

**CITY OF PIKEVILLE  
BOARD OF COMMISSIONERS  
REGULAR MEETING MINUTES  
June 8, 2009 AT 6:00 P.M.**

The Board of Commissioners for the City of Pikeville met in a regular called session on Monday, June 8, 2009. The meeting was held in the City Hall Conference Meeting Room located at 118 College Street, Pikeville, Kentucky.

There being a quorum present, Mayor Franklin D. Justice called the meeting to order at: 6:00 p.m. Commission Members present at roll call were a follows:

**COMMISSIONER:**           **GENE DAVIS  
BARRY CHANEY  
DALLAS LAYNE  
JIMMY CARTER**

**MAYOR:**                   **FRANKLIN D. JUSTICE, II**

**MINUTES**

The minutes for the previous **SPECIAL** meeting held on May 29, 2009 were in each Commission Member's agenda package. There being no additions or corrections, Commissioner Layne made the motion to approve the minutes as prepared. Commissioner Chaney seconded the motion. Mayor Frank Justice called for discussion, there being none the motion carried unanimously.

**PAYMENT OF CITY BILLS**

A list of City Bills totaling \$423,609.25 was presented to the Commission for approval of payment. Commissioner Davis made the motion to approve. Commissioner Chaney seconded the motion. Mayor Frank Justice called for discussion, there being none the motion carried unanimously.

**OLD BUSINESS**

- A. Melanie Stevens and Sandy Runyon were present with the Big Sandy Area Development District. No update presented.
- B. City Engineer's Report: Jack Sykes was present and submitted pay request No. 1 for Thompson Road to be approved to Mountain Enterprise in the amount of \$383,290.74. Commissioner Carter made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for additional comments, there being none the motion passed unanimously.

C. Jack Sykes submitted a change order to decrease the contract for Thompson Road project in the amount of \$5,820.00. Commissioner Carter made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously.

D. Police Chief James Adkins was present no update to present.

E. Russell H. Davis, Jr., City Attorney, presented the following matters for the Commission's consideration:

1. Consider request for 2<sup>nd</sup> reading and adoption of an ordinance amending Chapter 150.01 and 150.02 Fire Prevention Code. Ordinance number: 0 2009 15. Commissioner Carter made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for additional comments, there being none the Mayor called for a roll call vote. The motion and ordinance passed unanimously as documented below. 5-0

AN ORDINANCE RELATED TO THE AMENDMENT  
OF §150.01 ~~AND § 150.02~~ “ADOPTION OF KENTUCKY BUILDING CODE” EXTENDING KRS CHAPTER 227 (FIRE HAZARDS) TO SINGLE FAMILY RESIDENCE PURSUANT TO KRS 227.225(2) AND GRANTING THE FIRE CHIEF OR HIS DESIGNATE THE AUTHORITY TO ORDER FIRE HAZARDS TO BE REMOVED AND REMEDIED

SO TO CLARIFY THE PARTICULAR KENTUCKY ADMINISTRATIVE REGULATIONS ADOPTED BY THE CITY OF PIKEVILLE

ORDINANCE NO: 0-2009-015

WHEREAS, the City of Pikeville as heretofore adopted the ~~the Kentucky Standards of Safety, as authorized by KRS 227.300 and contained in 815 KAR 10:060 Kentucky Building Code and established a building inspection program~~ for application to all building, including single-family dwellings as provided for in KRS ~~198B.060 and the Kentucky Building Code:227.225(2)~~

WHEREAS, a question exist as to jurisdiction sought to be included within the City's building inspection ~~and fire inspection~~ program and the City desires to clarify its jurisdiction ~~and enforcement authority~~.

NOW, THEREFORE, BE IT ORDAINED by the City of Pikeville that § 150.01 ~~and § 150.02 is-are~~ amended as follows:

§ 150.01 ADOPTION OF KENTUCKY BUILDING CODE; STANDARDS OF SAFETY.

(1) That pursuant to KRS 198.060(8), ~~KRS 227.300 and KRS 227.225(2)~~ a building inspection and fire prevention program is hereby established in the City of Pikeville for application to all buildings, including single-family dwellings as provided in KRS 198.060, ~~KRS 227.225~~, the Kentucky Standards of Safety and the Kentucky Building Code.

(2) ~~The Kentucky Building Code, as contained in Chapter 7, Title 815 815 KAR 7:120 and The Kentucky Residential Code, as contained in 815 KAR 7:125 of the Kentucky Administrative Regulations; the Kentucky Plumbing Code, as contained in Chapter 20, Title 815-815 KAR 20:001 – 195 of the Kentucky Administrative Regulation; the Kentucky Standards of Safety, as contained in Chapter 10, Title 815815 KAR 10:060 of the Kentucky Administrative Regulations, together with any amendment, are hereby adopted by reference as if fully set forth in this code of ordinances. Copies of the above codes and any amendments thereto shall be placed on file in the office of the Finance Director/City Clerk/Tax Administrator where they shall be available for public inspection during normal business hours.~~

§ 150.02 ENFORCEMENT OF CODES.

(A) The Building Inspector is charged with enforcement of the provisions of the State Building Code adopted in § 150.01. All building code inspections shall be performed by persons certified by the Kentucky Department of Housing, Building and Construction. All electrical inspections shall be performed by a certified electrical inspector specifically approved by this jurisdiction.

(B) The Fire Chief and/or his designate are hereby charged with enforcement of the provisions of the State Standards of Safety adopted by reference in § 150.01. as provided for in KRS 227.380(1) and KRS 227.390 including but not limited to, ordering fire hazards to be removed or remedied and if their order is not complied with, caused the property to be repaired, or removed if repair is not feasible, all at the expense of the owner(s) for which the City of Pikeville shall be entitled to a statutory lien for such expense.

(C) That an attested copy of this Ordinance shall be transmitted to the Department of Housing, Building & Construction of the Commonwealth of Kentucky.

The above ordinance was given first reading this 29th day of May, 2009.

The ordinance was given a second reading on the 8th day of June, 2009.

Passed this 8th day of June, 2005. Commissioner Chaney moved the adoption of the foregoing ordinance. Commissioner Layne seconded the motion.

Upon roll call, the votes were as follows:

	<u>YES</u>	<u>NO</u>
FRANKLIN D. JUSTICE, II, MAYOR	_X_	___
JAMES A. CARTER, COMMISSIONER	_X_	___
EUGENE W. DAVIS, COMMISSIONER	_X_	___
BARRY CHANEY, COMMISSIONER	_X_	___
DALLAS LAYNE, COMMISSIONER	_X_	___

The Mayor declared the within ordinance adopted.

/s/Frankie Justice\_\_\_\_\_

FRANKLIN D. JUSTICE, II, MAYOR

ATTEST:

/s/ Rebecca Hamilton\_\_\_\_\_

REBECCA HAMILTON, CITY CLERK

**2. City Attorney Rusty Davis presented to the Commission a request to consider 1<sup>st</sup> reading of an ordinance amending Chapter 53 Water Fees setting the Wholesale Water Rate. Ordinance No. 0 2009 17. The second reading of the ordinance is schedule for the June 22<sup>nd</sup> regular meeting. No further action was required.**

3. City Attorney Rusty Davis presented to the Commission a request to consider 1<sup>st</sup> reading of an ordinance amending Chapter 55 Sewer Fees amending rates for reconnect fees for non payment accounts. Ordinance No. 0 2009 18. The second reading of the ordinance is schedule for the June 22<sup>nd</sup> regular meeting. No further action was required.

4. City Attorney Rusty Davis presented to the Commission the 1<sup>st</sup> reading of an Ordinance Finally Annexing unincorporated territory on Lykins Branch. 0 2009 16. Second Reading will be held on Jun 22, 2009. No further action was required.

City Manager noted: Understand the process for the press. If following the publication of the annexation ordinance pursuant to subsection (1) of this section and within sixty (60) days thereof, or if in any annexation proceeding where the annexing city has not adopted a final annexation ordinance, within sixty (60) days of February 12, 1988, fifty percent (50%) of the resident voters or owners of real property within the limits of the territory proposed to be annexed petition the mayor in opposition to the proposal, an election shall be held at the next regular election if the petition is presented to the county clerk and certified by the county clerk as sufficient not later than the second Tuesday in August preceding the regular election:

(a) The mayor of the city shall deliver a certified copy of the ordinance to the county clerk of the county in which the territory proposed to be annexed is located, who shall have prepared to be placed before the voters in each precinct embraced in whole or in part within the territory proposed to be annexed the question: "Are you in favor of being annexed to the City of ....?" If only a part of any precinct is embraced within the territory proposed to be annexed only persons who reside within the territory proposed to be annexed shall be permitted to vote. The clerk shall cause the sheriff or sheriffs to deliver to the election officers in each precinct in the appropriate counties copies of the ordinance proposing to annex;

(b) If less than fifty-five percent (55%) of those persons voting oppose annexation, the unincorporated territory shall become a part of the city; and

(c) If fifty-five percent (55%) or more of those persons voting oppose annexation, the ordinance proposing annexation shall become ineffectual for any purpose.

(3) In not less than sixty (60) days after the enactment of the ordinance, if no petition has been received by the mayor as set out herein, or within sixty (60) days of the certification of election results in which less than fifty-five percent (55%) of those persons voting opposed annexation, the legislative body may enact an ordinance annexing to the city the territory described in the ordinance. If the city has elected to establish the zoning for the new territory prior to the completion of the annexation pursuant to KRS 100.209, the

**ordinance shall include a map showing the zoning. Upon the enactment of this ordinance, the territory shall become part of the city for all purposes.**

- 5. City Attorney Russell Davis presented to the Commission the 1<sup>st</sup> reading of an Ordinance naming 2 un-named City Streets. Ordinance No. 0 2009 19. The second reading of the ordinance is schedule for the June 22<sup>nd</sup> regular meeting. No further action was required.**
- 6. City Attorney Russell Davis presented the reading into record and request to adopt the following resolution regarding the City cable franchise agreement with Suddenlink, Inc.**

RESOLUTION

A RESOLUTION CLOSING THE PROCEEDINGS AFFORDING THE PUBLIC IN THE CITY OF PIKEVILLE APPROPRIATE NOTICE AND PARTICIPATION REGARDING SUDDENLINK COMMUNICATION'S CABLE TELEVISION FRANCHISE RENEWAL AND REQUESTING THAT, PURSUANT TO 47 USC 546(b)(1), SUDDENLINK COMMUNICATIONS SUBMIT A PROPOSAL FOR ITS CABLE FRANCHISE RENEWAL AND ESTABLISHING A DEADLINE OF AUGUST 10, 2009 FOR SAID SUBMISSION.

WHEREAS, pursuant to its powers under Sections 163 and 164 of the Kentucky Constitution, the Pikeville City Commission may create and renew Franchises for cable television systems; and

WHEREAS, 47 USC 546(a)(1) provides that the Pikeville City Commission may, on its own initiative, during the six-month period beginning thirty-six months prior to the expiration of the Franchise, start formal Franchise renewal proceedings; and

WHEREAS, 47 USC 546(a)(1), provides, that Suddenlink Communications may initiate formal proceedings by providing franchising authority with proper written notice within that time period; and

WHEREAS, pursuant to 47 USC 546(a)(1), Suddenlink Communications initiate formal proceedings by providing the City of Pikeville (herein after referred to as "City") with proper written notice within that time period; and

WHEREAS, 47 USC 546(a)(1) states that the Pikeville City Commission shall commence a preceding which affords the public in the Franchise area appropriate notice and participation not later than six months from the date of submission of renewal notice; and

WHEREAS, 47 USC 546(a) (1), Pikeville City Commission commenced said proceeding within six months from the date of submission of renewal notice; and

WHEREAS, 47 USC 546(b)(1) states that upon completion of a proceeding under 47 USC 546(a), Suddenlink Communications may, on its own initiative or at the request of the Pikeville City Commission, submit a proposal for renewal; and

WHEREAS, USC 546(b)(2) states that, subject to 47 USC 544, any such proposal shall contain such material as the Pikeville City Commission may require, including proposals for an upgrade of the cable system; and

WHEREAS, USC 546(b) (3) states that a franchising authority can establish deadlines for submission of a formal proposal.

NOW, THEREFORE, BE IT RESOLVED BY THE PIKEVILLE CITY COMMISSION:

June 8, 2009 Regular Meeting

Section 1. That on June 8, 2009, the Pikeville City Commission completed and officially closed the proceeding under 47 USC 546(a) affording the public in Pikeville appropriate notice and participation regarding Suddenlink Communications' cable television franchise renewal.

Section 2. That pursuant to 47 USC 546(b) (1), the Pikeville City Commission hereby requested that Suddenlink Communications submit a proposal for a cable Franchise renewal.

Section 3. That pursuant to USC 546(b) (2), the Pikeville City Commission requires that any cable Franchise renewal proposal submitted by Suddenlink Communications shall contain the following material:

1. A provision stating that Suddenlink Communications' customer service agreements shall not include exculpatory language;
2. The Franchise shall continue in force and effect for a term of ten (10) years;
3. Suddenlink Communications shall, at all times during the life of the Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide. If federal regulations alter the required services, fees, costs, conditions or standards upon which the Cable System is to operate, the City shall have the right to amend the Franchise to make it consistent with the modified federal laws. Any such amendment shall be limited to the specific change in federal law;
4. Suddenlink Communications agrees to indemnify, hold harmless, and defend the City from any and all losses or claims of whatever kind that arise from or are alleged to have arisen, directly or indirectly, in whole or in part from the execution, performance or breach of the Franchise by Suddenlink Communications, its employees, agents, servants, owners, principals, lessees, contractors and subcontractors, excluding negligence and misconduct on the part of the City. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive forever;
5. Suddenlink Communications shall procure and maintain for the duration of the Franchise insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance hereunder by Suddenlink Communications;
6. Suddenlink Communications shall arrange for, and shall deposit with the City, a letter of credit from a financial institution or a performance bond in the amount of fifteen thousand dollars (\$15,000.00). The letter of credit or performance bond shall be used to insure the faithful performance by Suddenlink Communications of all of the provisions in the Franchise; and compliance with all orders, permits and directions of any agency, commission, board, department, division or office of the City having jurisdiction over its acts or defaults under the Franchise and the payment by Suddenlink Communications of any claims, liquidated damages, liens and/or taxes due the City which may arise by reason of the construction, operation or maintenance of the System;
7. If at any time Kentucky law is changed to allow the collection of Franchise fees by Suddenlink Communications, (i) Suddenlink Communications may collect said Franchise fees for the reason that the Roads to be used by Suddenlink Communications in the operation of its system within the boundaries of Pikeville are valuable public properties, acquired and maintained by the City at great expense to its taxpayers, and that the grant to Suddenlink Communications to use said Roads is a valuable property right without which the company would be required to invest substantial capital in right-of-way costs and acquisitions, and (ii) the Franchise fee shall be in an amount equal to the lesser of (X) five percent (5%) of Suddenlink Communication's Gross Revenue from all sources attributable to the operations of Suddenlink Communications within the territorial limits of Pikeville and (Y) the positive amount (if any) determined in accordance with (X) as remains after deducting Franchise fees paid by Suddenlink Communications under the Kentucky Franchise Law;
8. Provisions stating that for violation of the Franchise, liquidated damages may be recoverable from the letter of credit or performance bond;
9. Provision regarding construction of road occupancy;
10. Provisions regarding erection, removal and common use of poles;
11. Provisions regarding construction standards and specifications;
12. Suddenlink Communications shall be required to extend its system pursuant to the following requirements:
  - a. Upon request by an unserved potential subscriber, Suddenlink Communications must extend and make Cable Television Service available to his or her unserved dwelling unit, including individual apartment units, that both is not passed by a Cable System as of the date of enactment of the Franchise and is within one hundred and fifty (150) feet of Suddenlink Communication's Cable System trunks as of the date of enactment of the Franchise, within one hundred twenty (120) days of that date, but shall not be required to make Cable Television Service available to any unserved area reaching less than an average minimum density of eighteen (18) dwelling units, including individual apartment units, per road mile, as measured from the existing system. If at any time after the expiration of the initial one hundred

twenty (20) day period, the City notifies Suddenlink Communications that there are unserved dwelling units, including individual apartment units, which meet the foregoing minimum density, system passing and proximity requirements, Suddenlink Communications must extend and make Cable Television Service available to those dwelling units after notification from the City, unless Suddenlink Communications applies for and is granted a waiver of this requirement from the City;

13. Suddenlink Communications shall, at no charge to the City make available shared access to one (1) full time Educational and Governmental access channel. Such channel shall be used solely for non-commercial City access for the Pikeville School System and Pikeville College. Suddenlink Communications shall allow the City to air at least forty (40) hours of programming a week;
14. Suddenlink Communications shall incorporate into its cable television system, the capability which will permit the Mayor (or his/her designee) in times of emergency, to override, by remote control, the audio of all channels simultaneously;
15. Suddenlink Communications shall install and maintain equipment capable of providing two (2) hours standby power for the Headends;
16. Provisions regarding proof of performance testing and proof of performance records;
17. Provisions regarding performance evaluation sessions;
18. Suddenlink Communications shall put, keep, and maintain all parts of the system in good condition throughout the entire Franchise period.
19. Suddenlink Communications shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum system use;
20. Suddenlink Communications shall continue, through the term of the Franchise, to maintain the technical standards and quality of service set forth in the Franchise.
21. Suddenlink Communications will maintain a Local Office at which Subscribers may pay bills, report service or billing problems, request service or exchange equipment, and which shall be open during Normal Business Hours and be conveniently located;
22. Suddenlink Communications will provide a local and/or a toll-free telephone access line which will be available to its Subscribers twenty four (24) hours a day, seven (7) days a week.
  - a. Trained representatives of Suddenlink Communications will be available to respond to customer telephone inquires during Normal Business Hours. Each such employee shall be trained to perform efficiently the various tasks, including responding to consumer inquires and complaints, necessary to provide consumer services in a responsible and courteous manner.
  - b. After Normal Business Hours, the telephone access line may be answered by a service or an automated response system, including an answering machine. Inquires received after Normal Business Hours must be responded to by a trained representative of Suddenlink Communications within one (1) business day after receipt of the complaint.
23. Under Normal Operation 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 (90) percent of the time under Normal Operation Conditions.
24. Under Normal Operation Conditions, the customer will receive a busy signal less than three percent (3%) of the time.
25. Suddenlink Communications will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless a historical record of complaints indicates a clear failure to comply.
  - a. Installation Outages and Service Calls: Each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:
    - i. Installations within 150 feet of the existing distribution system will be performed within seven (7) business days after an order has been placed unless scheduled at a later time by customer request.
    - ii. Suddenlink Communications will begin working on "service interruptions" promptly and in no event later than twenty four (24) hours after the interruption becomes known.
  - b. When a Subscriber requests a change in the type of Cable Service he/she is currently receiving, Suddenlink Communications must begin action to change the type of service provided the next business day after notification. If the desired change is not made within seven (7) days of notification, and the change would decrease the Subscriber's bill, Suddenlink Communications shall credit the Subscriber's bill despite the fact that the service has not been changed.
  - c. The "appointment window" alternatives for 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. (Suddenlink Communications may schedule service calls and other installation activities outside of Normal Business Hours for the expressed convenience of the customer.)

- d. Suddenlink Communications may not cancel an appointment with a customer after close of business on the business day prior to the scheduled appointment.
  - e. If a representative of Suddenlink Communications 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. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer;
26. Suddenlink Communications shall provide written information on each of the following areas at the time of installation of service, and at any time upon reasonable request:
    - a. Products and services offered;
    - b. Prices and options for programming services and conditions of subscription to programming and other services;
    - c. Installation and service maintenance policies;
    - d. Instructions on how to use the Cable Service;
    - e. Channel positions of programming carried on the system;
    - f. Billing and complaint procedures, including the address and telephone number of the City;
    - g. A description of Suddenlink Communications' policies concerning credits for outages and reception problems, consistent with these consumer protection standards; and
    - h. The toll-free numbers for Suddenlink Communications' Subscriber service telephone system;
  27. Customers will be notified of any change in rates, programming services or channel positions as soon as possible through announcements on the Cable System or in writing using any reasonable means at Suddenlink Communications' sole discretion. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of Suddenlink Communications. In addition, Suddenlink Communications shall notify Subscribers thirty (30) days in advance of any significant changes in other information required by the preceding paragraph;
  28. Bills will 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
  29. In cases of a billing dispute, Suddenlink Communications must respond to a written complaint from a Subscriber within thirty (30) days.
  30. No refund checks shall be required to be issued for amounts less than one dollar. Refund checks will be issued promptly, but no later than either:
    - a. The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier; or
    - b. The return of the equipment supplied by Suddenlink Communications if service is terminated;
  31. Credits for service will be issued no later than the customer's second billing cycle following the determination that a credit is warranted. When the use of service or equipment furnished by Suddenlink Communications is interrupted due to any cause other than the negligence or willful act of the Subscriber or the failure of equipment provided by the Subscriber, a pro rata adjustment of the fixed monthly charges involved will be allowed, upon the request of the Subscriber, for the service and equipment rendered useless and inoperative by reason of the interruption during the time said interruption continues in excess of six (6) hours from the time it is reported to or detected by Suddenlink Communications. For purpose of this section, every month is considered to have thirty (30) days;
  32. Suddenlink Communications shall maintain a repair and maintenance crew capable of responding to Subscriber complaints within twenty-four (24) hours after receipt of the complaint. Charges may be made, as permitted by applicable law, to the Subscriber for this service if the service call is not a result of a Cable System malfunction;
  33. Suddenlink Communications shall establish procedures for receiving, acting upon, and resolving Subscriber technical, customer service, Cable Service, and billing complaints. Suddenlink Communications shall furnish a notice of such procedures to each Subscriber at the time of initial subscription to the system;
  34. Suddenlink Communications shall maintain a written record or "log", listing date and time of written customer technical, customer service, Cable Service, and billing complaints, describing the nature of the technical, customer service, Cable Service, and billing complaints and when and what action was taken by Suddenlink Communications in response thereto; such record shall be kept at Suddenlink Communications' local or regional office, reflecting the operations to date for a period of at least three (3) years, and shall be available for inspection by the City during Normal Business Hours;
  35. When there have been similar complaints made, which, in the judgment of the City cast doubt on the reliability or quality of Cable Service, the City shall have the right and authority to compel Suddenlink Communications to test, analyze and report on the performance of the system pursuant to the special testing procedures enumerated in the Franchise;
  36. If Suddenlink Communications fails to provide service to a Subscriber, Suddenlink Communications shall, after being afforded a reasonable opportunity to provide the service, refund all deposits or advance charges paid for the service in question by said Subscriber.



37. If any Subscriber terminates, for personal reasons, any monthly service prior to the end of a prepaid period, a pro-rata portion of any prepaid Subscriber service fee, using the number of days as a basis, shall be refunded to the Subscriber by Suddenlink Communications, in accordance with Section 24(c)(3).
38. Suddenlink Communications shall not, as to rates, charges, service, services facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage; provided, however, that this section shall not prohibit promotional activities of Suddenlink Communications or the provision of free service to employees of Suddenlink Communications;
39. No transfer of control of the Cable System shall take place, without prior notice to and approval by the Pikeville City Commission, which shall not be unreasonably refused. The notice shall include full particulars as legally required of the proposed transaction, and the Pikeville City Commission shall act by resolution. The Pikeville City Commission shall have one hundred twenty (120) days within which to approve or disapprove a transfer of control and if no action is taken within such one hundred twenty (120) days, approval shall be deemed to have been given unless the requesting party and the City agree to an extension of time
40. In addition to all other rights and powers pertaining to the City by virtue of the Franchise or otherwise, the City, by and through its City Commission, reserves the right to terminate and cancel the Franchise and all rights and privileges of Suddenlink Communications hereunder (after due process as set forth in the Franchise) in the event that Suddenlink Communications:
  - a. Violates any material provision of the Franchise or any material rule, order, or determination of the City made pursuant to the Franchise, except where such violation is without fault or through excusable neglect;
  - b. Attempts to evade any material provision of the Franchise or practices any fraud or deceit upon the City;
  - c. Knowingly makes a material misrepresentation of any application, proposal for renewal, or negotiation of the Franchise; or
  - d. Fails to restore Cable Service following ninety-six (96) or more consecutive hours of interrupted service, except when approval of such interruption is obtained from the City. Such approval shall not be unreasonably withheld;
41. The City shall give Suddenlink Communications written notice and an opportunity to be heard in accordance with the following procedure:
  - a. The City shall notify Suddenlink Communications in writing of an alleged failure to comply with the provisions of the Franchise as outlined in Section 30(a), which notice shall specify the alleged failure with particularity.
  - b. If the violation continues for a period of thirty (30) days following such written notice without written proof that corrective action has been taken or is being actively and expeditiously pursued, the City may place its request for termination of the Franchise on its City Commission meeting agenda. The City shall give Suddenlink Communications at least 10 days written notice of said meeting and legal notice shall be published.
  - c. The City Commission shall consider the request of the City and shall hear Suddenlink Communications and any other person(s) interested therein, and shall determine whether or not any violation has occurred. If the Pikeville City Commission determines that such failure has not occurred, or that such failure either has been or will be cured in a manner and in accordance with a schedule satisfactory to the Pikeville City Commission or that the failure is excusable, such determination shall conclude the investigation.
  - d. Following the majority vote of the Pikeville City Commission finding that a failure to comply with a material provision of the Franchise has occurred and that such failure is not excusable and has not been or will not be cured by Suddenlink Communications in accordance with a schedule satisfactory to the City, the Pikeville City Commission may issue a written decision ordering termination and forfeiture of the Franchise and/or imposing other penalties provided for under the Franchise.
  - e. In the event of said revocation Suddenlink Communications shall have two years from the date on which it ceases operations to remove, at its own expense, all portions of its Cable System from all roads within the confines of Pikeville, and shall restore said roads to a condition reasonably satisfactory to the City within such period of time.
  - f. Suddenlink Communications retains the right relating to any decision or determination under this section or any other provision herein, to appeal to any court or regulatory agency of competent jurisdiction;
42. It shall be the right of all Subscribers to receive all available services insofar as their financial and other obligations to Suddenlink Communications are honored. In the event that Suddenlink Communications elects to overbuild, rebuild, modify or sell the system, or the Pikeville City Commission terminates the Franchise, or the Pikeville City Commission purchases the system, Suddenlink Communications shall ensure that all Subscribers receive continuous, uninterrupted service regardless of circumstances;

43. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable Franchises, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulation, by Franchise or otherwise, shall be reasonable and not in conflict with the rights and obligations herein granted;
44. Upon twenty-one (21) days written notice, the City shall have the right to inspect during Normal Business Hours the books, records, maps, income tax returns, and other like materials of Suddenlink Communications pursuant to the operation of the Cable System within the City's Franchise area for its three last fiscal years of operation;
45. The City shall have the right to make such inspections it shall find necessary to ensure compliance with the terms of the Franchise and other pertinent provisions of law;
46. At the expiration of the term for which the Franchise is granted, or upon termination and cancellation of the Franchise granted hereunder, as provided for herein, the City shall have the right to require Suddenlink Communications to remove at its own expense all portions of the Cable System from all roads within the confines of Pikeville;
47. Copies of all petitions, applications, and communications submitted by Suddenlink Communications to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction respect to any matters affecting cable television operations authorized pursuant to the Franchise, shall be submitted to the City upon thirty (30) days written request;
48. If requested by the City in writing, Suddenlink Communications shall make provide to the City and pursuant to the specific provisions herein, within thirty (30) days of said request, or as mutually agreed upon the following:
  - a. construction information indicating the number of homes passed and the number of cable plant miles constructed;
  - b. information indicating, where technologically possible and economically feasible, the number of calls received, number of calls abandoned, number of calls receiving a busy signal;
  - c. installation information indicating: the number of total standard installations performed; the number of standard installations performed within seven days; number of service interruptions responded to within 24 hours; number of other service problems reported; number of other service problems responded to within 36 hours, and all other information necessary to monitor the licensee's compliance with the Subscriber protection standards of the Franchise;
  - d. a current copy of the Subscriber service agreement; a current list of all rates, charges, and available services, and a current channel list;
  - e. a summary of the previous year's activities in the development of the system, including, but not limited to, services begun or dropped, the previous year's constructions activities, and a summary of any policy changes taking effect during the year;
  - f. a copy of all Suddenlink Communications' published rules and regulations applicable to Subscribers and users of the Cable System; and a summary of the licensee's hours of operation;
  - g. subject to section 631 of the Communications Act, 47 U.S.C. § 551, a summary of written Subscriber or consumer complaints, identifying complaints by number and category, and their disposition; and, where complaints involve recurrent system problems, the nature of each problem and what steps have been taken to correct them;
  - h. a copy of updated maps depicting the location of all trunks. Strand maps shall be furnished. As-built maps may be viewed at Suddenlink Communications' Local Office without copying or note-taking Proprietary maps, shall be afforded confidentiality protection by an agreement mutually acceptable to the parties;
  - i. a listing of Suddenlink Communications's closings or holidays for the year; and
  - j. if Suddenlink Communications is a corporation, a list of officers and members of the board, a copy of Suddenlink Communication's report to its shareholders (if it prepared such a report), a list of the board members of any parent corporation; and where a parent corporation's stock is publicly traded, that corporation's annual report;
49. Suddenlink Communications shall not deny service, deny access, or otherwise discriminate against Subscribers, channel users, or general citizens on the basis of race, color, religion, national origin, or sex. Suddenlink Communications shall comply at all times with all other applicable federal, state and local laws, and all executive and administrative orders relating to nondiscrimination. Suddenlink Communications shall not deny service, deny access, or otherwise discriminate against persons owning or renting apartment units;
50. Suddenlink Communications shall comply with all applicable nondiscrimination and affirmative action requirements of any laws, regulations and executive directives of the United States, the Commonwealth of Kentucky, and the City;
51. Suddenlink Communications shall not discriminate in its employment practices against any employee or Applicant for employment because of race, color, religion, national origin, ancestry, sex, age or physical handicap. Suddenlink Communications shall take affirmative action to ensure that employees are treated,

- during employment, without regard to their age, sex, race, color, national origin, ancestry, or physical handicap. This condition includes, but is not limited to the following: recruitment advertising, employment interviews, employment rates of pay, upgrading, transfer, demotion, layoff, and termination;
- 52. Suddenlink Communications shall submit to the City, upon request, a copy of Suddenlink Communication’s EEO submissions required to be filed with the FCC;
- 53. Suddenlink Communications, by acceptance of the Franchise, acknowledges that it has not been induced to enter into the Franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City or by any third person concerning any terms and conditions not expressed in the Franchise;
- 54. Suddenlink Communications, in conducting the operation or work to be performed pursuant to the Franchise is not an agent of the City;
- 55. In any controversy or dispute under the Franchise, federal law and the law of the Commonwealth of Kentucky, if not conflicting, shall apply; and
- 56. Whenever the Franchise sets forth any time for any act to be performed by or on the behalf of Suddenlink Communications, such time shall be deemed of the essence and Suddenlink Communication’s failure to perform within the allotted time shall, in all cases, be sufficient grounds for the City to invoke the remedies available under the terms and conditions of the Franchise.

Section 4. Pursuant to USC 546(b) (3), the Pikeville City Commission hereby establishes August 10, 2009 as the deadline for submission of a cable television proposal by Suddenlink Communications.

Section 5. That this Resolution shall be effective as of the date of its passage.

PASSED THE PIKEVILLE CITY COMMISSION:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Date

ATTESTED: CITY CLERK

**City Attorney Davis stated that the public would not be fond of renewal based on the current contract prohibits customer from collecting damages that a service technician might do to their property. Service or no service. I am not worried that the Federal Court would tell any resident to sign this. Commissioner Chaney made a motion to adopt the resolution. Commissioner Layne seconded the motion. Mayor called for further comments. Mike with Suddenlink stated the city has been working with Suddenlink starting in 2005. In September 2008 an Ordinance presented for review and all Hell broke lose in the meeting. Question on technical and then the City paid for technical consultant to come. Now a lot of work has gone into trying to renew the contract, over 1 million dollars. Contract terms allow for different states. Corporate Legal has reviewed and we believe we are in compliance and we have agreed to rewire Myers towers for you. I would like the City to re consider avoiding mass legal fees. Commissioner Gene Davis asked the City Attorney to clarify days. City Attorney; singles, we can’t reach agreement by August 10<sup>th</sup>, accept proposal or not sill have to spend a lot of money to make them comply. The story about agreement in 16 states I don’t buy. They have a contract that is not enforceable. Customers don’t want in agreement. Commissioner Chaney stated that when he received his service the technical drilled 5 holes in his brick home. Mike with Suddenlink, what if a shorter term. Would the City be willing to agree to a shorter term contract? Rusty Davis; You wanting to put provisions on people for 1 year vs 5 years does not change my mind. No. There being no further discussion the mayor called for a vote for the passage of the resolution. The motion passed unanimously. 5-0**

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**F. City Manager Report: City Manager Donovan Blackburn asked the commission to consider the following requests.**

- 1. Consider request to adopt resolution for Economic Development to the region offering equitable gas a 1% occupational tax rebate to consolidate and locate their business in the City of Pikeville creating good paying jobs at the request of the state Economic Development Cabinet. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0**

**RESOLUTION BY THE PIKEVILLE  
CITY COMMISSION FOR PURPOSE OF  
1% PAYROLL TAX REBATE INCENTIVE  
FOR EQUITABLE RESOURCES**

WHEREAS, the City of Pikeville City Commission fully supports the economic opportunity of bringing new business into our region by providing services and opportunity for business to locate within the City of Pikeville. This creates new jobs while injecting new payroll into our region allowing our economy to grow stronger while benefiting those who work, live, operate or own business in and around our city.

WHEREAS, the Pikeville City Commission did by letter addressed to the Kentucky Cabinet for Economic Development dated June 5<sup>th</sup> of 2008 commit to offer an 1% rebate towards Equitable Resources for their payroll tax incentive for the time period required as outlined under Kentucky law for them to locate their offices into the City of Pikeville corporate limits.

WHEREAS, the Pikeville City Commission fully supports the Kentucky Cabinet for Economic Developments (KCED) request for the City of Pikeville to offer such an incentive in order to attract and retain business into our great state and region.

WHEREAS, as directed by the KCED under KRS 154.24 Section 1.10 under the Kentucky Job Development Act does allow the state of Kentucky to offer a 4% tax rebate to retain or solicit new business into Kentucky. The KRS section also requires the City in which the business would be locating to offer the 1% Payroll Tax rebate in order for the state to be able to participate. Through this resolution the City Commission is granting the city administration authority to offer this incentive.

WHEREAS, Equitable Resources know as EQT is a wonderful company that offers great paying employment opportunities. It is the Pikeville City Commission's pleasure to offer this incentive in order to support job growth in our region.

NOW, THEREFORE, BE IT RESOLVED the Pikeville City Commission is in full support of this resolution and hereby formally offers the 1% payroll tax rebate as described and allowed and required for the time period set forth by the terms and conditions under KRS 154.24 Section 1.10 and furthermore authorizes the City Manager and or Tax Administrator to execute any and all required paperwork necessary to execute said rebate. \*\*\*\*\*

- 2. Consider a request to hire Justin Maynard and Justin Blackburn for the position of full time Firefighter/EMT for the Pikeville Fire Department at the City chart start pay for position contingent upon passing all required pre employment testing. Commissioner Davis made the motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously.**

- 3. Consider request to accept the terms of the Memorandums of Agreement of Agreement for HB410 Coal Severance Tax Project #560 SX21195124 City of Pikeville \$220,000.00 FY09 Marion Branch Sewer Project and HB410 Coal Severance Tax Project #564 SX21195125 for \$100,000.00 FY09 for Thompson Sewer Project and authorize the Mayor to sign and execute. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motions. Mayor Justice called for discussion, there being none the motions passed unanimously. 5-0**
- 4. Consider a request to adopt a resolution of financial support for utilities for the regional East Kentucky Exposition Center. Commissioner Carter made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0**

**RESOLUTION IN SUPPORT OF THE  
REGIONAL EAST KENTUCKY EXPO CENTER  
PROVIDING FINANCIAL SUPPORT IN  
RELEIF OF FACILITY UTILITIES**

WHEREAS, the City of Pikeville City Commission fully supports the East Kentucky Expo Center as an economic catalyst for the entire region. This facility provides events and entertainment creating a wonderful quality of life for the entire region while brining economic opportunity for our regions cities and county.

WHEREAS, during the planning for such a magnificent facility, under then Governor Paul Patton's administration, it was known and written in various reports that this facility would require both state and local government financial support. The facility like others of its kind was expected to operate with a deficient and would expect outside funding for its continued operation.

WHEREAS, the Pikeville City Commission is truly grateful to have such a fantastic facility in its backdoor that services the entire region. They acknowledge through the hard work of the board and management company acts have been brought abroad allowing people in and around our region to travel to Pike County and the City of Pikeville to enjoy such quality entertainment. This facility has also been used for various conferences, parties, gatherings along with many other events. This past year seven (7) different high schools in our region also had their prom in the Expo Center. This is truly a regional facility that has created many memories for those who work, live and travel to our region.

WHEREAS, the Pikeville City Commission understands this facility is a state owned facility that is in need of financial support to keep the operations and facility going. That without such support from state and local government the facility would be in jeopardy and unable to provide all such mentioned services and entertainment.

WHEREAS, the Pikeville City Commission's through their action of this resolution is in agreement to issue a "Grant" for the payment of the utilities to the East Kentucky Expo Board appointed by the State of Kentucky. The grant will be in the amount of \$100,000 per year. The City of Pikeville does supply the Expo Center with such utilities as water, sewer and natural gas.

WHEREAS, the City of Pikeville will also agree to forgo any late fees and penalties during the year and issue a \$100,000 grant that will be credited to the East Kentucky Expo Center's utility accounts. This will be done the first

week in July of each year as long as the commission sees the city is financially able to offer. It is understood that the city commission does have the authority to stop said grant at any time that they feel necessary to do so.

WHEREAS, the Pikeville City Commission requires the following conditional terms to take place in order for the East Kentucky Expo Center to qualify for this Grant along with the dismissal of late fees and penalties. By the first week in each July that the grant is issues starting with July of 2009 the East Kentucky Expo Center's account MUST be paid in full. There cannot be any outstanding balance to any of their accounts. Under these conditions a \$100,000 grant will be credited to their account. After the account has exceeded the \$100,000 amount in services the amount must be kept current and paid in full before by July 1<sup>st</sup> of the next year before the East Kentucky Expo Center would qualify for the grant the following year.

WHEREAS, the Pikeville City Commission agrees the grant will be administered and charged to the outstanding balances from water, sewer and gas accounts.

NOW, THEREFORE, BE IT RESOLVED the Pikeville City Commission fully supports the regional East Kentucky Expo Center and by the passage of this resolution agrees to execute said grant under the terms and conditions set forth. \*\*\*\*\*

- 5. Consider request to amend City Personnel Policy Chapter 3.4 Sick Leave as dated and presented to the commission. Commissioner Davis made the motion to approve. Commissioner Carter seconded the motion. Mayor called for discussion, there being none the motion passed unanimously. 5-0**
- 6. Consider request to approve a Memorandum of Agreement between the City of Pikeville and Governor's Commission on Fire Protection for the purpose of purchasing a Nautilus Stepmill Equipment for the Fire Department. Request to authorize Ronald Conn as fire chief to sign and execute the agreement. Commissioner Chaney made the motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0**
- 7. Consider request for approval of the City of Pikeville Audit Engagement Letter as submitted and authorize the Mayor to sign and execute. Commissioner Chaney made the motion to approve. Commissioner Chaney seconded the motion. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0**
- 8. Consider request for City Medical Insurance renewal to Bluegrass Family Health at an 11.9% increase in premium for fiscal year 2009-2010. Commissioner Carter made the motion to approve. Commissioner Layne seconded the motion. Mayor Justice called for discussion. Commissioner Carter asked what were the other insurance quotes and what companies. City Manager answered, it started at 27% increase and we worked on making a few changes within the policy to get the cost lowered. The City received several plan options and Anthem was the other company that submitted a proposal. Bluegrass offered the best plan. City Manager commended City Clerk/HR Director Rebecca Hamilton for doing a great job working with the various companies to get the best plan at the best**

- price. Mayor called for further discussion, there being none the motion passed unanimously. 5-0
9. Consider request to accept agreement for Premier for pre employment screening services as submitted. Commissioner Chaney made the motion to approve. Commissioner Carter seconded. Mayor Justice called for discussion, there being none the motion passed unanimously. 5-0
  10. Consider request to approve a MOA between City of Pikeville and Pike County Fiscal Court as presented for the purpose to allow county to access Justice Assistance Grant for \$12,602.00 and to authorize the City Manager to sign and execute the agreement. Commissioner Davis made the motion to approve. Commissioner Chaney made the motion to second. Mayor Justice called for discussion. City Manager responded by saying the City was issued this for a jail program awarded to the City and County. Mayor asked if this grant was processed by Big Sandy Add District. City Manager responded yes. Mayor called for further discussion, there being none the motion passed unanimously. 5-0
  11. Consider request to hire summer intern Storm Orion Flannery at entry pay contingent upon passing all required pre employment test. Commissioner Chaney made the motion to approve. Commissioner Davis seconded the motion. Mayor Justice called for further discussion, there being none the motion passed unanimously. 5-0
  12. Consider request for closed session for discussion of personnel, legal and economic development issues. Commissioner Carter made the motion to adjourn. Commissioner Chaney seconded the motion to adjourn. Mayor called for discussion there being none the motion passed unanimously for adjournment.
  13. Commissioner Chaney made the motion to re convene. Commissioner Carter seconded the motion. Mayor called for discussion there being none the motion passed unanimously calling the session back into order.
  14. Mayor Justice made the motion to approve Pinson Insurance Agency (Triple J Insurance) to continue doing business as the agent for the City Health and Cancer Insurance Plans and a request to authorize Nationwide Insurance to be the agent on Dental and Disability Insurance Plans for the 2009-2010 Fiscal Year Contracts, as presented beginning July 1, 2009. Commissioner Chaney made the motion to approve. Commissioner Carter seconded the motion. Mayor called for discussion. City Manager suggested that he motion be amended so that it would be a requirement in order to do this type of business with the city all vendors must stay current with the City permits, licenses, owed taxes or any accounts payable to the city in order to be authorized to be the cities agents of record. Failure to do so would authorize the City Manager to immediately exclude them from doing any further business with the city and would authorize the city

manager to be reassigned the cities insurance to another agent. Commissioner Chaney amended his motion to include the City Managers suggestion as part of his motion. Commissioner Carter seconded the amended motion. Mayor Justice called for any further discussion, there being no further discussion the motion passed unanimously. 5-0

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There being no further business to come before the Commission, Commissioner Davis made the motion to adjourn the meeting. Commissioner Carter seconded the motion. Mayor Frank Justice called for discussion, there being none the motion passed unanimously and the meeting was adjourned. 5-0

The next scheduled Regular Meeting of the City of Pikeville Board of Commissioners is June 22, 2009 at 6:00 p.m.

**APPROVED:**

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**FRANKLIN D. JUSTICE, II, MAYOR**

**ATTESTED:**

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**REBECCA HAMILTON, CITY CLERK**