

City Council Agenda Items
and
Contracts, Leases or Agreements

01/17/2012

City Council Meeting Date
Agenda Items Only

Lindsley Smith
Submitted By

Communication
Division

General Government
Department

Action Required:

A Resolution Approving Telecommunications Board Revisions to Chapter 33: Department Boards, Commissions and Authorities Ordinance Article IX: Telecommunications Board

N/A
Cost of this request

N/A
Category / Project Budget

N/A
Program Category / Project Name

N/A
Account Number

N/A
Funds Used to Date

N/A
Program / Project Category Name

N/A
Project Number

N/A
Remaining Balance

N/A
Fund Name

Budgeted Item

Budget Adjustment Attached

Lindsley Smith
Department Director 12-30-11
Date

Previous Ordinance or Resolution # _____

King
City Attorney 12-30-11
Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Behr
Finance and Internal Services Director 1-3-2011
Date

Received in City Clerk's Office 12-30-11 P03:47 RCVD
King

Ann Man
Chief of Staff 1-4-2012
Date

Received in Mayor's Office
ENTERED 1/3/11
PH

Frank Jordan
Mayor 1/4/12
Date

Comments:



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CITY COUNCIL AGENDA MEMO

To: City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: Lindsley Smith, Communication Director *SS*
Fayetteville Communication Department

Date: December 30, 2011

Subject: Revisions to Chapter 33: Department Boards, Commissions and Authorities Ordinance Article IX:
Telecommunications Board

PROPOSAL

In addressing complaints against the Telecommunications Board, the Board found merit in some complaints filed by Mr. Jim Bemis, primarily the inability of Board members to perform certain duties required by the existing ordinance. Also, over the past year and a half in the Board's goal of addressing the complaints, the City Attorney and the Assistant City Attorney, upon request of the Telecommunications Board, were called upon various times to attend Board meetings and assist the Board in understanding its role and duties as a Board. An orientation for Board members was also instituted in 2010 to assist Board members in understanding their roles and the scope of their duties. On September 15, 2011, the Telecommunications Board established an Ordinance Review Committee to address these issues and determine what ordinance changes were needed to improve the efficiency and effectiveness of the Telecommunications Board and clarity of the Board ordinance.

The Telecommunications Board's Ordinance Review Committee met twice and made amendments to the Ordinance, which included incorporating several previous opinions of the City Attorney that clarified language in the existing ordinance regarding the role of the Telecommunications Board.

The Telecommunications Board's Ordinance Review Committee presented its revised ordinance to the full Telecommunications Board for review on October 20, 2011, and the Board voted to send the Board's revised ordinance to the City Attorney for review and comments. The City Attorney made additional comments and recommended changes on November 23 and December 1, 2011.

The following changes were made in the proposed ordinance:

Addition of words:

- "IP television provider" was added to the Telecommunications Board's purview in order to increase the Board's review of agreements in light of recent technological advancements and to try to cover all current providers and anticipate additional future technological changes and providers,

- added the word “year” to the Board’s reporting duty to the City Council, as this word is missing from the original ordinance and necessary for duty clarity and a complete sentence,
- added the words “work with City staff” as to the creation of city policies related to PEG channels, and
- the words “franchisees and access” were added to clarify the telecommunications providers in which the Board would track to assure that they are responding to complaints effectively and timely.

Deletion of words:

- “the current” in reference to the Telecommunications Board,
- “and to coordinate and oversee” when referencing the Board’s role in regard to telecommunications franchise systems and public rights of way,
- the definition of “Telecommunications Infrastructure”,
- deleting the words “as it may be from time to time amended” in reference to the FOIA,
- deleted a role for the Board of advising the City Council about “Funding for the development and maintenance of the City’s telecommunications infrastructure”,
- deleted a duty to “Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity”,
- the shortening of §33.206 to remove eligibility and attendance requirements that are now controlled by §33.330-§33.332, and
- deletion of the wording “Perform periodic evaluations of contract compliance for all contracts relating to telecommunications” since that was covered earlier in the ordinance for assuring contract compliance.

Word editing:

- changing two uses of “shall” to “should”,
- one use of “shall” changed to “may”,
- changing the word “local” to “Fayetteville”,
- twice changed the word “oversee” to instead say “regularly review”,
- in reference to the Board’s review of franchise agreements the words “between a telecommunications agent and the City” was changed to “by any such provider”,
- “changed “citizens” to “Fayetteville residents” in reference to tracking complaints, and
- “telecommunications agent” was changed to “telecommunications franchisee”.

On December 15, 2011, the ordinance as revised by the Telecommunications Board Committee and City Attorney was then submitted back to the Telecommunications Board, which considered, discussed, and approved the revised ordinance with a recommendation in a 5-1 vote that the revised ordinance be adopted by the City Council.

RECOMMENDATION

Staff recommends approval of Chapter 33, Article IX revisions.

BUDGET IMPACT

This ordinance revision will have no impact on the City’s budget.

ATTACHMENTS--Dec. 1 City Attorney Memo and Exhibit “A” revised ordinance; Exhibit “B” strike-through version of revised ordinance; existing ordinance (Ordinance No. 4504) passed in 2003; City Attorney Memos (11-23-2010, 8-19-2010, 6-3-2008, 2-7-2006).



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Telecommunications Board

CC: Lindsley Smith, Communications & Marketing Director
Fritz Gisler, Government Channel Manager

FROM: Kit Williams, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal line extending to the right.

DATE: December 1, 2011

RE: Revision of Article IX Telecommunications Board of Fayetteville Code

I have reviewed the proposed revision of Article IX **Telecommunications Board** of the Fayetteville Code which was submitted to me by the Telecommunications Board. I believe that you have made several well-reasoned and appropriate changes to the current ordinance.

I have made a few suggested changes myself for your consideration. Please see the attached proposed amended copy. Some changes, like the title of the ordinance are merely stylistic rather than substantive. Recently, the City Council enacted uniform rules and procedures, eligibility and attendance requirements for all citizen volunteers serving on City boards, committees and commissions. Therefore, I have drastically shortened §33.206 which is now controlled by §33.330-§33.332.

Under §33.210 **Duties**, I have suggested changes in (6) and (7) to **add** Internet Protocol (IP) television provider (such as AT&T Arkansas) to the existing cable operator and telecommunications franchisee to try to cover all current providers. With further advances and changes in this exploding technological area, we will probably learn of new forms of service and new names for future providers. The City Council will appreciate your advice on the performance and renewal of all such providers.

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE IX TELECOMMUNICATIONS BOARD OF THE CODE OF FAYETTEVILLE, BY REDEFINING THE PROCEDURES AND DUTIES OF THE TELECOMMUNICATIONS BOARD

WHEREAS, under the terms and conditions of the cable television franchise agreement the city is given, among other responsibilities, the duty to regulate cable television channels for public access, educational and governmental (PEG) programming; and

WHEREAS, the use of the public rights of way in the City of Fayetteville, Arkansas, includes other telecommunications services as well as cable television services; and

WHEREAS, the City Council of the City of Fayetteville, Arkansas, desires to redefine the scope of the current Telecommunications Board to serve in an advisory capacity regarding telecommunications issues, to promote the use of public information media, and to serve as a coordinating body for issues relating to the provision of different telecommunications services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That §33.205 through §33.211, "Telecommunications Board" is hereby repealed and Exhibit "A" attached hereto and made a part hereof, is enacted in its stead.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Exhibit "A"

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the Telecommunications Board to advise the City Council on telecommunications issues, telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for Fayetteville residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members should have experience in one or more of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. All members shall serve staggered four-year terms.

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor should designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) The Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) The Telecommunications Board may establish rules and regulations governing its procedures.

(c) The Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*

(d) The Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities and outlining its goals for the next year.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

(6) Performance of any cable operator, IP television provider or telecommunications franchisee serving the City, with regard to customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(7) Renewal of any franchise agreement by any such provider.

(b) The Telecommunications Board shall have the following duties and responsibilities:

(1) Regularly review the administration of the City's PEG facility;

(2) Regularly review the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG

channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall work with City staff to facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels. A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(3) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by Fayetteville residents to assure that telecommunications franchisees and access providers are responding to complaints in an effective and timely manner.

(4) Promote public awareness, use and viewership of PEG channels;

(5) Promote public awareness of telecommunications policy issues; and,

(6) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications franchisee no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.

Exhibit "B" (strike-through version of revised ordinance)

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the ~~current~~ Telecommunications Board to advise the City Council on telecommunications issues and to ~~coordinate and oversee~~ telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for local **Fayetteville** residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

~~(4) *Telecommunications Infrastructure.* Telecommunications infrastructure means the shared portions of the telecommunications transmission facilities used by the city, including public rights of way, all transmission mechanisms, and associated equipment and software components necessary for the management and control of the city's information network. Telecommunications facilities include, but are not necessarily limited to: terrestrial radio, optical fiber cables, satellite communications, radio and television stations (traditional broadcast as well as cable and satellite broadcast), and public-switched telephone network.~~

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members ~~shall~~ **should** have experience in any one of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. ~~Members shall be registered voters and residents of the City of Fayetteville, and shall have resided therein for at least six (6) months prior to their~~

~~appointment. Those members serving as of the effective date of this ordinance shall retain their seats until August 15, 2003, at which point all of the positions shall be open for appointment. At the first regular meeting after appointment, the members shall draw lots to determine the length of their initial term. One (1) member shall serve a term of one (1) year; two (2) members shall serve terms of two (2) years; two members shall serve terms of three (3) years; and two (2) members shall serve terms of four (4) years. Thereafter, All members shall serve staggered four-year terms. Vacancies in an unexpired term shall be filled by the City Council for the remainder of the term. Any person who serves two consecutive terms on the Telecommunications Board shall not be eligible for reappointment until one term of office has expired, unless there are an insufficient number of qualified applicants to fill all vacancies.~~

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor shall **should** designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) the Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) the Telecommunications Board shall **may** establish rules and regulations governing its procedures.

(c) the Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*, as it may be from time to time amended.

(d) the Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities, and outlining its goals for the next **year**.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

~~(6) Funding for the development and maintenance of the city's telecommunications infrastructure;~~

(7) Performance of any cable, **IP television provider** or telecommunications operator serving the city, with regard to rates, customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

~~(8) Renewal of any franchise agreement between a telecommunications agent and the City~~ **by any such provider.**

(b) ~~Further,~~ the Telecommunications Board shall have the following duties and responsibilities:

(1) ~~Oversee~~ **Regularly review** the administration of the City's PEG facility;

(2) ~~Oversee~~ **Regularly review** the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall **work with City staff to** facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels.

~~(3) Perform periodic evaluations of contract compliance for all contracts relating to telecommunications.~~ A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(4) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by ~~citizens~~ **Fayetteville residents** to assure that telecommunications **franchisees and access providers** are responding to complaints in an effective and timely manner.

(5) Promote public awareness, use and viewership of PEG channels;

~~(6) Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity;~~

(7) Promote public awareness of telecommunications policy issues; and,

(8) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications agent **franchisee** no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.

ORDINANCE NO. 4504

AN ORDINANCE AMENDING CHAPTER 33, DEPARTMENTS, BOARDS, COMMISSIONS AND AUTHORITIES, OF THE CODE OF FAYETTEVILLE, BY REDEFINING THE COMPOSITION, OFFICERS, STAFFING, PROCEDURES, AND DUTIES OF THE TELECOMMUNICATIONS BOARD.

WHEREAS, under the terms and conditions of the cable television franchise agreement the city is given, among other responsibilities, the duty to regulate cable television channels for public access, educational and governmental (PEG) programming; and,

WHEREAS, the use of the public rights of way in the City of Fayetteville, Arkansas, includes other telecommunications services as well as cable television services; and,

WHEREAS, the City Council of the City of Fayetteville, Arkansas, desires to redefine the scope of the current Telecommunications Board to serve in an advisory capacity regarding telecommunications issues, to promote the use of public information media, and to serve as a coordinating body for issues relating to the provision of different telecommunications services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That §33.205 through §33.211, "Telecommunications Board" is hereby repealed and Exhibit "A" attached hereto and made a part hereof, is inserted in its stead.

PASSED and APPROVED this 15th day of July, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

Exhibit "A"

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the current Telecommunications Board to advise the City Council on telecommunications issues and to coordinate and oversee telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for local residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

(4) *Telecommunications Infrastructure.* Telecommunications infrastructure means the shared portions of the telecommunications transmission facilities used by the city, including public rights of way, all transmission mechanisms, and associated equipment and software components necessary for the management and control of the city's information network. Telecommunications facilities include, but are not necessarily limited to: terrestrial radio, optical fiber cables, satellite communications, radio and television stations (traditional broadcast as well as cable and satellite broadcast), and public switched telephone network.

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members shall have experience in any one of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. Members shall be registered voters and residents of the City of Fayetteville, and shall have resided therein for at least six (6) months prior to their

appointment. Those members serving as of the effective date of this ordinance shall retain their seats until August 15, 2003, at which point all of the positions shall be open for appointment. At the first regular meeting after appointment, the members shall draw lots to determine the length of their initial term. One (1) member shall serve a term of one (1) year; two (2) members shall serve terms of two (2) years; two members shall serve terms of three (3) years; and two (2) members shall serve terms of four (4) years. Thereafter, members shall serve staggered four-year terms. Vacancies in an unexpired term shall be filled by the City Council for the remainder of the term. Any person who serves two consecutive terms on the Telecommunications Board shall not be eligible for reappointment until one term of office has expired, unless there are an insufficient number of qualified applicants to fill all vacancies.

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor shall designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) the Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) the Telecommunications Board shall establish rules and regulations governing its procedures.

(c) the Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*, as it may be from time to time amended.

(d) the Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities, and outlining its goals for the next.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

(6) Funding for the development and maintenance of the city's telecommunications infrastructure;

(7) Performance of any cable or telecommunications operator serving the city, with regard to rates, customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(8) Renewal of any franchise agreement between a telecommunications agent and the City.

(b) Further, the Telecommunications Board shall have the following duties and responsibilities:

(1) Oversee the administration of the City's PEG facility;

(2) Oversee the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels.

(3) Perform periodic evaluations of contract compliance for all contracts relating to telecommunications. A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(4) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by citizens to

assure that telecommunications providers are responding to complaints in an effective and timely manner.

(5) Promote public awareness, use and viewership of PEG channels;

(6) Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity;

(7) Promote public awareness of telecommunications policy issues; and,

(8) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications agent no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.



Departmental Correspondence



www.accessfayetteville.org

LEGAL
DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

MEMORANDUM

TO: DON MARR, CHIEF OF STAFF
LINDSLEY SMITH, COMMUNICATIONS DIRECTOR
FRITZ GISLER, TELEVISION CENTER MANAGER
TELECOMMUNICATIONS BOARD MEMBERS

FROM: JASON B. KELLEY, ASST. CITY ATTORNEY

DATE: NOVEMBER 23, 2010

RE: PEG CHANNEL LOCATIONS/CABLE DIGITAL CONVERSION/RELATED
FRANCHISE AGREEMENT ISSUES

There have been questions raised concerning Cox Communications, Inc.'s (Cox) announcement that PEG channels will be relocated exclusively to the "basic tier" digital cable service lineup. The company has announced they will be providing, for two years and at no cost to customers, a digital converter box which will permit viewing of PEG channels and other digital channels on "legacy" standard definition, analog tuner televisions. This is what might be called a "first step" in a full digital conversion of cable service. Though no time table has been announced, it is anticipated that cable service, at some point, will become fully digital without the provision of any analog cable service.

By our franchise agreement authorized by federal law, Cox is obligated to provide PEG channel service as part of any "basic tier" of cable service. The "basic tier" is the lowest level of service offered by the company. At a minimum, all Cox cable television service customers have access to "basic tier" channels. No requirement exists that "basic tier" channels be assigned any particular channel number. Accessibility is all that is required, not location. Some confusion arises on this point since many people expect basic channels to be the lowest channel numbers. It must be remembered that there is no correlation between level of service (lowest cost service) and channel number.

It appears Cox is operating within the dictates of the current franchise agreement, particularly given the fact that the company will be offering free digital converter boxes to assure PEG channel access to current "basic tier" analog subscribers. Channel number changes or relocations of PEG channels are not prohibited by our current franchise agreement.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE




LEGAL DEPARTMENT

MEMORANDUM

TO: ANDREA FOREN, PURCHASING AGENT

**CC: LINDSLEY SMITH, COMMUNICATIONS DIRECTOR
FRITZ GISLER, CABLE ADMINISTRATION**

FROM: JASON B. KELLEY, ASST. CITY ATTORNEY 

DATE: AUGUST 19, 2010

RE: AUTHORITY OF TELECOMMUNICATIONS BOARD RE: RFPs

Kit asked me to review the City Code related to the authority of the Telecommunications Board, particularly the role of the board, if any, of the process of RFP issuance and award of a contract for operation of the City's public access television channel.

The Telecommunications Board is an advisory board, whose authority is limited to rendering advice to the City Council and administration regarding telecommunications issues. As it relates to any of the City's PEG channels, the Board shall *"oversee the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance."* Fayetteville, Ark. Code § 33.210(B)(2) (emphasis added). The Telecommunications Board has no authority to order acceptance or rejection of any RFP related to operation of the City's public access channel. The Board does have the authority to express an opinion on such a matter, to advise the City Council related to the matter, and to ensure contract compliance once a contract is entered, but that is the extent of the Board's authority.

The Board has the responsibility of making a report to the City Council "recommending either renewal or replacement of any cable or telecommunications agent no less than 45 days before the contract's expiration." Fayetteville, Ark. Code § 33.210(B)(8). Again, this is an expression of an opinion, not any binding authority regarding issuance or renewal of any such contract. The provision does not operate as a limitation on the authority of the administration or City Council related to the matter.

Please contact me if I can provide further assistance.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: Dan Coody, Mayor
City Council

CC: Susan Thomas, Public Information & Policy Advisor

FROM: Kit Williams, City Attorney

DATE: June 3, 2008

RE: Telecommunications Board Duties

There has been some issue about the extent of duties placed upon the Telecommunications Board by §33.210 (B)(1) and (2). These subsections state that the Board "shall have the following duties and responsibilities:

"(1) Oversee the administration of the City's PEG facility;

"(2) Oversee the administration of any cable television channels"

There has been some concern that "Oversee the administration" could mean that the ordinance was intended to give the Telecom Board supervisory authority over city employees. As I have tried to explain earlier, the mayor is statutorily empowered to supervise city employees. Thus, the City Council is without legal power to give itself or another body the supervisory authority over employees.

When interpreting a statute or ordinance, "we will give the words in the statute (or ordinance) their ordinary and common usage." Rolling Pines Ltd. V. City of Little Rock, 73 Ark. App. 97, 40 S.W. 3d 828, 832 (2001). So I looked up "oversee" in the Merriam-Webster Collegiate Dictionary, 10th edition (2001). The first definition (most common usage) was "survey, watch." The second definition was "inspect, examine." The third and last (least common usage) was "supervise." (page 828).

Thus, the most basic rule of ordinance interpretation of “oversee” would be to survey or watch, possibly inspect or examine, but not supervise.

Another rule of ordinance construction or interpretation is that the law or ordinance should be interpreted so as to make it legal and constitutional if possible. Bunch v. State, 344 Ark. 730, 43 S.W. 2d 132, 136 (2001).

“(a) The mayor of the city shall be its chief executive officer

“(b) The mayor shall:

“(1) Supervise the conduct of all officers of the city”
A.C.A. §14-43-504 Mayor.

Since the mayor is statutorily empowered to supervise all city employees, an ordinance granting the Telecom Board the power to “oversee the administration” cannot mean to grant any supervisory powers. Instead, “oversee” must be interpreted as its primary, customary meaning to watch or inspect the administration of the PEG facility. This would help the Board fulfill its primary purpose “to advise the City Council on telecommunications issues” §33.205
Purpose and Intent Fayetteville Code of Ordinances.

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DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: Marvin Hilton, Cable Administrator
CC: Susan Thomas, Public Information & Policy Advisor
FROM: David J. Whitaker, Assistant City Attorney *D. J. Whitaker*
DATE: February 7, 2006
RE: Government Channel Policy, Appeals & Procedures Clarification

You have asked the following questions regarding authority to regulate the PEG access channels:

1. Has the City Council, through Ordinance 4504, delegated autonomous authority to determine the Government Channel programming policy? Otherwise, what is the extent of their authority?
2. Is it necessary and appropriate, under Ordinance 4504 for the City Council to approve the Government channel programming policy?
3. Is it necessary and appropriate for the City Council, under Ordinance 4504, to hear appeals and complaints about the Government Channel programming policy?

As to Question #1: No. While it is true that Ordinance 4504 delegates certain authority to the Telecommunications Board, I can find no language in the ordinance to suggest a grant of "autonomy" to the Board. It is doubtful that, without an express grant of authority from the State Legislature, the City Council could create any separate and autonomous body. "It is well settled that municipal corporations have no inherent powers and can exercise only (1) those expressly given to them by state statute or the Arkansas Constitution, (2) those necessarily implied for the purposes of, or incident to, the express powers, and (3) those indispensable, not merely convenient, to their objects and

purposes." City of Cave Springs v. City of Rogers, 343 Ark. 652, 37 S.W.3d 607 (2001). However, the City Council's (our legislative entity at the municipal level), limited delegation of authority in this instance would appear to comport with the Arkansas Supreme Court's holding that "any power not legislative in character which the legislature may exercise it may delegate." Merritt v. No Fence Dist. No. 2 of Jefferson County, 205 Ark. 1129, 172 S.W.2d 684 (1943). See also Cosgrove v. City of West Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997), (City Council may designate agents to act, within the scope of their agency, on behalf of the city). The City Council, as the governing body of the municipality, retains the power to intervene in matters of public policy, and indeed, could abolish the Telecommunications Board entirely, if it so desired.

As to Question #2: While it is not *necessary*, it is certainly appropriate for the City Council to approve the policies governing all of the access channels. When read in its entirety, Ordinance No. 4504 clearly contemplates an advisory role for the Telecommunications Board. See §33.205; §33.210 (A); and §33.210 (B) (3) & (8), Fayetteville Code of Ordinances. Again, as stated above, the Ordinance contains no express grant of autonomy or exclusivity to the Telecommunications Board in such policy-making. It is, therefore, my conclusion that the City Council may, at its discretion, approve, modify or reject any policies put forward by the Telecommunications Board.

As to Question #3: Again, though not *necessary* under the Ordinance, there is nothing in either the Arkansas Code or the Fayetteville Code of Ordinances that would preclude the City Council, *at its discretion*, from allowing aggrieved citizens an opportunity to seek redress of their grievances before their elected City Council. The striking of the "appeals" language from the Ordinance removed the *statutory requirement* that the Council hear such appeals. It did not deprive them of their discretion.

