shall have either one (1) year from the date that this Chapter becomes effective or nine (9) months from the date that a Franchise Agreement (initial or renewal) becomes effective.

All new Franchisees shall be required to comply from the date of execution of the Franchise Agreement.

Secs. 22-105--22-130. Reserved.

ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 22-131. Compliance Required.

The Franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the Franchise by any failure of the City to enforce prompt compliance.

SECTION 2. SEVERABILITY. That if any section, paragraph or provision of this Ordinance shall be found to be inoperative, ineffective or invalid for any cause, the deficiency or invalidity of such section, paragraph or provision shall not effect any other section, paragraph or provision hereof, it being the purpose and intent of this Ordinance to make each and every section, paragraph, and provision, hereof separable from all other sections, paragraphs and provisions.

SECTION 3. COMPLIANCE WITH OPEN MEETINGS LAWS. The City Commission hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this City Commission, and that all deliberations of this City Commission and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be read on two separate days and become effective upon summary publication pursuant to KRS 424.

SECTION 5. REPEAL OF ORDINANCES. Upon the publication and on the effective date of this ordinance, the following Chapter of the Code of Ordinances of the City of Paducah, Kentucky shall be repealed in its entirety and superseded with this Ordinance: Chapter 22.

Brandi Harless, Mayor

ATTEST:

Lindsay Parish, City Clerk

Introduced by the Board of Commissioners, December 17, 2019

Adopted by the Board of Commissioners, _____

Recorded by City Clerk, _____

Published by *The Paducah Sun*, _____

\ord\ 22 - Cable Communications Repeal & Replace 2019

CHAPTER 22 CABLE COMMUNICATIONS

CITY OF PADUCAH, KENTUCKY

December 6, 2019

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ARTICLE I. IN GENERAL

Sec. 22-1. Title of Chapter.

This Chapter shall be known as “Chapter 22 Cable Communications of the City’s Code of Ordinances.”

Sec. 22-2. Definitions.

For the purpose of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

(a) *Access Channel*. A Public, Educational or Governmental Access Channel which is carried on a Cable System, but which is not part of any institutional network.

(b) *Affiliate* shall mean any Person controlling, controlled by or under common control of a Franchisee.

(c) *Annual Gross Revenues* or *Gross Revenues* means any and all revenue derived by the Franchisee from the operation of the Cable System in the Franchise Area to provide Cable Service. Cable Service revenue shall include, but is not limited to, revenues from Basic Cable Service, premium, pay-per-view, pay television, Franchise Fees, late fees, guides, home shopping revenue, Installation and reconnection fees, upgrade and downgrade fees, advertising revenue (excluding advertising sales commissions paid to unaffiliated third parties), and converter rental fees. Gross Revenue shall not include refundable deposits, actual bad debt write-offs, investment income nor any taxes, fees or assessments of general applicability imposed or assessed by any governmental authority (a Franchise Fee is not such a tax, fee or assessment). The City acknowledges and agrees that Franchisee will maintain its books and records in accordance with GAAP.

(d) *Applicable Law* means any and all local law, state or federal law, statute, charter, ordinance, regulation, code, franchise, permit, judgment or decree in accordance with state and federal law.

(e) *Authority*. The City of Paducah Board of Commissioners.

(f) *Basic Cable Service*. Any Service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the Franchise to be carried on the basic tier. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. § 543(b)(7).

(g) *Board*. The Board of Commissioners for the City of Paducah, Kentucky.

(h) *Cable Operator*. Any Person or group of Persons, including a Franchisee, who:

(1) provides Cable Service over a Cable System and directly or through one (1) or more affiliates owns a significant interest in such Cable System; or

(2) otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.

(i) *Cable Service or Service.* (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) other programming service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service. Cable Service as defined herein shall not be inconsistent with the definition set forth in 47 U.S.C. § 522(6) and § 522(14).

(j) *Cable System or System.* A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

(1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(2) a facility that serves Subscribers without using any Street or Public Way;

(3) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) an open video system that complies with 47 U.S.C. § 573; or

(5) any facilities of any electric utility used solely for operating its electric utility systems.

(k) *Cable Television Channel or Channel.* A portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel (as “television Channel” is defined by FCC regulation).

(l) *City.* The City of Paducah, Kentucky, and all the territory within its presently existing or future territorial corporate limits. Where appropriate, the term “City” shall refer to it as a corporate entity and also include its officers, employees and duly authorized representatives.

(m) *City Manager.* The designated or acting City Manager of the City of Paducah, Kentucky.

(n) *Commonwealth.* The Commonwealth of Kentucky.

(o) *Converter.* Any electric or other device separate and apart from the Subscriber’s receiver that is capable of converting or changing signals to a frequency not intended to be

susceptible to interference within the television or video receiver of a Subscriber, and by an appropriate Channel or other type of selector may also permit a Subscriber to view or otherwise use signals delivered at designated dial locations, or such other reception and use allocations as may be applicable and required for the practical use of the signal.

(p) *Drop.* The cable that connects the ground block on the Subscriber's residence or institution to the nearest feeder cable of the System.

(q) *FCC or Federal Communications Commission.* The federal administrative agency, or lawful successor, authorized to oversee cable television regulation on a national level.

(r) *Franchisee.* All Persons, natural or corporate, or any other entity having any rights, powers, privileges, duties, liabilities or obligations under this Chapter and the Franchise Agreement, and also all Persons having or claiming any power or interest in or to the System, whether by reason of the Franchise itself or any subcontract, transfer assignment, mortgage, pledge, hypothecation, security agreement, management agreement or operating agreement, or otherwise arising or created.

(s) *Franchise or Franchise Agreement.* That separate agreement by which a Franchise is granted to the Franchisee as required by this Chapter. Franchise as defined herein shall not be inconsistent with 47 U.S.C. § 522(9).

(t) *Franchise Area or Service Area.* The entire geographic area within the City as it is now constituted or may in the future be constituted.

(u) *Franchise Fee.* Any tax, fee, or assessment of any kind imposed by the City or other governmental entity on Franchisee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and Cable Operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against Cable Operators or cable Subscribers); capital costs which are required by the Franchise to be incurred by Franchisee for Public, Educational, or Governmental Access Facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

(v) *Normal Business Hours.* The term "Normal Business Hours" means those hours during which most similar businesses in the community are open to serve customers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or weekend hours.

(w) *Normal Operating Conditions.* Those Service conditions which are within the control of Franchisee. Those conditions which are not within the control of Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(x) *Ordinance or Chapter.* Chapter 22 Cable Communications of the City's Code of Ordinances.

(y) *Pay Television.* The delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or other programming services.

(z) *Person.* Any individual, corporation, business trust, estate trust, partnership, association of two (2) or more Persons having a joint common interest, governmental agency or other legal entity, including the City.

(aa) *PEG.* Public, Educational or Governmental.

(bb) *Public Way.* All public Streets and utility easements, as those terms are defined in the City Code, now or hereafter owned by the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such Streets and easements for telecommunications facilities or Cable System.

(cc) *Service Day.* Any day or other twenty-four (24) hour period, other than a Sunday or a City-recognized holiday, in which employees of the Franchisee regularly respond to service requests and calls.

(dd) *Service Interruption.* The loss of picture or sound on one (1) or more Channels.

(ee) *Standard Installation.* Any residential or commercial installation which can be completed using a Drop of one hundred fifty (150) feet or less.

(ff) *Street.* The surface of and the space above and below any public Street, road, highway, freeway, lane, path, Public Way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter held by the City, and includes other easements or rights-of-way as may be now or hereafter held by the City for the purposes of installing poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other devices or property as may be necessary for the construction, operation, and maintenance of a wire telecommunications system or Cable System.

(gg) *Subscriber.* A Person lawfully receiving Service delivered over a Cable System by either a Cable Operator or Franchisee.

(hh) *Utility easement.* Any easement owned by the City and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities or Cable System.

(ii) *U.S.C.* United States Code.

(jj) *Video Programming.* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Sec. 22-3. Franchisee May be Required to Pay Associated Costs.

In addition to any other rights the City may have under this Chapter, the City specifically reserves the right to charge the Franchisee for any and all costs incidental to the awarding or enforcing of the Franchise as provided for in a Franchise Agreement in accordance with Applicable Law. Under no circumstances shall the costs exceed two thousand five hundred dollars (\$2,500).

Sec. 22-4. Fair Employment and Contracting.

(a) Equal opportunity in employment shall be afforded by each cable entity to all qualified Persons, and no Person shall be discriminated against in employment by such entity because of race, color, religion, national origin, age or sex.

(b) A Franchisee shall exercise its reasonable best effort to use minority organizations, organizations for women, media, educational institutions, and other potential sources of minority and female applicants, to supply referrals whenever jobs are available in its operation and to encourage minority and female entrepreneurs to conduct business with all parts of its operation.

(c) In addition to the provisions noted above, a Franchisee shall comply with all Commonwealth laws, FCC regulations, and 47 U.S.C. § 554 as they relate to equal employment and contracting opportunity within the cable industry.

Sec. 22-5. Construction of Chapter.

(a) This Chapter shall be construed in light of Applicable Laws and regulations governing cable practices in general and cable consumer practices in particular in accordance with Applicable Law.

(b) Wherever possible, this Chapter shall be construed with as much flexibility as possible so that the City might be able to accomplish its goals of protecting the health, safety, and welfare of the citizenry.

Sec. 22-6. Compliance with Federal, State and Local Laws.

If any federal or state law or regulation shall require or permit City or Franchisee to perform any service or act or shall prohibit City or Franchisee from performing any service or act which may be in conflict with the terms of this Ordinance, then as soon as possible following knowledge thereof, either party shall notify the other of the point in conflict believed to exist between such law or regulation. Franchisee and City shall conform to state and federal laws and regulations and rules regarding cable communications as they become effective.

Sec. 22-7. Effect on New and Existing Franchisees.

(a) For Persons awarded a cable Franchise after the effective date, this Chapter shall have full effect and be enforceable in its entirety and for a Franchise existing on the date that this Chapter becomes effective, this Chapter shall have no effect during its present Franchise term.

(b) Notwithstanding the above provisions, a Franchisee may file a written petition, at any time, seeking relief from one (1) or more provisions of this Chapter. The relief requested may specifically include the delay in implementation (as to the petitioning Franchisee only) of one (1) or more provisions of this Chapter.

(c) In order to receive relief from one (1) or more provisions of this Chapter, a Franchisee must satisfactorily demonstrate to the City that one (1) of the following facts exist:

(1) The provision and/or requirement is expressly prohibited by Applicable Law; or

(2) The provision materially affects and is in conflict with an expressed right that is specifically noted in an existing Franchise Agreement; or

(3) That the imposition of such provisions and/or requirements is commercially impracticable or will create such an undue economic hardship on the Franchisee so as to imperil or eliminate the economic benefits of providing Cable Service to a majority of current Subscribers; or

(4) That the Franchisee has its own construction, maintenance, operation, customer service or equal employment opportunity (EEO) policy, practice or standard which is deemed comparable to or exceeding any provision and/or requirement from which the Franchisee seeks relief.

(d) The City shall have the responsibility of determining whether a Franchisee's construction, maintenance, operation, customer service or EEO policy, practice or standard is comparable to or exceeds a similar provision in this Chapter.

(e) In accordance with this Chapter, the City may charge the petitioning Franchisee with the incidental costs of processing an initial Franchise consistent with 47 U.S.C. § 542(2)(D).

Sec. 22-8. Delegation of Power.

Unless prohibited by the Commonwealth, the City and/or Board of Commissioners may delegate its powers and authorities (except its ultimate franchising authority) with respect to cable to the Authority, or a duly authorized representative of the City, including the Mayor and City Manager, provided, however, the City and/or Board of Commissioners shall not delegate its powers and authority with respect to matters concerning, Franchise renewal, non-compliance or revocation of the Franchise unless otherwise agreed to by City and Franchisee.

Sec. 22-9. City Ownership of Cable System.

In the event the City directly or indirectly through any legal means constructs, acquires, purchases, leases or otherwise owns or controls a Cable System, it shall, with the exception of those requirements pertaining to application for and obtaining a Franchise, be considered a Franchisee for purposes of this Chapter and shall be bound by and comply with all the requirements of this Chapter as if it were a Franchisee.

Sec. 22-10. Secs. 22-10--22-30. Reserved.

ARTICLE II. FRANCHISE PROVISIONS

Sec. 22-31. Franchise Required.

(a) *Necessity of Franchise.* Except as provided in subsections (b) and (c) of this section, to the maximum extent permitted under applicable law, no Person shall provide Cable Services nor operate or maintain a Cable System without having first obtained a Franchise, and then entering into a Franchise Agreement with the City.

(b) *Exception for City-owned or City-controlled Cable System.* Under judicial interpretations of the Kentucky Commonwealth Constitution, a municipality may own and operate a Cable System. Consequently, should the City, directly or indirectly, through any legal means available to the City, decide to purchase, acquire, construct, lease, control or otherwise own a Cable System within the territorial limits of the City, then the City shall comply with all Applicable Laws in order to construct, operate and maintain a Cable System within the territorial limits of the City.

(c) *Contravention of Franchise; costs of litigation.* The cost of any litigation incurred by the City to enforce this Chapter or the Franchise granted pursuant hereto, or any Franchise Agreement, or in relation thereto, or in relation to the cancellation or termination of a Franchise, shall be reimbursed to the City by the affected Franchisee if the City prevails in the litigation. In the event the Franchisee prevails, the cost of litigation incurred by the Franchisee shall be reimbursed to the Franchisee by the City. Such costs shall include, but not be limited to, filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney's fee.

Sec. 22-32. Term; Termination and Cancellation.

(a) *Maximum term.* No Franchise granted hereunder, or any renewal thereof, shall be for a term of more than fifteen (15) years.

(b) *Term six years or less.* If an initial Franchise or renewal Franchise is for a period of six (6) years or less, then the Franchise Agreement shall explain the reasons for granting the shorter Franchise term.

(c) *Reasons for term six years or less.* The reasons for a shorter Franchise term may include, but are not limited to, the following:

- (1) Multiple or repeated documented material violations of the prior Franchise Agreement.
- (2) Multiple or repeated documented material violations of this Chapter.
- (3) Documented reckless disregard for the safety and welfare of the citizens of the City.
- (4) Failure to furnish any required annual reports.

(5) Failure to comply with a specific, previously agreed upon construction schedule.

(6) Failure to timely pay in their entirety any Franchise Fees or taxes or other charges due to the City.

(d) *Termination and cancellation of Franchise.* In addition to all other rights and powers of the City by virtue of the Franchise or this Chapter, the City may, subject to and in accordance with appropriate terms of this Chapter and a Franchise Agreement, federal, and state law, terminate and cancel the Franchise and all rights and privileges of the Franchisee thereunder in the event that the Franchisee either:

(1) Substantially violates any material provisions of the Franchise or this Chapter, or any legal rule, order or determination of the Board of Commissioners made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by Franchisee of written notice of said violation, except where such violation is due to excusable neglect or outside the control of the Franchisee;

(2) Intentionally evades any of the provisions of this Chapter or the Franchise Agreement or practices any intentional fraud or deceit upon the City; or

(3) Becomes insolvent, files bankruptcy or abandons the Franchise or, subject to Section 22-72, fails to pay any applicable Franchise Fee when due.

Such determination and cancellation shall be made by ordinance of the Board of Commissioners duly adopted after twenty (20) days' notice to the Franchisee and shall in no way affect any of the City's rights under the Franchise or any provisions of law; provided, however, that, before the Franchise may be terminated and canceled under this section, the Franchisee shall be provided with an opportunity to be heard at a public hearing before the Board of Commissioners, upon thirty (30) days' prior written notice to the Franchisee of the time and place of the public hearing; provided further that the notice shall affirmatively and with specificity cite the reasons alleged to constitute a cause for revocation; and, provided further, that notice of the public hearing shall be published in a local newspaper of general circulation at least five (5) days before the hearing.

(e) *Performance evaluation provisions.*

(1) The City and Franchisee may hold scheduled performance evaluation sessions concerning the provision of Cable Services on the Cable System within thirty (30) days prior to the fifth (5th) and tenth (10th) anniversary dates of granting a Franchise or renewal of a Franchise. Franchisee shall fully cooperate with the City and shall provide, without cost and in a timely manner, such information and documents related to the operation of the Cable System as the City may reasonably request to perform the evaluation. All performance evaluation sessions shall be open to the public and will be announced by the City in a newspaper of general circulation at least five (5) days before each session.

(2) Special performance evaluation sessions may be held at any time during the term of the Franchise; provided that both the City and the Franchisee shall mutually agree on the time, the place and the topics to be negotiated.

Sec. 22-33. Selection of New Franchisee.

(a) *Request for proposal.* In selecting a new Franchisee (not applicable to a proposed transferee) pursuant to this Chapter, the City shall prepare a request for proposal to seek bids for a Cable System to be established under a Franchise by the City. This request for proposal shall contain, among other things, detailed information and instructions relating to the preparation and filing of proposals; technical standards regarding the installation, operation and maintenance of a Cable System; financial ability and stability to construct, operate, and maintain a Cable System; history of legal compliance with other types of Franchise Agreements and commitment to comply with the legal requirements of the City; and the criteria to be used in evaluation of applicant proposals.

(b) *Criteria for selection of Franchisee.* Applicants for a new Franchise shall be evaluated according to the following criteria:

(1) *Nonprofit ownership.* A preference shall be given to applicants for a Franchise representing nonprofit organizations.

(2) *Service priorities.* A preference shall be given to System capability in terms of no costs telecasting production facilities and Service available to municipal and educational institutions and community groups and individuals. Preference shall be given to System provisions for two-way nonvoice communications. Preference shall be given to the maximum total Channels provided by the System.

(3) *Installation plan.* A preference may be given to an installation plan that would provide flexibility needed to adjust to new developments, maintenance practices, and services that would be available to the Subscriber and the community immediately and in the future.

(4) *Financial soundness and capability.* The evidence of financial ability required in the applicant's proposal shall be such as to assure ability to complete the entire System within a minimum of two (2) years from the date the Franchisee receives an FCC certificate of compliance and to operate a fiscally sound System throughout the term of the Franchise.

(5) *Demonstrated experience in operating a Cable System under City Franchise.* Preference shall be given upon satisfactory evidence of the applicant's experience in operating a Cable System under a City Franchise, where such evidence would show or tend to show or confirm the ability of the applicant to furnish sufficient and dependable Service to the potential public and users.

(6) *Educational program.* A preference shall be given to a System which presents a program whereby the City's public schools may benefit, utilize and develop education programs for students and Subscribers.

(7) *Award of New Franchise; Hearing; Publication of Ordinances.* The Board of Commissioners may award a new Franchise to an applicant only after a public hearing on the application and proposal, notice of which hearing shall be published in a local newspaper of general circulation at least twenty (20) days before the date of the hearing. Any Franchise that is granted shall be authorized by an ordinance of the Board of Commissioners, which ordinance shall be thereafter published in the manner prescribed by law in a local newspaper of general circulation.

Sec. 22-34. Renewal of Franchise.

Any renewal of a Franchise shall be governed by and comply with the provisions of 47 U.S.C. § 546 of the Cable Act, as amended.

Sec. 22-35. Franchise Conditions.

(a) All Franchises granted pursuant to this Chapter shall be subject to, and shall expressly indicate that they are subject to, the following provisions:

(1) Any Franchise granted hereunder shall be subject to the right of the City, by appropriate action of its Board of Commissioners, to revoke the Franchise, after notice and opportunity to cure for cause shown pursuant to the provisions of this Chapter or the applicable law of the Commonwealth of Kentucky or the United States of America.

(2) Any Franchise granted hereunder shall be subject to all generally applicable provisions of City ordinances and any amendments thereto.

(3) Any Franchise granted hereunder shall be subject to the right of the City:

a. To repeal the same for failure to comply with the provisions of this Chapter, or any other local, state or federal laws, or Federal Communication Commission rules or regulations.

b. To require proper and adequate extensions of the plant and service and maintenance thereof at the highest practicable standard of efficiency as provided for in a Franchise Agreement.

c. To establish reasonable standards of service and quality of products, and to prevent unjust discrimination in service or rates.

d. To require continuous and uninterrupted Service to the public in accordance with the terms of the Franchise throughout the entire period thereof.

e. To control and regulate the use of its Street, alleys, bridges and public places and the space above and beneath them. The Franchisee may be required by the City to permit joint use of its property and appurtenances located in the Streets, alleys, and public places of the City by the City insofar as such joint use may be reasonably practicable and upon payment of reasonable rent therefore; provided that, in the absence of agreement, upon application by any Franchisee,

or the City, the dispute may be submitted and resolved as provided in Section 22-44(b).

f. Through its appropriately designated representatives, to inspect all construction work performed subject to the provisions of the Franchise and this Chapter, and make such other inspections as it shall find necessary to ensure compliance with the terms of the Franchise, this Chapter and other pertinent provisions of law.

g. At the expiration of the term for which the Franchise is granted, or upon the termination and cancellation as provided herein, to require the Franchisee to remove, within eighteen (18) months, at its own expense, the Cable System from the Public Ways within the City in accordance with Applicable Law.

h. To require a Franchisee to pay the cost of newspaper publication of a summary of this Chapter and any amendments thereto in accordance with generally applicable codes.

Sec. 22-36. Franchise Agreement.

(a) Every Franchisee shall enter into a Franchise Agreement with the City which details the rights, duties, responsibilities and liabilities of both parties, and which contains an acceptance on the part of the applicant or Franchisee to the terms of this Chapter and the Franchise Agreement. Moreover, a new Franchisee may not lay any cable until the Franchise Agreement is executed by both the new Franchisee and the City.

(b) In addition to those matters required elsewhere in this Chapter to be included in the Franchise Agreement, it must contain the following express representations of the Franchisee that:

(1) It accepts and agrees to all the provisions of this Chapter as to construction, technical standards, operation, and maintenance and rate structures, if permitted by law, which the City may include in the Franchise Agreement. In the case of a Franchise renewal, the Franchise Agreement may include exceptions to this Chapter.

(2) It has examined all the provisions of this Chapter.

(3) It recognizes the right of the City to make reasonable amendments to this Chapter, consistent with the City's police powers, during the term of the Franchise upon thirty (30) days' written notice to the Franchisee.

(4) It recognizes and agrees that it may be considered as a Franchisee for the purposes of this Chapter.

(5) It expressly recognizes and agrees that it has considered all the provisions of this Chapter in regard to resolution of disputes, and agrees to be bound by same throughout the term of the Franchise.

(c) No Franchise shall be exclusive and no Franchisee shall, through the grant of a Franchise, either written or verbal, be given an unfair competitive advantage over other franchised Cable Operators (including the City, to the extent required by Applicable Law) providing Cable Service in the City.

(d) Every Franchise Agreement shall specifically set forth the specific standards which the Franchisee must maintain in respect to signal quality requirements and technical standards of construction, operation, and maintenance of the System.

(e) The Franchise Agreement shall contain such further conditions or provisions as may be included in the request for proposal and/or negotiated between the City and the Franchisee. In the case of a conflict between any terms or provisions of the Franchise Agreement and this Chapter, the words of the Franchise shall be deemed to control.

(f) Any application filed for an initial Franchise shall become a part of the Franchise Agreement and any representations, promises, commitments or volunteered parameters and/or standards shall become binding upon the Franchisee and its heirs and assigns.

Sec. 22-37. Operational Standards.

(a) *State of the art; maintaining system to level of current technology.* If a Franchise authorizes, the City may require a Franchisee, during the term of its Franchise, to construct, maintain and operate a Cable System that is at a level that reflects the current technology utilized within the industry.

(b) *Construction standards and technical requirements.*

(1) Methods of construction, installation, maintenance and repair of any Cable System shall comply with the National Electrical Safety Code.

(2) It shall be the duty of a Franchisee to undertake a preventative maintenance of the Cable System in order to ensure that there is no material degradation of the Cable System that would affect the citizens' health, safety or welfare, or negatively affect the quality of the Cable Services being provided.

(3) All wires, conduits, cable, and other property and facilities of a Franchisee shall be so located, constructed, installed and maintained so as to not endanger or unnecessarily interfere with usual and customary use, traffic, and travel upon the Streets, rights-of-way, Easements, and Public Ways of the community.

(4) In the event a Franchisee's System creates a hazardous or unsafe condition, or an unreasonable interference with public property, then, at its own expense, the Franchisee shall, with a reasonable time, voluntarily, or upon the written request of the City, correct or remove that part of the System that creates the hazardous condition from the subject property.

(5) A Franchisee shall not place equipment where it will interfere with the rights of private property owners or with gas, electric or telephone fixtures, or with water

hydrants or mains, or with wastewater lift stations, or any other service or facility in the Public Ways that benefits the City's or its residents' health, safety or welfare.

(6) Subject to reasonable prior written notice, it shall be the responsibility of a Franchisee (acting alone or in conjunction with another Person) to locate and mark or otherwise visibly indicate and alert others to the location of underground cable (or its equivalent) and other utility lines before employees, agents or independent contractors of a Franchisee install cable in a marked-off area.

(7) A Franchisee shall, on the request of any Person holding a building moving permit, temporarily remove, raise or lower the cable to allow the moving of the building. The expense of temporary removal shall be borne by the Person requesting it, and the Franchisee may require advance payment. The Franchisee shall be given not less than ten (10) days' advance written notice in order to facilitate the temporary cable changes.

(8) A Franchisee, at either its own expense, or that of a private contractor, shall protect the Streets, rights-of-way and Easements, and support or temporarily disconnect, remove or relocate in the same Street or other Public Way any property of the Franchisee when necessitated by reason of: traffic conditions; public safety; a Street closing; Street construction or resurfacing; change or establishment of Street grade; installation of sewers, drains, water pipes, storm sewers, storm drains, lift stations, force mains, power or traffic signal lines; or any improvement, construction or repair related to the City's or its residents' health, safety, or welfare. If the City requests the relocation, removal or reinstallation of Franchisee's property in any of the Public Ways in the Franchise Area for the sole purpose of installing or providing Cable Services in competition with Franchisee, the cost of such relocation, removal or reinstallation shall not be borne by Franchisee but by the City.

(9) Prior to a Franchisee's commencing to attach wire, cable (coaxial, fiber or its functional equivalent) or other fixtures and appurtenances to poles or towers located within the City, it shall execute license agreements for pole attachments with the appropriate utility.

(10) The Franchisee shall not discriminate nor permit discrimination between or among any Persons in the availability of Cable Services provided in connection with the Cable System in the Service Area. It shall be the right of all Persons to continuously receive all available Service provided on the Cable System so long as such Person's financial or other obligations to the Franchisee are satisfied. Moreover, the City states that density, proximity and geography, and not economic status, should be the primary factors used to determine whether a Franchisee should provide Service to one (1) or more Persons within a part of a Franchisee's Franchise Area.

(11) A Franchisee shall create, maintain and provide to the City upon written request, on an annual basis, Cable System route maps. Complete and accurate System maps, which shall include, but not be limited to, detail of trunks, distribution lines, and nodes shall be available at Franchisee's office for the City's review.

(12) A Franchisee shall construct, operate, maintain, repair, remove, replace or restore the Cable System in strict compliance with all current generally applicable codes adopted by the City. The codes referred to specifically include, but are not limited to, construction, fire and safety codes.

(13) A Franchisee shall obtain, at its expense, all permits and licenses (including pole attachment agreements) required by law, rule, regulation or local law, and maintain the same in full force and effect for as long as required. Franchisee shall at all times comply with the City Code, as may be amended from time to time.

Sec. 22-38. Number of Channels.

The precise Channel capacity that a Franchisee must maintain during the term of the Franchise shall be detailed in the Franchise Agreement.

Sec. 22-39. Use of Channels.

(a) The City recognizes that pursuant to 47 U.S.C. § 531, the City has certain authority with respect to certain aspects for Public, Educational or Governmental Access Channel use.

(b) To the extent permitted by law, and in order to fulfill the City's desired goal of achieving a PEG Access Channel policy that will facilitate the long-range needs of the City, the Board of Commissioners adopts the following:

(1) At the time of an initial application or proposal, and unless otherwise provided in a Franchise Agreement or subsequent renewal Franchise Agreement, a Franchisee shall pledge to include the following:

a. A Franchisee shall provide, one (1) educational Access Channel that is available for providing non-commercial, educational programming.

b. A Franchisee shall provide, one (1) public Access Channel that is available for providing non-commercial public access, senior citizen, and library programming.

c. A Franchisee shall provide, one (1) governmental Access Channel that is available for providing noncommercial governmental programming.

(2) If at any time eighty percent (80%) of the total time allocated for a required PEG Access Channel is consistently used eight (8) hours per day, five (5) days a week for a period of three (3) consecutive months with non-character generated, non-repetitive programming, then, upon one hundred twenty (120) days written request, the Franchisee shall provide one (1) additional PEG Access Channel.

(3) All programming transmitted over PEG Access Channels shall be non-commercial in nature. Program material to be distributed on PEG Access Channels shall contain no advertising or commercial content for which consideration is received by City.

Franchisee and City agree that City or the producer or distributor of such programming may include acknowledgments for Persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship information provided on the Public Broadcasting System (PBS).

(c) Unless otherwise provided in a Franchise, a Franchisee shall provide:

(1) Both mobile, portable and stationary equipment to be used for Access Channel programming, together with the aid of technical and production assistance provided by the Franchisee;

(2) Equipment that can store programs for delayed cablecasting; and

(3) Technical production assistance required for PEG access use that may extend to, but not exceed, fifty (50) actual production man-hours per year.

(d) Unless otherwise specified in a Franchise, the City shall develop a plan for handling requests for use of PEG Access Channels, facilities or programming. Such a plan shall be nondiscriminatory in nature and should encourage joint or cooperative efforts on the part of potential users. However, the City recognizes that, while citizens enjoy considerable first amendment freedoms, these freedoms, nonetheless, must be weighed against the legitimate health, safety and welfare interests of all citizens in the Service Area. Consequently, when a request for access time is made by a culturally unpopular, politically controversial, or racially/ethnically/religiously intolerant organization, the City may require safeguards which minimize or lessen the possibility and probability that such espoused viewpoints will damage the community fabric. The City may declare the speech is culturally obscene in that it was or would be so morally devoid or culturally offensive that it either dramatically reduced the overall value of other services provided on the Cable System or posed a discernible risk of disrupting the spiritual, political or racial fabric of the community. However, the safeguards imposed may only be as much as is necessary to accomplish the City's objectives. The safeguards include restricting such programming to non-prime-time hours (before 7:00 p.m. and after midnight) and allowing the audio, but not video, of such programming to be provided over the PEG Access Channel. For purposes of this Chapter, a culturally unpopular, politically controversial, or racially/ethnically/religiously intolerant organization is one whose viewpoints or displays have no redeeming social, historical or artistic value, and undermine the community fabric.

Sec. 22-40. Public Service Installations.

Each Franchise granted by the City shall specify the Franchisee's commitment to public service installations and complimentary services.

Sec. 22-41. Right of City to Purchase System.

(a) *Purchase upon expiration of term.* Subject to Section 626 of the CCPA (47 U.S.C. § 546), other applicable law, and with the consent of Franchisee, upon expiration of the term of the Franchise, the City, at its selection, and upon payment to the Franchisee of a price equal to the fair market value of the System as a going concern and on the same terms and conditions as offered by other parties, including physical assets and intangibles, including good

will, in accordance with the accepted and usual industry practices (except the valuation of the Franchise privilege itself), shall be given the opportunity to purchase the System.

(b) *Purchase upon default.* Upon lawful termination of the Franchise rights as provided for by this section or by law occasioned by the substantial breach of provisions of the Franchise Agreement or this Chapter and with the consent of Franchisee, the City, at its selection and upon payment to the Franchisee of a price equal to the fair market value of the System as a going concern, including physical assets and intangibles, including good will, in accordance with accepted and usual industry practices (except that the valuation shall not include any valuation of the Franchise privilege itself), shall be given the opportunity to purchase the System. In the case of the City's purchase of the System and the circumstances, the Franchise shall transfer to the City possession and title to all facilities and property, real and personal, of the Cable System business, free from any and all liens and encumbrances. This provision, however, may be waived by the City at its option, in whole or in part.

Sec. 22-42. Transactions Affecting Ownership or Control of Franchise Facilities.

(a) In accordance with Applicable Law, to protect the interest of the City under any Franchise granted pursuant to this Chapter, the Franchisee shall not transfer, transfer control, or otherwise assign the Cable System or Franchise to a third party without adherence to the provisions of subsections (1) and (2) below:

(1) Without the express approval of the Board of Commissioners, which shall not be unreasonably withheld; and

(2) Without a written assent filed with the Board of Commissioners binding upon the Person in whom any right, power, privilege, duty, title, interest, claim or demand in or to the Franchise or the System is created or vested, to the effect that such right, power, privilege, duty, title, interest, claim or demand is and shall be held and exercised subject to all the terms and provisions of the Franchise, including this Chapter. The Board of Commissioners may require such written assent to be contained in any instrument or document creating or vesting such right, power, privilege, duty, title, interest, claim or demand. Provided, however, that this subsection (a)(2) shall not apply to the disposition of worn-out or obsolete facilities or personal property in the normal course of carrying out the Cable System business.

(b) Prior approval of the Board of Commissioners shall be required for any sale, transfer, exchange or assignment of stock in Franchisee, or Franchisee's parent corporation or any other entity having a controlling interest in Franchisee, so as to create a new controlling interest therein, shall be subject to the requirements of this Section 22-42. The term "controlling interest" as used herein is an acquisition of 51% or greater ownership interest in the Franchisee, but includes actual working control in whatever manner exercised.

(c) No Franchise may be transferred unless such transfer is approved by the Board of Commissioners, by ordinance, after public hearing, such approval not to be unreasonably withheld. No such approval shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Franchisee in a Franchise or

the Cable System in order to secure indebtedness, or (ii) an internal transfer to an entity directly or indirectly owned or controlled by the parent corporation of Franchisee. The City shall process all requests in accordance with applicable FCC regulations and other Applicable Laws.

(d) By its acceptance of a Franchise, the Franchisee specifically concedes and agrees that any acquisitions or transfers set forth in subsections (b) and (c) above, without prior approval of the Board as may be required, shall constitute a violation of the Franchise and this Chapter by the Franchisee.

Sec. 22-43. Receivership; Foreclosure.

(a) Any Franchise shall, at the option of the Board of Commissioners, cease and terminate one hundred twenty (120) days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the Franchisee, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trustee shall have been vacated prior to the expiration of the one hundred twenty (120) days or unless:

(1) The receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Chapter and the Franchise, and the receivers or trustees within the one hundred twenty (120) days shall have remedied all defaults, if any, under the Franchise; and

(2) The receivers or trustees shall, within the one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of a Franchise.

(b) In the case of a foreclosure or other judicial sale of the plant, property, and equipment of the Franchise, or any part thereof, including or excluding the Franchise, the Board of Commissioners or its designee may serve written notice of termination upon the Franchisee and the successful bidder at such sale, in which event the Franchise and all rights and privileges of Franchisee hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

(1) The Board of Commissioners shall have approved the transfer of the Franchise as and in the manner in this Chapter provided; and

(2) Unless the successful bidder shall have covenanted and agreed with the City to assume and be bound by all the terms and conditions of the Franchise.

Sec. 22-44. City's Right of Intervention; Resolution of Disputes.

(a) *City's right of intervention.* The Franchisee shall not oppose intervention by the City, at the City's expense, in any suit or proceeding to which the Franchisee is a party.

(b) *Resolution of disputes.*

(1) *Intent.* It is the intent of the City to provide for the orderly resolution of any controversy or dispute between the Franchisee and the City arising out of the enforcement or interpretation of any provision of this Chapter, the Franchise Agreement, or any rule, regulation or procedure relating to cable communication matters. Unless otherwise provided for in a Franchise Agreement, negotiation between the parties and fact finding shall be the means of resolving the great majority of such controversies or disputes. Neither fact finding nor mediation, however, shall be the first resort of the parties, but shall be undertaken only after a reasonable time has been taken to reach agreement by negotiation between the parties.

(2) *Fact finding.* Any material controversy or dispute, upon the election of both the City and the Franchisee, may be submitted to an expert individual acceptable to both parties for an investigation of the facts and a report thereof. Such fact finding shall be for the purpose of developing better information for the use of both parties and shall not be binding on either party. All reasonable fees and other expenses resulting from such fact finding shall be equally borne by both the City and the Franchisee.

(3) *Mediation.* Any material controversy or dispute, upon the election of either the City or the Franchisee, may be submitted to an expert individual acceptable to both the Franchisee and the City for the purpose of facilitating discussion and receiving new perspectives on the issues and new proposals for compromise. Such mediation shall not be binding on either party. All reasonable fees or expenses resulting from such mediation shall be equally borne by both the City and the Franchisee.

(4) *Fees and expenses.* The reasonable fees of single experts as provided for above shall be jointly borne by the Franchisee and the City. In no event shall the City be obligated for more than one-half of the expenses.

Sec. 22-45. Submission of Reports and Data.

(a) *Filings and communications with regulatory agencies.* At any time the FCC or another federal or state agency requires or requests the submission of reports, data or other information by a Franchisee, then such Franchisee shall, upon reasonable written request, submit those reports, data or other information to the City. However, unless specifically authorized by state or federal statute, a Franchisee shall not be required to submit state or federal tax returns.

(b) *Reports.* City shall have access to, and the right to inspect, during normal business hours, books and records of Franchisee related to the operation of the Cable System, necessary to ensure compliance with the terms of this Ordinance and a Franchise held by a Franchisee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) business days, that City inspect them at Franchisee's local area office. If any books or records of Franchisee are not kept in a local office or if unavailable electronically, Franchisee will provide or otherwise make such documents available for inspection and review at the local office within ten (10) business days.

(1) Upon request, Franchisee shall provide City with a sample Cable Services bill, on a monthly basis. Cable Services bills associated with complimentary services accounts may satisfy this requirement.

(2) Franchisee shall at all times maintain and allow City, with reasonable notice (minimum two (2) working days and maximum five (5) working days), access and the right to review a full and complete set of digital plans, records and maps compatible with ESRI Shape Files showing the approximate location of all Cable System equipment installed or in use in the City, exclusive of electronics, Subscriber drops and equipment provided in Subscribers' homes. These maps shall be maintained in the format described herein and provided to the City upon request as set forth above, but not more frequently than twice annually, for the City's use only.

(3) The ability for City to obtain records and information from Franchisee is critical to the administration of this Ordinance and the Franchise. Therefore, Franchisee's failure to comply with the requirements of this Section may result in enforcement by City as permitted herein and under Applicable Laws.

Sec. 22-46. Insurance; Bonds; Indemnification.

(a) *Liability and indemnification of City.* The Franchisee shall indemnify and hold harmless the City at all times during the term of the Franchise and specifically agree that it will pay all damages and penalties which the City may be legally required to pay as a result of the Franchisee's actions or omissions as it relates to the construction, operation and maintenance of the Cable System. Such damages and penalty shall include, but not be limited to, damages arising out of copyright infringements, and other damages arising out of the installation, operation or maintenance of the Cable System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by the Franchise. In the case suit shall be filed against the City, either independently or jointly with the Franchisee, to recover for any claim or damages, the Franchisee, upon written notice to it by the City, shall defend the City against the action and, in the event of a final judgment being obtained against the City, either independently or jointly with the Franchisee, solely by reason of the acts of the Franchisee, the Franchisee will pay the judgment and all costs and hold the City harmless therefrom. This provision is intended to address lawsuits brought by third parties related to the actions of the Franchisee and the City and not lawsuits independently brought by the City against Franchisee or independently brought by the Franchisee against the City.

(b) *Performance bond.* Upon the effective date of the Franchise Agreement requiring System construction, the Franchisee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the initial sum of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00). Upon completion of any System construction/upgrade the bond shall be reduced to Twenty-five Thousand and No/100 Dollars (\$25,000.00). The bond shall be conditioned that the Franchisee shall well and truly observe, fulfill and perform each and every term and condition of this Chapter and the Franchise Agreement, and that, in the case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and the surety, jointly and severally, thereof by the City for all damages resulting from the failure of the Franchisee to well and truly observe and perform any

provisions of this Chapter or the Franchise Agreement. The aforesaid bond shall be maintained by the Franchisee throughout the term of the Franchise and written evidence of the payment of the required payments shall be filed and maintained both with the office of the City Manager and the Authority.

(c) *Insurance.*

(1) The Franchisee shall be required to maintain insurance in such forms and in such companies as shall be approved by the City, such approval not to be unreasonably withheld, to protect the City and the Franchisee from and against any and all claims, injury or damage to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any aspect of the system. The amount of such insurance shall not be less than the following:

a. General liability insurance:

1. Bodily injury per Person: \$3,000,000.00.
2. Bodily injury per occurrence: \$5,000,000.00.
3. Property damage per occurrence: \$1,000,000.00.
4. Property damage aggregate: \$1,000,000.00.

b. Automobile insurance:

1. Bodily injury per Person: \$1,000,000.00.
2. Bodily injury per occurrence: \$3,000,000.00.
3. Property damage per occurrence: \$1,000,000.00.

(2) Workmen's compensation insurance shall also be provided as required by the laws of the Commonwealth of Kentucky. All said insurance shall name the City as an additional insured and shall provide a ten (10) day notice to the City Clerk in the event of material alteration or cancellation of any coverage afforded in the policies prior to the date the material alteration or cancellation shall become effective. Copies of all policies required hereunder shall be furnished to and filed with the City Clerk and the Authority prior to the commencement of operations or the expiration of prior policies, as the case may be.

(d) *Nonwaiver.* Neither the provisions of this section nor any bonds accepted by the City pursuant hereto, nor any damage recovered by the City hereunder, shall be construed to excuse unfaithful performance by the Franchisee or limit the liability of the Franchisee under this Chapter or the Franchise for damages either to the full amount of the bond or otherwise.

Sec. 22-47. Secs. 22-47--22-70. Reserved.

ARTICLE III. RATES AND CHARGES

Sec. 22-71. Rates, Charges and Refunds.

(a) *Rates subject to local regulation.* City may regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the City chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The City shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. City reserves the right to regulate rates for any future Services to the extent permitted by Applicable Law.

(b) *Rate changes; discrimination.* In accordance with applicable law:

(1) Access to Cable Service shall not be denied to any group of potential residential Subscribers because of the income of the residents of the local area in which such group resides. However, nothing herein shall prohibit a Franchisee from denying Service based on location of a residence if that residence is outside either the defined Service Area or line extension criteria specified in a Franchise.

(2) Equal opportunity in employment shall be afforded by a Franchisee to all qualified Persons and no Person shall be discriminated against in employment by a Franchisee because of race, color, religion, national origin, age or sex.

(3) A Franchisee shall not, as to rates and charges or use of a Franchisee's facilities or equipment, allow or grant any undue preference or advantage on the basis of race, color, religion, national origin, age, sex or location of residence. Nothing herein shall prohibit a Franchisee from offering a promotional or incentive discount rate or charge or from offering customized bulk billing arrangements.

Sec. 22-72. Franchise Fees.

(a) The Franchisee shall pay to the City a Franchise Fee equal to five percent (5%) of annual Gross Revenues received from the operation of the Cable System to provide Cable Service in the Franchise Area; provided, however, that Franchisee shall not be compelled to pay any higher percentage of Franchise Fee than any other video service provider providing Service in the Franchise Area. The payment of Franchise Fees shall be made on a quarterly basis and shall be due forty-five (45) days after the close of each calendar quarter. Each Franchise Fee payment shall be accompanied by a report prepared by a representative of the Franchisee showing the basis for computation of the Franchise Fees paid during that period.

(b) Upon reasonable notice, the City shall have the right during Normal Business Hours to inspect the Franchisee's records relevant to the payment of Franchise Fees and the right to audit and to re-compute any amounts determined to be payable under a Franchise Agreement, this Ordinance and Applicable Laws. The audit period may not extend back beyond the maximum time period permitted under the applicable state statute of limitation for contracts (KRS 413.120) under the laws of the State of Kentucky. If, as a result of such audit, the City

determines that the Franchisee has underpaid its fees to the City six percent (6%) or more, then: 1) the undisputed amount will be due to the City within thirty (30) days following written notice to Franchisee by the City, which notice shall include a copy of the audit report; and 2) in addition to making full payment of the relevant obligation, the Franchisee shall reimburse the City for all of the reasonable costs associated with the audit or review, including costs for attorneys, accountants and other consultants. Any additional undisputed amount due to the City as a result of an audit shall be paid within thirty (30) days following written notice to Franchisee by the City.

(c) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles (“GAAP”) as promulgated and defined by the Financial Accounting Standards Board (“FASB”), Emerging Issues Task Force (“EITF”) and/or the U.S. Securities and Exchange Commission (“SEC”). Notwithstanding the forgoing, the City reserves its right to challenge Franchisee’s calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

(d) Nothing in this Ordinance shall in any way be construed to prohibit the City from collecting any fees, taxes or assessments as may be permitted by Applicable Laws, including Kentucky Revised Statutes and City hereby reserves any and all rights in accordance with Applicable Laws.

Sec. 22-73. Secs. 22-73--22-90. Reserved.

ARTICLE IV. CUSTOMER PROTECTION AND SERVICE STANDARDS

Sec. 22-91. Notice of Rights and Responsibilities.

(a) *General policy.*

(1) The City recognizes that it is critical that a customer fully understands and realizes the rights and responsibilities of both the customer and Franchisee with respect to the provisions, maintenance and repair of Cable Service.

(2) Further, the City believes that, if sufficient information is provided to a customer on certain customer service practices, such as rates, billing periods, and number and types of service provided, then that customer will have the information necessary to make an informed decision on what, if any, Cable Services to subscribe to and receive.

(3) In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their and the Franchisee’s rights and responsibilities with respect to the Cable System, a Franchisee must provide a customer with a written notice of a customer’s and Franchisee’s rights and responsibilities with respect to the provision of Cable Service.

(b) *Notifications to Subscribers.* Franchisee shall provide printed or electronically available information on each of the following areas at the time of installation of Cable Service, at least annually to all Subscribers, and at any time upon request:

- (1) Products and Services offered;
- (2) Prices and options for programming Services and conditions of subscription to programming and other Services;
- (3) Installation and Service maintenance policies;
- (4) Instructions on how to use the Cable Service;
- (5) Channel positions of the programming carried on the System; and
- (6) Billing and complaint procedures, including the address and telephone number of the City.

(c) Subscribers will be notified of any changes in rates, programming services or Channel positions as soon as possible in writing or electronically. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Franchisee. In addition, the Franchisee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 22-91. Franchisee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or City on the transaction between the operator and the Subscriber. New Channels and services may be offered with less than the required notice so long as there is no additional charge or the Channel or service is sold on a subscription basis.

(d) All programming decisions remain the discretion of Franchisee in accordance with the Franchise, provided that Franchisee notifies City and Subscribers in writing thirty (30) days prior to any Channel deletions or realignments directed to each Subscriber individually by any reasonable means available to and at the discretion of the Franchisee consistent with applicable law, and further subject to Franchisee's signal carriage obligations hereunder and pursuant to 47 U.S.C. § 531-536, and further subject to City's rights pursuant to 47 U.S.C. § 545.

Sec. 22-92. Customer Service Office and Telephones.

(a) Unless otherwise provided for in a Franchise Agreement, Franchisee shall maintain a convenient local customer service and bill payment location in the City for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information. The Franchisee shall comply with the standards and requirements for customer service set forth below and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 during the term of the Franchise, that impose higher or additional customer service standards on a Cable Operator.

(b) Cable System office hours and telephone availability:

(1) Franchisee will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained Franchisee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Franchisee representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) Franchisee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(5) Customer service center and bill payment locations will be open at least during Normal Business Hours.

(c) Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred fifty (150) feet from the existing distribution cable.

(2) Excluding conditions beyond the control of Franchisee, Franchisee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Franchisee must begin actions to correct other Service problems the next business day after notification of the Service problem. Franchisee shall resolve all Service Interruptions within forty-eight (48) hours under Normal Operating Conditions.

(3) The "appointment window" alternatives for Standard Installations, Service calls, and other installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Franchisee may schedule Service calls and other installation activities outside of Normal Business Hours for the express convenience of the customer.)

(4) Franchisee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If Franchisee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted prior to the time of the scheduled appointment. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(6) Under Normal Operating Conditions, if Franchisee cannot perform installations within the times specified in applicable customer standards, the Subscriber shall, upon request, receive a credit equal to the charge for a Standard Installation. For any installation that is not a free installation or a Standard Installation, Franchisee shall provide the Subscriber with a written estimate of all charges within seven (7) days of a request by the Subscriber. Failure to comply will subject Franchisee to appropriate enforcement actions. This section does not apply to the introduction of new products and services when Franchisee is utilizing a phased introduction.

Sec. 22-93. Special Requirements for the Disabled.

(a) In addition to any other requirements mandated by this Chapter, or by federal or Commonwealth law, a Franchisee shall comply with the following special service requirements for blind, hearing-impaired or wheelchair customers:

(1) Provide wheelchair accessibility to a Franchisee's customer service office.

(2) For any customer declared legally blind by the Commonwealth, a Franchisee must provide at a non-discriminatory cost, if requested by the customer, large-type, braille, voice-synthesized or functionally equivalent notices, bills and other pertinent information.

(3) Provide, upon request, either: 1) assistance with identifying a consumer electronics source; or 2) at a reasonable, non-discriminatory cost, a device sufficient to enable closed-captioning services for a hearing-impaired Subscriber.

(4) Provide, at a nondiscriminatory cost, a remote-control device and/or Converter for wheelchair Subscribers or Subscribers with a permanent medical or physical ambulatory impairment.

(5) Where applicable, provide modified or special instructions for use of equipment by Subscribers who have physical impairments.

Sec. 22-94. Reserved.

Sec. 22-95. Restoration of Subscribers' Property.

(a) At any time a Franchisee disturbs the yard, residence, or other real or personal property of a Subscriber, the Franchisee shall ensure that the Subscriber's yard, residence, or other real or personal property is returned, replaced and/or restored to a condition that is

comparable to its condition immediately before the disturbance to the extent such corrective action cannot be accomplished. The Franchisee shall reimburse a Subscriber, or private property owner, for any damage caused by the Franchisee, subcontractor or independent contractor in connection with the disturbance of a Subscriber's or private property owner's property if Franchisee fails to perform the restoration work required herein.

(b) The types of acts specifically included in this section are the following:

(1) Removal of a Subscriber's sod, lawn, plants, shrubbery, flowers, trees, driveway or fence to install a trench or repair, replace, remove or locate cable or other equipment of the Franchisee.

(2) Installation or removal of a cable or other equipment of the operator within a Subscriber's residence, or around a Subscriber's swimming pool or tennis court, or which requires drilling, excavating, plastering or the like on the part of the Franchisee.

(3) Temporarily relocating or moving a piece of personal property of a Subscriber (such as a motor vehicle, fence, garden hose or the like) in order to perform some sort of construction or maintenance on the Cable System.

(4) Permanently removing a Franchisee's cable or equipment due to either the revocation, termination or nonrenewal of a Franchise or the abandonment, withdrawal or cessation of Cable Service to any portion of the City.

(c) The requirements for the Franchisee extend to any contractor that the Franchisee might employ to perform the tasks outlined.

(d) In light of the foregoing, a Franchisee has the authority to trim trees of a private property owner (including a Subscriber) only to the extent necessary to prevent the branches of the tree from coming in contact with the Franchisee's wires and cables.

Sec. 22-96. Emergency Alert and Availability of Parts and Personnel.

(a) *Emergency alert; standby power.*

(1) At all times a Franchisee shall provide and maintain an Emergency Alert System (EAS) consistent with Applicable Law and regulations including 47 CFR, Part 11, and any Kentucky Emergency Management requirements. The City may identify authorized emergency officials for activating the EAS consistent with Kentucky Emergency Statewide Plan ("EAS Plan"). The City may also develop a local plan containing methods of EAS message distribution, subject to Applicable Law and the EAS Plan.

(2) In addition to any other requirements listed in this Chapter, a Franchisee shall cooperate with the City on the use and operation of the emergency alert override system.

(3) As one method of providing continuity of services in the event of a natural, manmade or disaster emergency, a Franchisee shall, unless exempted by the City, maintain equipment capable of providing automatic standby power for a minimum of two (2) hours, strategically placed in locations along the Cable System trunkline in order to minimize the number of Subscribers affected by interruption of Service.

(b) *Availability of parts and personnel.*

(1) Except in times of natural, manmade or disaster emergency, a Franchisee shall make a reasonable effort at all times to keep and maintain a sufficient and adequate inventory of maintenance and repair parts and equipment for the Cable System, so that the Franchisee can respond to, and correct, all Subscriber interruptions within the specified time periods.

(2) Except in times of natural, manmade, or disaster emergency or strike (whose duration has been more than seventy-two (72) hours), a Franchisee shall make a reasonable effort to have sufficient maintenance and repair personnel so that the Franchisee can respond to, and correct, all Subscriber Service Interruptions within the specified time periods.

Sec. 22-97. Billing Practices; Billing Credit; Disconnection for Nonpayment of Charges.

(a) *Billing practices.*

(1) Bills must be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

(2) In case of a billing dispute, the Franchisee must respond to a written complaint from a Subscriber within thirty (30) days.

(3) At all times Franchisee's billing practices shall comply with 47 C.F.R § 76.1619.

(b) *Billing credit.* A Franchisee shall provide a Subscriber, upon request, with credit for a Service outage exceeding twenty-four (24) hours and for substandard signal, picture or sound quality exceeding twenty-four (24) hours.

(c) *Disconnection for nonpayment.* A Subscriber shall not be considered disconnect for non-payment until at least thirty (30) days after the posting of the bill to the Subscriber and payment has not been received by the Franchisee.

Sec. 22-98. Voluntary Disconnection.

(a) At any time, a Subscriber may request that a particular service tier, service cluster, Pay Television, premium Channel, informational service or the entire Cable Service be discontinued.

(b) From the date that such a Subscriber makes such a request, the Franchisee shall have up to five (5) business days to disconnect the service tier, service cluster, Pay Television, premium Channel, informational service or entire Cable Service. In the event that a Franchisee does not disconnect Service within five (5) business days, a Subscriber's obligation to pay for such Service shall cease.

(c) Notwithstanding the above provisions, and in order to reduce Subscriber abuse of this voluntary disconnection policy, a Subscriber shall be charged a minimum of one (1) month's full rate for any one (1) service (basic, premium, informational, cluster or tier) which is disconnected at least three (3) times in a span of one hundred eighty (180) days.

(d) Unless damage has occurred or Franchisee's equipment has not been returned, no excessive, unreasonable or punitive fee may be passed on to a Subscriber for the actual disconnection of a Channel or Service if the disconnection involves a single residence with fewer than five (5) outlets.

(e) Any refund due a Subscriber after disconnection (both for nonpayment and voluntary) shall be made within sixty (60) days after such disconnection.

Sec. 22-99. Protection of Subscriber Privacy.

(a) Written permission from the Subscriber shall not be required for the conducting of system wide or individually addressed electronic sweeps for the purpose of verifying System integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth above.

(b) The Franchisee shall, at all times, comply with all applicable federal and state privacy law including Section 631 of the Cable Act and any regulations adopted pursuant thereto. The City shall have the right to enforce Franchisee's compliance with said privacy law to the maximum extent permitted under applicable laws.

Sec. 22-100. Substandard Picture Quality.

(a) The City recognizes that a cable Subscriber is a consumer. As such, there is no more important factor for the cable Subscriber in terms of enjoying the provision of video or other programming services offered by a Franchisee than the provision of good and acceptable picture and sound quality.

(b) The City declares as one of its primary objectives to preserve, protect, and promote that all cable Subscribers within the City receive good and acceptable picture and sound quality.

(c) At a minimum, the Franchisee must meet all FCC standards that relate to the reception of broadcast signals. Moreover, the Franchisee must provide sound and picture quality that does not suffer from constant and/or recurring degradation or requires frequent (more than ten (10) times in one (1) year) adjusting or servicing by a Franchisee customer service technician or a Franchisee field service technician.

(d) To prevent possible abuse, a Subscriber shall pay for all administrative and Franchisee costs associated with examining substandard picture and sound quality if it is administratively determined that the Subscriber's claim is unwarranted and without foundation.

(e) The City reserves the right to develop and adopt comprehensive regulations on the technical aspects of signal quality should the FCC permit such.

Sec. 22-101. Use and Return of Equipment; Security Deposits.

(a) If needed for proper operation or requested by a customer, a Franchisee shall provide to a customer printed or electronic instructions on the proper use of the rented, loaned, leased or purchased equipment. A Franchisee may comply with this section (except in the case of sight- or hearing-impaired customers) by delivering the manufacturer's instructions to a customer.

(b) A Franchisee is not required to seek a security deposit from a customer for the use or rental of a Franchisee's equipment.

(c) When a security deposit is required from a customer by a Franchisee, the customer shall first receive a written statement from the Franchisee acknowledging that the equipment is in working order.

Sec. 22-102. Continuity of Service.

(a) The City declares that, as part of its right to establish cable customer service guidelines, it has the duty to ensure continuity of Cable Service for all Subscribers. In that light, the City also determines that it may take appropriate measures in order to ensure that no portion of the City is threatened or faced with a disruption, interruption or discontinuance of Cable Service due to the actions of any Franchisee.

(b) In addition to the above principles and ideals, the City also expresses that its policy covers the following:

(1) Providing for continuity of Cable Service in the event of acquisition by the City;

(2) Providing for continuity of Cable Service in the event of a proposed abandonment, withdrawal or cessation of Cable Service by a Franchisee;

(3) Providing for continuity of Cable Service in the event of the lawful revocation, termination or nonrenewal of a cable Franchisee;

(4) Providing for continuity of Cable Service in the event of a transaction that affects the ownership of control of the Cable Operator or Franchisee;

(5) Providing for continuity of Cable Service in the event of an expiration of a Franchise; and

(6) Preventing disruption of Cable Service which would provide a hardship on those Subscribers who rely on Cable Service as their primary or secondary source for information.

(c) Whenever any situation occurs (including those mentioned above) which threatens the City and Subscribers with loss or interruption in the continuity of Cable Service, then the City may direct the Franchisee and/or Cable Operator to do everything in its power to ensure that all Subscribers receive continuous, uninterrupted Cable Service.

(d) During any interim period, the City shall work with the Franchisee in order to secure a new Cable System owner or rectify the problem, so that threat of loss of continuity is removed at the earliest possible time.

(e) During any interim period in which the Franchisee continues to provide Cable Service to Subscribers, the Franchisee is entitled to all revenues collected, except for any sums owed (including Franchise Fees, Alternative User Charges and taxes) to the City or other Persons in accordance with Applicable Law.

Sec. 22-103. Resolution of Complaints.

(a) A Franchisee is required to develop a comprehensive complaint/inquiry resolution policy that is consistent with the policies outlined in these customer service practices.

(b) A Franchisee's resolution policy shall be reduced to writing and such policy shall be available upon request to any Subscriber.

Sec. 22-104. Date of Compliance.

(a) Unless relief is granted by the City, or unless otherwise provided for in a Franchise Agreement, the Franchisee operating under a renewed Franchise shall have either one (1) year from the date that this Chapter becomes effective or nine (9) months from the date that a Franchise Agreement (initial or renewal) becomes effective.

(b) All new Franchisees shall be required to comply from the date of execution of the Franchise Agreement.

Sec. 22-105. Secs. 22-105--22-130. Reserved.

ARTICLE V. ADMINISTRATION AND ENFORCEMENT

Sec. 22-131. Compliance Required.

The Franchisee shall not be relieved of its obligation to comply promptly with any of the provisions of the Franchise by any failure of the City to enforce prompt compliance.

SUMMARY OF AMENDED CHAPTER 22 - CABLE COMMUNICATIONS

City of Paducah, Kentucky

Section	Description
"Applicable Law" definition	<p>Applicable Law is new defined term and includes any and all local law, state or federal law, statute, charter, ordinance, regulation, code, franchise, permit, judgment or decree in accordance with state and federal law.</p> <p>Edits throughout Chapter 22 have been revised to reflect the "applicable law" definition.</p>
"Gross Revenues" definition	<p>A stronger, more detailed "gross revenues" definition has been included to ensure maximum franchise fee payments to the City regarding cable service.</p>
Complimentary Services	<p>The language in this section has been revised and requires each franchise granted by the City to specify complimentary services. This change was necessitated by recent action of the Federal Communications Commission.</p>
Reports	<p>The report section has been revised to allow:</p> <ol style="list-style-type: none">1) the City to review a franchisee's books and records necessary to insure compliance with the terms of a franchise agreement;2) the City the right to request and review maps; and3) enforcement by the City if a franchisee does not comply with this section.
Franchise Fees	<p>Revisions were made to the franchise fee section to reflect a 5% franchise fee paid to the City quarterly, 45 days after the close of each calendar quarter.</p> <p>Revisions were also made to reflect the City's right to inspect the franchisee's records and to audit any amounts due under the franchise, the ordinance and applicable law as well as language regarding resolution of any disputes regarding audit results.</p>
Emergency Alert	<p>The emergency alert section has been revised to comply with changes in technology and</p>

	applicable law, including federal regulations and any Kentucky Emergency Management requirements.
Paducah Cable Communications Authority	This section has been deleted in its entirety as this entity no longer meets.