

City of Dyer, Arkansas
Resolutions and Ordinances
Adopted by the City Council

- 2011-05-17-01 - Ordinance - Granting Access to CoxCom, Inc.
- 2011-06-21-01 - Ordinance - Land Maintenance Within City Limits
- 2011-06-21-02 - Ordinance - Condemnation of Nuisance Structures
- 2011-07-19-01 - Ordinance - City Council to Act as Planning Commission & Board
of Adjustment
- 2011-07-19-02 - Ordinance - Abolishing City Court
- 2011-07-19-03 - Ordinance - Appointment of Crawford County District Court
- 2011-07-19-04 - Ordinance - Designation of Court Costs
- 2011-07-19-05 - Ordinance - Designation of Incarceration Fine
- 2011-11-16-01 - Ordinance - Granting Access to CoxCom, Inc.

ORDINANCE NO. 11- 2011-5-17-01

AN ORDINANCE GRANTING TO COXCOM, INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO USE AND OCCUPY FOR ITS CABLE SYSTEM THE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, AND OTHER PUBLIC PLACES OF THE CITY FOR THE PURPOSE OF ERECTING, CONSTRUCTING, OWNING, LEASING, OR OTHERWISE ACQUIRING, MAINTAINING, OR OPERATING TELEVISION CABLE LINES WITHIN THE CORPORATE LIMITS OF THE CITY OF DYER, TOGETHER WITH ALL BUSINESS INCIDENTAL TO OR CONNECTED WITH SAID SYSTEM, PROVIDING THAT COX COMMUNICATIONS, SHALL PAY TO THE CITY OF DYER A MUNICIPAL FRANCHISE FEE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS:

Section 1. GRANT OF AUTHORITY.

(a) The City of Dyer, Arkansas, hereby grants to CoxCom, Inc. ("Cox") and to its successors, lessees and assigns, the right, privilege and authority within the present and all future expansions of the corporate limits of the City of Dyer to construct, operate and maintain a Cable System to provide Cable Service and other lawful services.

(b) Grantee shall have the right, privilege and authority under the terms of this Franchise, to the regulatory authority of the city council and the FCC and other regulatory authorities:

(i) To sell, furnish, transmit and distribute Cable Service and other lawful services to all inhabitants and consumers within the corporate limits; and

(ii) Subject to the terms, conditions and stipulations set forth in this ordinance, to construct, equip, operate, repair and maintain a Cable System; and

(iii) To construct, equip, operate, repair and maintain a Cable System for the purpose of conveying, distributing and conducting Cable Service and other lawful services to any point beyond the city limits in order to enable Grantee to distribute and sell Cable Service and other lawful services to subscribers in the City

(c) Nothing herein contained shall be construed as granting to Grantee any exclusive right or privilege, nor shall it affect any prior or existing rights of Grantee to maintain a Cable System within the City of Dyer, Arkansas.

Section 2. DEFINITIONS AND CONSTRUCTION.

For the purposes of this division:

Cable System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

Cable Act means Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Cables Act of 1996, and as the same may be further amended from time to time.

Grantee shall be construed to mean the CoxCom, Inc. or its successors, lessees, and assigns, the Franchisee under this ordinance.

Federal Communications Commission or FCC shall mean the present federal agency of that name as constituted by the Communication Act of 1934, or any successor agency created by the United States Congress.

Municipal Franchise Fee shall be defined as that charge levied by the city for the privilege of occupying municipal right-of-way, easement or property.

Public way shall be defined as including streets, avenues, alleys, roads, highways, rights-of-way, easements and other public places and ways within the jurisdiction of the city.

Public Ground shall be defined as City parks and other public places within the jurisdiction of the City.

Gross Revenues mean any subscriber revenues received by the Grantee for charges for Cable Services provided to Subscribers in the Service Area. Gross Revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross Revenues shall not include: (i) any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency, including without limitation the municipal franchise fee required by Section 4.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such, including a tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers); (iii) any other special tax, assessment, or fee such

as a business, occupation, and entertainment tax; (iv) any fee for the recovery of costs incurred to collect late payments for Cable Services; (v) net unrecovered bad debt (vi) revenues from commercial advertising; (vii) sales to the Grantee's subscribers by programmers of home shopping services and (viii) reimbursements paid by programmers for launch fees or marketing expense.

Section 3. LOCATION, OTHER REGULATIONS.

(a) Location of Facilities. Grantee's Cable System shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. The Cable System shall be located on Public Grounds as determined by the City. Grantee's construction, reconstruction, operation, repair, maintenance and location of its facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this Franchise. Grantee may abandon underground facilities in place; provided, at the City's request, Grantee will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

(b) Field Locations. Grantee shall provide horizontal field locations for its underground facilities within the City within 48 hours of a formal request by the City. If vertical field locations are requested, Grantee shall provide the information within 14 days.

(c) Street Openings. Grantee shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may require a surety bond at the beginning of each year. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other entities for similar facilities or work. Grantee may, however, open and disturb any Public Way or Public Ground without permission from the city where an emergency exists requiring the immediate repair of its Cable System. In such event Grantee shall notify the City by telephone to the office designated by the city as soon as practicable. Not later than the second working day thereafter, Grantee shall obtain any required permits.

(d) Restoration. After completing any work requiring the opening of any Public Way or Public Ground, Grantee shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. Work outside the paved area must be fine graded and seeded, hydro-mulched, or sod placed so that adjacent property owners or the City can mow without damage to machinery or people. The work shall be completed as promptly as weather permits, but in no case greater than 60 days, and if Grantee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Grantee to cure and the passage of a reasonable

period of time following the demand, but not to exceed five days, the right to make the restoration at the expense of Grantee. Grantee shall pay to the City the cost of such work done for or performed by the City. The remedy shall be in addition to any other remedy available to the City for noncompliance.

(e) Notice of Improvements. The City must give Grantee reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Grantee's Cable System may affect or be affected by the improvement. The notice must contain; (i) the nature and character of the improvements, (ii) the Public Ways and Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must give Grantee a sufficient length of time in advance of the actual commencement of the work to permit Grantee to make any necessary additions, alterations or repairs to its facilities.

Grantee will be required to submit to the City a copy of any long range plan for Cable System construction on the 1st of each calendar year along with a work schedule inside the City within that calendar year.

(f) Utility Corridors. The City will provide Grantee space within a utility corridor in which to locate on all major street projects. Any facility that is located outside the corridor will be required to be moved into the assigned location or the City may move the facility and charge Grantee for the relocation. Grantee must locate within the assigned area of the corridor so as to not interfere with other entities. If Grantee is unable to locate within its assigned location, Grantee must notify the City of the situation. The City shall respond to the notice within five (5) business days or Grantee may proceed with its relocation.

Section 4. RELOCATIONS

(a) Relocation of Cable System Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Grantee to relocate its Cable System facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Grantee shall relocate its facilities at its own expense unless the facilities are located in a private easement or right of way obtained by the Grantee or by agreement between the parties. If they are in an easement obtained by the City or as part of a City project the Grantee must relocate at its own expense. The City shall give Grantee reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If relocation is ordered within five years of a prior relocation of the same facilities, which relocation was made at Grantee's expense, the City shall reimburse Grantee for any non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Grantee may be required to make the subsequent relocation at

its own expense. Nothing in this ordinance requires Grantee to relocate, remove, replace or reconstruct at its own expense its Cable System where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement. Where public funds are made available to reimburse utilities or other occupants of the Public Ways for relocation costs, Grantee shall have equal right to apply for and access such funds.

(b) Relocation of Cable System in Public Ground. City may require Grantee at Grantee's expense to relocate or remove its Cable System from Public Ground upon finding by City that the facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

(c) Moving of Buildings Grantee shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures, provided that the person requesting such temporary removal, raising or lowering of the wires shall pay the expense of such temporary removal, raising, or lowering of the wires, and provided that Grantee shall not be required to remove, raise or lower its wires with less than 48 hours advance notice or mutually agreed upon time.

Section 5. VEGETATION MANAGEMENT.

Grantee shall have the authority to trim trees or other natural growth overhanging any of its television system or facilities so as to reasonably prevent branches from coming in contact with the Grantee's wires, cables, or other equipment; however the Grantee shall not engage in excessive trimming. Except during an emergency or the recovery after an emergency. Grantee shall attempt to notify the City and its residents at least three days prior to entering onto property to perform any tree trimming activities.

Section 6. FRANCHISE FEE.

Grantee shall pay to the City a municipal franchise fee in an amount equal to five (5) percent of Grantee's annual Gross Revenues. Payments shall be made to the City in monthly installments, payable within 45 days following conclusion of the month for which payment is made.

In addition:

(i) The City shall have the right to examine and verify from the records of Grantee any data relating to the Gross Revenues subject the municipal franchise fee; and

(ii) Assignment, Grantee shall have the right to assign this Franchise and its respective rights, terms and conditions, so long as the operations to be conducted by said assignee are in accordance with the applicable standards contained therein. Any such assignment to an "unrelated entity," as that term is hereinafter defined in this paragraph,

or any subsequent assignment of this Franchise to an unrelated entity, shall be subject to the prior approval of the City, which approval shall not be unreasonably denied or delayed. For purposes of this agreement, an "unrelated entity" shall be defined as a corporation or other entity which is neither partially or totally owned by nor a subsidiary of Grantee nor the partial or total owner of Grantee.

Section 7. TERM

The Franchise granted hereunder shall be for a term of five (5) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise. The municipal franchise fee shall become payable with the _____, 2011 billing for television service.

Section 8. POLICE POWER OF CITY.

No provision of this Franchise shall be construed to limit or abridge the authority of the City to implement and exercise police powers and regulations necessary for the safety and welfare of the inhabitants of the City of Dyer, Arkansas.

Section 9. INDEMNITY.

Grantee shall save and hold harmless the City from any and all claims for damage for which the City may become liable, as well as any costs incurred by defense of such claims by reason of the granting of this Franchise, or any act or omission of Grantee in the conduct of its operations.

Section 10. EQUAL PROTECTION

The right to use and occupy the City's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the City's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a Franchise, permit, license, authorization or other agreement from the City. In the event the City authorizes or permits any Person other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Section 11. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances conflicting with any of the provisions of this ordinance are hereby repealed. If any clause, sentence, or section of this ordinance should be determined to be invalid, the invalidity of any clause, sentence, or section hereof shall not affect the validity of the remainder of this ordinance.

Section 12. EMERGENCY CLAUSE.

The City Council for the City of Dyer, Arkansas, has determined that an emergency exists and this ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Dyer, Arkansas, shall become law immediately upon its passage, approval and publication.

Section 13. NOTICE.

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgment, (b) upon receipt when sent by certified, registered mail, postage prepaid, or (c) within five (5) business days after having been posted in first-class mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Dyer, Arkansas
P.O. Box 149
Dyer, Arkansas 72935
Attention: Mayor Randy Beard

The notices or responses to the Grantee shall be addressed as follows:

Cox Communications
901 So. George Washington Blvd.
Wichita, Kansas 67211
Attn: V.P Government Affairs

Cox Communications
4901 S. 48th Street
Springdale, AR 72762
Attention: Dir. Government Affairs

with a copy to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attention: Legal Department

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other in accordance with the provisions hereof.

Section 14. EFFECTIVE DATE

The effective date of this Franchise is the 18 day of may, 2011, pursuant to the provisions of applicable law.

Passed, adopted and effective this 17 day of may, 2011, subject to applicable federal, state and local law.

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on _____, 2011.

FRANCHISING AUTHORITY:

City of Dyer, Arkansas

By: Randy Beard
Name: Randy Beard
Title: Mayor

Attest:



, Clerk REC | TRSR

GRANTEE:

CoxCom, Inc.

By:
Name:
Title:

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-6-21-1

AN ORDINANCE ESTABLISHING MINIMUM STANDARDS FOR THE USE AND MAINTENANCE OF ALL LANDS LOCATED WITHIN THE CITY LIMITS OF DYER, ARKANSAS; GIVING THE MAYOR AUTHORITY TO APPOINT A REPRESENTATIVE WHO SHALL HAVE FULL AUTHORITY TO, AT ANY GIVEN TIME, INSPECT PROPERTY FOR EXISTING CONDITIONS WHICH CREATE ONE OR MORE OF THE FOLLOWING DANGERS: HEALTH, FIRE OR FLOODING; REPEALING CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: All property owners within the City of Dyer are required to cut weeds and grass growing thereon, remove garbage, rubbish, and other unsanitary or unsightly articles and things from their property, and to eliminate, fill up, or remove stagnant pools of water or any other unsightly things, place or condition which might become a breeding place for mosquitoes, flies, rodents, reptiles, and germs harmful to the health of the community. Said aforementioned conditions shall include but shall not be limited to the following: unused furniture, unmounted tires or wheels, limbs or other brush, building materials, abandoned toys, etc. Weeds, grass, or brush allowed to grow over six (6) inches high shall be deemed a violation of this section except on those lands which constitute one contiguous tract larger than two (2) acres in size and which has never been cleared or developed and which remains in its natural state.

SECTION 2: All pastureland located within the City of Dyer must be cut, i.e. mowed, brushhogged, or cut for hay, at least twice every summer in order to control unsightly growth and reduce fire hazards during dry and dead seasons, unless enough livestock grazing on land will control growth.

SECTION 3: Any automobile or other conveyance including but not limited to trailers, wagons, bicycles, motorcycles, race cars, and similar items (hereinafter "conveyance"), sitting on blocks with tires removed or sitting disabled or used as a storage for garbage or that does not have current licensing registration and valid insurance where required for operation upon the public streets, roads, and highways within this state will be considered as one or more of the conditions described in Section 1 and a removal order will be issued. If a conveyance has not been moved for a period of ninety (90) days a rebuttable presumption shall arise that the conveyance is disabled. This section shall not apply to conveyances kept or stored inside buildings or other structures of a nature that when all doors are closed the conveyance is not visible from any public street or adjoining landowners' property.

SECTION 4: If any property owner shall suffer the loss either total or partial of a house or trees by fire or storm, it shall be the owners' responsibility to remove debris from the property.

SECTION 5: From and after the passage of this ordinance all burning will be governed by the laws, ordinances, regulations, and other requirements or restrictions imposed by the county or state.

SECTION 6: If any property owner shall fail or refuse to correct the offending condition(s) set forth in this ordinance within the times fixed by this ordinance after receiving such notice from the City, he or she shall, upon conviction be fined \$75.00, and each day that such property owner refuses to comply with this ordinance after the expiration of the time limits provided shall be considered a separate offense, and will be fined \$75.00 per day.

SECTION 7: After an on-sight inspection by the Mayor's representative and a formal notice issued by the City, the offending property owner(s) will have seven (7) days to comply. An additional seven (7) days may be granted if the property owner(s) can show just cause as to why a grace period is needed, the grace period will be granted only by the Mayor's representative and recorded by with the City Clerk.

SECTION 8: Pursuant to Ark. Code Ann §§ 14-54-901 *et seq.* the City of Dyer may take necessary steps to clean-up or abate any condition that is a violation of this ordinance seven (7) days after written notice has been provided to the property owner or lien holder and shall take the necessary steps to perfect a lien pursuant to state statute for the costs of said work.

SECTION 9: In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a non-resident of this State, then a copy of the written notices hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the City Recorder/Treasurer shall make an affidavit setting out the facts as to unknown address or whereabouts of non-residents, and thereupon service of publication as now provided for by law against non-resident defendants may be had and an attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

SECTION 10: All prior ordinances that conflict with the terms and provisions of this ordinance are hereby repealed.

SECTION 11: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the currently existing unsightly and unsanitary conditions existing within the City of Dyer and the hazards these conditions pose to the citizens. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

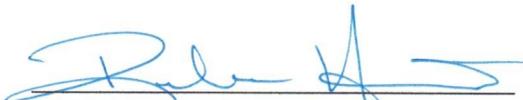
PASSED AND APPROVED THIS 21ST DAY OF June 2011.

APPROVED:

ATTEST:



MAYOR



RECORDER/TREASURER

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-6-21-1

AN ORDINANCE ESTABLISHING MINIMUM STANDARDS FOR THE USE AND MAINTENANCE OF ALL LANDS LOCATED WITHIN THE CITY LIMITS OF DYER, ARKANSAS; GIVING THE MAYOR AUTHORITY TO APPOINT A REPRESENTATIVE WHO SHALL HAVE FULL AUTHORITY TO, AT ANY GIVEN TIME, INSPECT PROPERTY FOR EXISTING CONDITIONS WHICH CREATE ONE OR MORE OF THE FOLLOWING DANGERS: HEALTH, FIRE OR FLOODING; REPEALING CONFLICTING ORDINANCES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: All property owners within the City of Dyer are required to cut weeds and grass growing thereon, remove garbage, rubbish, and other unsanitary or unsightly articles and things from their property, and to eliminate, fill up, or remove stagnant pools of water or any other unsightly things, place or condition which might become a breeding place for mosquitoes, flies, rodents, reptiles, and germs harmful to the health of the community. Said aforementioned conditions shall include but shall not be limited to the following: unused furniture, unmounted tires or wheels, limbs or other brush, building materials, abandoned toys, etc. Weeds, grass, or brush allowed to grow over six (6) inches high shall be deemed a violation of this section except on those lands which constitute one contiguous tract larger than two (2) acres in size and which has never been cleared or developed and which remains in its natural state.

SECTION 2: All pastureland located within the City of Dyer must be cut, i.e. mowed, brushhogged, or cut for hay, at least twice every summer in order to control unsightly growth and reduce fire hazards during dry and dead seasons, unless enough livestock grazing on land will control growth.

SECTION 3: Any automobile or other conveyance including but not limited to trailers, wagons, bicycles, motorcycles, race cars, and similar items (hereinafter "conveyance"), sitting on blocks with tires removed or sitting disabled or used as a storage for garbage or that does not have current licensing registration and valid insurance where required for operation upon the public streets, roads, and highways within this state will be considered as one or more of the conditions described in Section 1 and a removal order will be issued. If a conveyance has not been moved for a period of ninety (90) days a rebuttable presumption shall arise that the conveyance is disabled. This section shall not apply to conveyances kept or stored inside buildings or other structures of a nature that when all doors are closed the conveyance is not visible from any public street or adjoining landowners' property.

SECTION 4: If any property owner shall suffer the loss either total or partial of a house or trees by fire or storm, it shall be the owners' responsibility to remove debris from the property.

SECTION 5: From and after the passage of this ordinance all burning will be governed by the laws, ordinances, regulations, and other requirements or restrictions imposed by the county or state.

SECTION 6: If any property owner shall fail or refuse to correct the offending condition(s) set forth in this ordinance within the times fixed by this ordinance after receiving such notice from the City, he or she shall, upon conviction be fined \$75.00, and each day that such property owner refuses to comply with this ordinance after the expiration of the time limits provided shall be considered a separate offense, and will be fined \$75.00 per day.

SECTION 7: After an on-sight inspection by the Mayor's representative and a formal notice issued by the City, the offending property owner(s) will have seven (7) days to comply. An additional seven (7) days may be granted if the property owner(s) can show just cause as to why a grace period is needed, the grace period will be granted only by the Mayor's representative and recorded by with the City Clerk.

SECTION 8: Pursuant to Ark. Code Ann §§ 14-54-901 *et seq.* the City of Dyer may take necessary steps to clean-up or abate any condition that is a violation of this ordinance seven (7) days after written notice has been provided to the property owner or lien holder and shall take the necessary steps to perfect a lien pursuant to state statute for the costs of said work.

SECTION 9: In case the owner of any lot or other real property is unknown or his whereabouts is not known or is a non-resident of this State, then a copy of the written notices hereinabove referred to shall be posted upon the premises and before any action to enforce such lien shall be had, the City Recorder/Treasurer shall make an affidavit setting out the facts as to unknown address or whereabouts of non-residents, and thereupon service of publication as now provided for by law against non-resident defendants may be had and an attorney ad litem shall be appointed to notify the defendant by registered letter addressed to his last known place of residence if same can be found.

SECTION 10: All prior ordinances that conflict with the terms and provisions of this ordinance are hereby repealed.

SECTION 11: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the currently existing unsightly and unsanitary conditions existing within the City of Dyer and the hazards these conditions pose to the citizens. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

PASSED AND APPROVED THIS 21ST DAY OF JUNE 2011.

APPROVED:

ATTEST:

RANDY BEARD
MAYOR

REBECCA HATLEY
RECORDER/TREASURER

WE CERTIFY THAT THE FOREGOING ORDINANCE IS TRUE AND CORRECT AS OF THE DATE SUBSCRIBED BELOW.

Bill Mouse
MAYOR

Rebecca Hatley
RECORDER/TREASURER

May 8, 2015

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-6-21-2

AN ORDINANCE PROVIDING FOR THE CONDEMNATION AND REMOVAL OF HOUSES, BUILDINGS AND/OR STRUCTURES CONSTITUTING A NUISANCE WITHIN THE CORPORATE LIMITS; PROVIDING FOR A LIEN ON THE PROPERTY; PROVIDING A PENALTY THEREFOR, AND FOR OTHER PURPOSES.

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

SECTION 1: That it shall be and it is hereby declared to be unlawful for any person or persons, partnership, corporation or association, to own, keep or maintain any house, building and/or structure within the corporate limits of the City of Dyer, Arkansas, which constitutes a nuisance and which is found and declared to be a nuisance by Resolution of the City Council.

SECTION 2: That any such house, building and/or structure which is found and declared to be a nuisance by Resolution of the City Council will be condemned to insure the removal thereof as herein provided.

SECTION 3:

(a) That prior to the consideration of a Resolution by the City Council declaring any house, building and/or structure as a nuisance, the owner(s) and any mortgagee(s) or lien- holder(s), of such house, building and/or structure shall be mailed written notification of the date, time and place that the city Council will consider said Resolution. In addition, said notice shall inform the owner(s) and any mortgagee(s) or lienholder(s), of the right to be heard at the City Council meeting on the proposed Resolution declaring such house, building and/or structure to be a nuisance.

(b) Should the owner(s) and mortgagee(s) and/or lienholder(s) of any such house, building and/or structure be unknown or their whereabouts be unknown, or if they do not reside in Arkansas, then a copy of the written notice shall be posted upon said premises and the Mayor or his designee shall make an affidavit setting out the facts as to unknown address, unknown whereabouts and/or non-resident status of said owner(s), mortgagee(s), and lienholder(s). Thereupon, service of publication as now provided by law

SECTION 8: All proceeds of the sale of any such house, building and/or structure, or the proceeds of the sale of saleable materials therefrom and all fines collected from the provisions of this ordinance shall be paid by the person or persons collecting the same to the City Treasurer. If any such house, building and/or structure, or the saleable materials thereof, be sold for an amount which exceeds all costs incidental to the abatement of the nuisance (including the cleaning up of the premises) by the City, plus any fine or fines imposed, the balance thereof will be returned by the City Treasurer to the former owner or owners of such house, building and/or structure constituting the nuisance.

SECTION 9: If the City has any net costs in removal of any house, building or structure, the City shall have a lien on the property as provided by A.C.A. 14-54-904.

SECTION 10: A fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than Thousand Dollars (\$1000.00) is hereby imposed against the owner(s) of any house, building and/or structure found and declared to be a nuisance by Resolution of the City Council thirty (30) days after the same has been so found and declared to be a nuisance, and for each day thereafter said nuisance be not abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day; provided the notice as herein provided in Section 5 hereof has been given within ten (10) days after said house, building and/or structure has been by Resolution found and declared to be a nuisance.

SECTION 11: In the event it is deemed advisable by the City Council that a particular house, building and/or structure be judicially declared to be a nuisance by a Court having jurisdiction of such matters, the City Council is hereby authorized to employ an attorney to bring such an action for said purpose in the name of the City, and the only notice to be given to the owner(s) and mortgagee(s) and/or lien- holder(s) of any such house, building and/or structure sought to be judicially declared to be a nuisance will be that as now provided for by law in such cases in a court of equity or Circuit Court. When any such house, building, and/or structure has been declared judicially to be a nuisance by a Court of competent jurisdiction, a fine up to One Thousand Dollars (\$1000.00) is hereby imposed against the owner(s) thereof from the date said finding is made by the Court and for each day thereafter, said nuisance be not abated constitutes a continuing offense punishable by a fine up to Five Hundred Dollars (\$500.00) per day.

against unknown and/or non-resident defendant(s) may be had and an attorney ad litem shall be appointed to notify such persons by registered letter addressed to their last known place(s) of residence or business.

SECTION 4: That the Resolution of the City Council condemning any house, building and/or structure which constitutes a nuisance will include in said Resolution an adequate description of the house, building, and/or structure; the name(s), if known, of the owner(s) and mortgagee(s) and/or lienholder(s) thereof; and shall set forth the reason or reasons said house, building and/or structure is or has been condemned as a nuisance.

SECTION 5: After a house, building and/or structure has been found and declared to be a nuisance and condemned by Resolution as herein provided, a true or certified copy of said Resolution will be mailed to the owner(s) and mortgagee(s) and/or lienholder(s) thereof, if the whereabouts of said owner(s) and mortgagee(s) and/or lienholder(s) thereof be known or their last known address be known, and a copy thereof shall be posted at a conspicuous place on said house, building and/or structure. Provided, that if the owner(s) and mortgagee(s) and/or lienholder(s) of said house, building and/or structure be unknown, or if his or their whereabouts or last known address be unknown, the posting of the copy of said resolution as hereinabove provided will suffice as notice of the condemnation.

SECTION 6: If the house, building and/or structure constituting a nuisance has not been torn down or removed, or said nuisance otherwise abated within thirty (30) days after posting the true copy of the Resolution at a conspicuous place on said house, building and/or structure constituting the nuisance, it will be torn down and/or removed by the Building Inspector or his duly-designated representative.

SECTION 7: The Building Inspector or any other person or persons designated by him to tear down and remove any such house, building and/or structure constituting a nuisance will insure the removal thereof and dispose of the same in such a manner as deemed appropriate in the circumstances and to that end may, if the same have a substantial value, sell said house, building and/or structure, or any saleable materials thereof, by public sale to the highest bidder for cash, ten (10) days' notice thereof being first given by one publication in some newspaper having a general circulation in the City, to insure its removal and the abatement of the nuisance.

SECTION 12: If, for any reason, any portion of this ordinance be held to be invalid, such invalidity shall in no way affect the remaining portions thereof which are valid, but said valid portions shall be and remain in full force and effect.

SECTION 13: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 14: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the lack of a mechanism for the city to properly remove or abate hazardous/nuisance structures poses a hazard to the citizens of the city. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

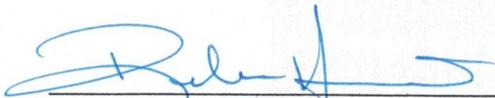
PASSED AND APPROVED THIS 21ST DAY OF June 2011.

APPROVED:

ATTEST:



MAYOR



RECORDER/TREASURER

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-07-19-1

AN ORDINANCE ALLOWING THE CITY COUNCIL TO SERVE AS THE PLANNING COMMISSION AND BOARD OF ADJUSTMENT FOR THE CITY OF DYER, ARKANSAS, DECLARING AN EMERGENCY, AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City of Dyer, Arkansas, currently has a joint planning commission and board of adjustment;

WHEREAS, the 88th General Assembly adopted Act 280 in the 2011 regular session permitting second class cities to have the city council serve as the planning commission and board of adjustment with the mayor acting as the chairman; and

WHEREAS, the City Council of the City of Dyer, Arkansas, deems it prudent due to the small size of the city and difficulty filling vacant positions on the commission and board to abolish the current planning commission and board of adjustment and have the city council perform those functions henceforth.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: The City Council of the City of Dyer, Arkansas shall immediately take the place of the Dyer Planning Commission and Board of Adjustment and assume and discharge all of its duties, obligations, rights, responsibilities, and roles under the various ordinances of the City of Dyer and the laws of the State of Arkansas and the United States of America.

SECTION 2: All ordinance provisions providing for action, hearing or other by the planning commission or board of adjustment are hereby amended to allow for such action, hearing or other by the city council.

SECTION 3: Any ordinance provision providing for an appeal from action or inaction by the planning commission or board of adjustment to the city council is hereby repealed and any appeal from the decision or inaction of the city council acting as the planning commission or board of adjustment shall be as otherwise provided for under the laws of the State of Arkansas.

SECTION 4: All prior ordinance provisions that conflict with the terms and provisions of this ordinance are hereby repealed.

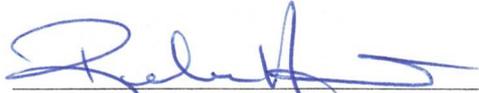
SECTION 5: If any court of competent jurisdiction shall declare any portion of this ordinance illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 6: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the continuing need to carry out the zoning ordinance and the duties of the planning commission and board of adjustment, and without this ordinance, the city cannot properly administer the duties of the planning commission and board of adjustment going forward in the future. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

PASSED AND APPROVED THIS 19th DAY OF JULY 2011.



MAYOR



RECORDER/TREASURER

CERTIFICATION

I, the City Recorder/Treasurer of Dyer, Arkansas, certify that the foregoing ordinance was passed by a vote of 4 to 1 and the included emergency clause was passed by separate vote of 4 to 1 by the City Council of Dyer, Arkansas, at its regular meeting held on July 19, 2011 such that the ordinance was duly adopted and approved and an emergency was declared.



Recorder/Treasurer

Ordinance No.: 2011-07-19-1

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-7-19-2

AN ORDINANCE ABOLISHING THE CITY COURT OF DYER, ARKANSAS, DECLARING AN EMERGENCY, AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City of Dyer, Arkansas, currently has a city court with jurisdiction pursuant to the laws of the State of Arkansas;

WHEREAS, the City Council of the City of Dyer has determined after diligent inquiry that it is in the best interests of the citizens of Dyer and the administration of justice for the city court jurisdiction to be transferred to a division of the District Court of Crawford County, Arkansas; and

WHEREAS, Amendment 80 to the Arkansas Constitution provides authority for the City Council of Dyer, Arkansas, to abolish its city court.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: The City Court of the City of Dyer, Arkansas, shall be hereby abolished as of and effective at 11:59 p.m. on August 9, 2011.

SECTION 2: All jurisdiction of the City Court of the City of Dyer, Arkansas shall transfer immediately upon abolishment to the District Court of Crawford County, Arkansas.

SECTION 3: The administration of the former city court jurisdiction shall be in a manner agreed upon by the relevant governing bodies and the district court subject to all applicable rules, regulations and laws.

SECTION 4: All prior ordinances that conflict with the terms and provisions of this ordinance are hereby repealed.

SECTION 5: If any court of competent jurisdiction shall declare any portion of this ordinance illegal or otherwise unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 6: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because of the continuing need to enforce the laws and ordinances of the city and without this ordinance, the city cannot properly administer the jurisdiction of its city

court going forward in the future. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

PASSED AND APPROVED THIS 19th DAY OF JULY 2011.



MAYOR



RECORDER/TREASURER

CERTIFICATION

I, the City Recorder/Treasurer of Dyer, Arkansas, certify that the foregoing ordinance was passed by a vote of 5 to 0 and the included emergency clause was passed by separate vote of 5 to 0 by the City Council of Dyer, Arkansas, at its regular meeting held on July 19, 2011 such that the ordinance was duly adopted and approved and an emergency was declared.



Recorder/Treasurer

Ordinance No.: 2011-7-19-2

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-7-19-3

AN ORDINANCE CREATING THE PROCEDURES FOR THE TRIAL OF PERSONS CHARGED WITH A VIOLATION OF LAW OR ORDINANCE WITHIN THE CITY OF DYER, ARKANSAS, PURSUANT TO AMENDMENT 80 TO THE ARKANSAS CONSTITUTION AND OTHER LAWS OF THE STATE OF ARKANSAS, DECLARING AN EMERGENCY, AND FOR OTHER RELATED PURPOSES.

WHEREAS, the City of Dyer has by ordinance under the authority of Amendment 80 abolished its city court and transferred the jurisdiction to the District Court of Crawford County, Arkansas;

WHEREAS, the City Council of Dyer desires to set the procedures for the trial of persons charged with violations of law and ordinances within the City of Dyer; and

WHEREAS, the District Court of Crawford County, Arkansas shall be the proper court for the trial of persons charged with violations of law and ordinances within the City of Dyer;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF DYER, ARKANSAS:

SECTION 1: Subsequent to the abolishment of the City Court of Dyer, Arkansas, all persons charged with violations of applicable laws and ordinances within the City of Dyer, Arkansas shall be tried in the District Court of Van Buren, Crawford County, Arkansas.

SECTION 2: Court costs assessed in criminal actions by the City of Dyer, Arkansas, shall be paid to the State of Arkansas, with such turn-back as may be provided for under Arkansas law.

SECTION 3: Subsequent to the abolishment of the City Court of Dyer, Arkansas, all fines and costs assessed by the City of Dyer in criminal actions shall be payable through the Clerk of the District Court of Van Buren, Crawford County, Arkansas.

SECTION 4: All fines collected on behalf of the City of Dyer by the Crawford County District Court Clerk shall be divided with fifteen percent (15%) to the District Court Fund for use by the district court in its sole discretion as permitted by law and with the remaining eighty-five (85%) to the City of Dyer for its use in its sole discretion as permitted by law.

SECTION 5: There shall be assessed and collected a fifty dollar (\$50.00) warrant fee, with respect to issuance of warrants by the District Court of Van Buren, Crawford County, Arkansas, with respect to matters in which the City of Dyer, Arkansas, is the Plaintiff, payable to the District Court of Van Buren, Crawford County, Arkansas, for the benefit of the City of Dyer, Arkansas, and proper disbursements, in cases of, or relating to, traffic and misdemeanor matters.

SECTION 6: In the event of probation, there shall be charged a \$20.00 per month probation fee, to be administered by the Clerk of the District Court of Van Buren, Crawford County, Arkansas, in the same manner as that of the City of Van Buren, Arkansas.

SECTION 7: In the event of installment or time payments of fines and costs, there shall be added thereto a fee after the first month of five dollars (\$5.00) per month, one-half (½) of which shall be paid to the District Court of Van Buren, Crawford County, Arkansas, and one-half (½) to the Court Technology Trust on behalf of the City of Dyer, Arkansas, to be used by the District Court of Van Buren, Crawford County, Arkansas for court technology.

SECTION 8: In the event that a person against whom fines are assessed is unable to pay those fines, the District Court may order community service to the entity to which fines are due, and the Mayor of Dyer shall keep the District Court apprised of the person and location designated to whom individuals shall report to perform community service due the City of Dyer.

SECTION 9: The Dyer Police Department shall turn in completed ticket books to the Clerk of the District Court of Van Buren, Crawford County, Arkansas, each calendar year quarter, or at such other times as the clerk may request.

SECTION 10: The Mayor of Dyer, Arkansas, shall contract for and is hereby directed to execute the necessary documents for payment of jail fees and other expenses necessary to incarcerate prisoners of the City of Dyer with the Crawford County Sheriff or such other entities as may be permitted under state law.

SECTION 11: The Dyer Police Department shall be responsible for transportation of prisoners to and from their place of incarceration for legal proceedings; however, the City of Dyer may contract with other entities, particularly those entities providing jail services to the city, to provide for the necessary transportation as may be required.

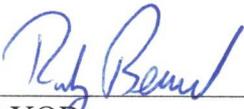
SECTION 12: All ordinances or provisions of ordinances that may be in conflict herewith are hereby repealed.

SECTION 13: If a court of competent jurisdiction shall deem any portion of this ordinance invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 14: The adoption of this Ordinance is necessary for the proper and efficient administration of the Crawford County, Arkansas, District Court acting on behalf of the City of Dyer, Arkansas, and therefore contributes directly to the safety and security of the citizenry being necessary for the operation of the Dyer Police Department, and for the preservation of the health, safety and welfare of the residents of Dyer, Arkansas; therefore an emergency is declared to exist and this ordinance shall take effect, and be in full force and effect, immediately upon its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 19 DAY OF July, 2011.

APPROVED:



MAYOR

ATTESTED:



RECORDER/TREASURER

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-7-19-A

AN ORDINANCE AUTHORIZING ALLOCATION OF TIME PAYMENTS COLLECTED BY THE VAN BUREN, CRAWFORD COUNTY, DISTRICT COURT ON BEHALF OF DYER AT FIFTY PERCENT (50%) TO COURT COSTS AND FIFTY PERCENT (50%) TO FINES.

WHEREAS, Ark. Code Ann. § 16-10-209 assigns to the municipal governing body the authority to provide by appropriate municipal legislation an alternative allocation of time payments;

WHEREAS, the Van Buren, Crawford County District Court will be handling all criminal court matters that may arise within Dyer corporate limits including all citations and summons that may be issued by the Dyer Police Department; and

WHEREAS, the District Court Clerk has requested that this allocation be made to facilitate collection and make Dyer's court similar to the other courts administered by the Van Buren, Crawford County, District Court.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF DYER, ARKANSAS, AS FOLLOWS:

SECTION 1: All time payments collected by the Van Buren, Crawford County District Court on behalf of Dyer, Arkansas, shall be allocated at fifty percent (50%) to court costs, and fifty percent (50%) to fines. Whenever either court costs or fines are fully paid, all remaining payments collected shall be allocated to remaining amounts due.

SECTION 2: Any ordinances or provisions in ordinances in conflict herewith shall be and are repealed.

SECTION 3: If any court of competent jurisdiction shall declare any portion of this ordinance unlawful or unenforceable then the remaining portions of the ordinance shall remain in full force and effect.

SECTION 4: This ordinance is deemed important for the immediate protection and preservation of the public peace, health, safety, and welfare of the citizens of Dyer, Arkansas, because this ordinance is necessary for the initiation of Dyer's transfer of court responsibilities thus facilitating the protection of the citizens and property of Dyer. Therefore an emergency is hereby declared and this ordinance shall be and take effect and be in full force after its passage, approval, and publication.

PASSED AND APPROVED THIS 19th DAY OF July, 2011.

APPROVED:


MAYOR

ATTESTED:


RECORDER/TREASURER

CITY OF DYER, ARKANSAS

ORDINANCE NO. 2011-7-19-5

AN ORDINANCE AUTHORIZING THE LEVY OF AN ADDITIONAL TWENTY DOLLAR (\$20.00) FINE TO HELP DEFRAID THE EXPENSE OF INCARCERATING PRISONERS PURSUANT TO ACT 209 OF 2009; AND FOR OTHER PURPOSES.

WHEREAS, the Arkansas General Assembly has now passed Act 209 of 2009, which authorizes the City, by Ordinance, to levy an additional Twenty Dollar (\$20.00) fine to help defray the expense of incarcerating prisoners; and

WHEREAS, since the City of Dyer transports all prisoners to the Crawford County Jail or other similar entities, the additional fines to be levied by this Ordinance under authority of Act 209 of 2009 shall be sent to the City Treasury with identification of the sum representing revenues from the cases of misdemeanors and traffic violations and deposited into a special fund within the City Treasury to be used for construction and maintenance of the city jail and payments to other entities for incarcerating city prisoners or as otherwise permitted under Act 209 of 2009; and

WHEREAS, the Arkansas General Assembly provided that it is the intent of Act 209 of 2009 that revenues derived from the additional fines levied under authority of said Act shall not offset or reduce funding from other sources for the maintenance, operation, and capital expenditures of detention facilities; and

WHEREAS, it is in the best interests and welfare of the citizens of Dyer, Arkansas that an additional fine of Twenty Dollars (\$20.00) be levied and collected upon each conviction, plea of guilty or nolo contendere or each bond forfeiture in all cases of misdemeanors and traffic violations in the Van Buren, Crawford County, District Court or other court acting on behalf of Dyer.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF DYER, ARKANSAS:

SECTION 1: Under authority of Act 209 of 2009, there is hereby levied and shall be collected an additional fine in the amount of Twenty Dollars (\$20.00) from each defendant upon each conviction, each plea of guilty or nolo contendere, or each bond forfeiture for any misdemeanor or traffic violation in the Van Buren, Crawford County, District Court on behalf of Dyer.

SECTION 2: The additional fine levied in Section 1 hereinabove shall apply to all applicable cases brought before all City Courts and departments thereof that now exist and are in operation, or may hereafter be operated and placed into operation, within or on behalf of the City of Dyer, Arkansas.

SECTION 3: All additional fines levied and collected under the provisions of this Ordinance shall be sent to the City Treasury with identification of the sum representing revenues from the cases of any misdemeanor or traffic violation in the courts acting on behalf of Dyer and deposited into a special fund within the City Treasury to be used for construction and maintenance of the city jail and payments to other entities for incarcerating city prisoners or as otherwise permitted under Act 209 of 2009.

SECTION 4: All Ordinances or parts of Ordinances found to be in conflict herewith are hereby repealed.

SECTION 5: In the event that any portion of this ordinance is deemed illegal, invalid, or otherwise unenforceable by any court of competent jurisdiction said portion shall be struck from the ordinance and the remainder of the ordinance shall remain in full force and effect.

SECTION 6: The adoption of this Ordinance is necessary for the proper and efficient administration of the Van Buren, Crawford County, District Court acting on behalf of the City of Dyer, Arkansas, for the payment of costs associated with incarcerating prisoners of the Dyer Police Department, and for the preservation of the health, safety and welfare of the residents of Dyer, Arkansas; therefore an emergency is declared to exist and this ordinance shall take effect, and be in full force and effect, immediately upon its passage, approval, and publication as required by law.

PASSED AND APPROVED THIS 19th DAY OF July, 2011.

APPROVED:



MAYOR

ATTESTED:



RECORDER/TREASURER

Ordinance No.: 2011-7-19-5

ORDINANCE NO. 10-11-16-1

AN ORDINANCE GRANTING TO COXCOM, INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO USE AND OCCUPY FOR ITS CABLE SYSTEM THE STREETS, AVENUES, ALLEYS, ROADS, HIGHWAYS, AND OTHER PUBLIC PLACES OF THE CITY FOR THE PURPOSE OF ERECTING, CONSTRUCTING, OWNING, LEASING, OR OTHERWISE ACQUIRING, MAINTAINING, OR OPERATING TELEVISION CABLE LINES WITHIN THE CORPORATE LIMITS OF THE CITY OF DYER, TOGETHER WITH ALL BUSINESS INCIDENTAL TO OR CONNECTED WITH SAID SYSTEM, PROVIDING THAT COX COMMUNICATIONS, SHALL PAY TO THE CITY OF DYER A MUNICIPAL FRANCHISE FEE, AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DYER, ARKANSAS:

Section 1. GRANT OF AUTHORITY.

(a) The City of Dyer, Arkansas, hereby grants to CoxCom, Inc. ("Cox") and to its successors, lessees and assigns, the right, privilege and authority within the present and all future expansions of the corporate limits of the City of Dyer to construct, operate and maintain a Cable System to provide Cable Service and other lawful services.

(b) Grantee shall have the right, privilege and authority under the terms of this Franchise, to the regulatory authority of the city council and the FCC and other regulatory authorities:

(i) To sell, furnish, transmit and distribute Cable Service and other lawful services to all inhabitants and consumers within the corporate limits; and

(ii) Subject to the terms, conditions and stipulations set forth in this ordinance, to construct, equip, operate, repair and maintain a Cable System; and

(iii) To construct, equip, operate, repair and maintain a Cable System for the purpose of conveying, distributing and conducting Cable Service and other lawful services to any point beyond the city limits in order to enable Grantee to distribute and sell Cable Service and other lawful services to subscribers in the City

(c) Nothing herein contained shall be construed as granting to Grantee any exclusive right or privilege, nor shall it affect any prior or existing rights of Grantee to maintain a Cable System within the City of Dyer, Arkansas.

Section 2. DEFINITIONS AND CONSTRUCTION.

For the purposes of this division:

Cable System means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Public Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Cable Act, except that such facility shall be considered a Cable System (other than for purposes of Section 621(c)) to the extent such facility is used in transmission of video programming directly to Subscribers unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with Section 653 of title VI of the Cable Act; or (E) any facilities of any electric utility used solely for operating its electric utility system.

Cable Act means Title VI of the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, by the Cable Television Consumer Protection and Competition Act of 1992, and by the Cables Act of 1996, and as the same may be further amended from time to time.

Grantee shall be construed to mean the CoxCom, Inc. or its successors, lessees, and assigns, the Franchisee under this ordinance.

Federal Communications Commission or FCC shall mean the present federal agency of that name as constituted by the Communication Act of 1934, or any successor agency created by the United States Congress.

Municipal Franchise Fee shall be defined as that charge levied by the city for the privilege of occupying municipal right-of-way, easement or property.

Public way shall be defined as including streets, avenues, alleys, roads, highways, rights-of-way, easements and other public places and ways within the jurisdiction of the city.

Public Ground shall be defined as City parks and other public places within the jurisdiction of the City.

Gross Revenues mean any subscriber revenues received by the Grantee for charges for Cable Services provided to Subscribers in the Service Area. Gross Revenues shall be calculated and reported based on generally accepted accounting principles (GAAP). Gross Revenues shall not include: (i) any fees or taxes which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency and which are collected by the Grantee on behalf of such governmental unit or agency, including without limitation the municipal franchise fee required by Section 4.1 hereof; (ii) any tax, fee, or assessment of any kind imposed by the City or other governmental entity on a cable operator, or Subscriber, or both, solely because of their status as such, including a tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or Subscribers); (iii) any other special tax, assessment, or fee such

as a business, occupation, and entertainment tax; (iv) any fee for the recovery of costs incurred to collect late payments for Cable Services; (v) net unrecovered bad debt (vi) revenues from commercial advertising; (vii) sales to the Grantee's subscribers by programmers of home shopping services and (viii) reimbursements paid by programmers for launch fees or marketing expense.

Section 3. LOCATION, OTHER REGULATIONS.

(a) Location of Facilities. Grantee's Cable System shall be located, constructed and maintained so as not to interfere with the safety and convenience of ordinary travel along and over Public Ways and so as not to disrupt normal operation of any City Utility System previously installed therein. The Cable System shall be located on Public Grounds as determined by the City. Grantee's construction, reconstruction, operation, repair, maintenance and location of its facilities shall be subject to permits if required by separate ordinance and to other reasonable regulations of the City to the extent not inconsistent with the terms of this Franchise. Grantee may abandon underground facilities in place; provided, at the City's request, Grantee will remove abandoned metal or concrete encased conduit interfering with a City improvement project, but only to the extent such conduit is uncovered by excavation as part of the City improvement project.

(b) Field Locations. Grantee shall provide horizontal field locations for its underground facilities within the City within 48 hours of a formal request by the City. If vertical field locations are requested, Grantee shall provide the information within 14 days.

(c) Street Openings. Grantee shall not open or disturb any Public Way or Public Ground for any purpose without first having obtained a permit from the City, if required by a separate ordinance, for which the City may require a surety bond at the beginning of each year. Permit conditions imposed on Grantee shall not be more burdensome than those imposed on other entities for similar facilities or work. Grantee may, however, open and disturb any Public Way or Public Ground without permission from the city where an emergency exists requiring the immediate repair of its Cable System. In such event Grantee shall notify the City by telephone to the office designated by the city as soon as practicable. Not later than the second working day thereafter, Grantee shall obtain any required permits.

(d) Restoration. After completing any work requiring the opening of any Public Way or Public Ground, Grantee shall restore the same, including paving and its foundation, to as good a condition as formerly existed, and shall maintain any paved surface in good condition for two years thereafter. Work outside the paved area must be fine graded and seeded, hydro-mulched, or sod placed so that adjacent property owners or the City can mow without damage to machinery or people. The work shall be completed as promptly as weather permits, but in no case greater than 60 days, and if Grantee shall not promptly perform and complete the work, remove all dirt, rubbish, equipment and material, and put the Public Way or Public Ground in the said condition, the City shall have, after demand to Grantee to cure and the passage of a reasonable period of time

following the demand, but not to exceed five days, the right to make the restoration at the expense of Grantee. Grantee shall pay to the City the cost of such work done for or performed by the City. The remedy shall be in addition to any other remedy available to the City for noncompliance.

(e) Notice of Improvements. The City must give Grantee reasonable notice of plans for improvements to Public Ways or Public Ground where the City has reason to believe that Grantee's Cable System may affect or be affected by the improvement. The notice must contain; (i) the nature and character of the improvements, (ii) the Public Ways and Public Ground upon which the improvements are to be made, (iii) the extent of the improvements, (iv) the time when the City will start the work, and (v) if more than one Public Way or Public Ground is involved, the order in which the work is to proceed. The notice must give Grantee a sufficient length of time in advance of the actual commencement of the work to permit Grantee to make any necessary additions, alterations or repairs to its facilities.

Grantee will be required to submit to the City a copy of any long range plan for Cable System construction on the 1st of each calendar year along with a work schedule inside the City within that calendar year.

(f) Utility Corridors. The City will provide Grantee space within a utility corridor in which to locate on all major street projects. Any facility that is located outside the corridor will be required to be moved into the assigned location or the City may move the facility and charge Grantee for the relocation. Grantee must locate within the assigned area of the corridor so as to not interfere with other entities. If Grantee is unable to locate within its assigned location, Grantee must notify the City of the situation. The City shall respond to the notice within five (5) business days or Grantee may proceed with its relocation.

Section 4. RELOCATIONS

(a) Relocation of Cable System Facilities in Public Ways. If the City determines to vacate a Public Way for a City improvement project, or at City's cost to grade, regrade, or change the line of any Public Way, or construct or reconstruct any City Utility System in any Public Way, it may order Grantee to relocate its Cable System facilities located therein if relocation is reasonably necessary to accomplish the City's proposed public improvement. Grantee shall relocate its facilities at its own expense unless the facilities are located in a private easement or right of way obtained by the Grantee or by agreement between the parties. If they are in an easement obtained by the City or as part of a City project the Grantee must relocate at its own expense. The City shall give Grantee reasonable notice of plans to vacate for a City improvement project, or to grade, regrade, or change the line of any Public Way or to construct or reconstruct any City Utility System. If relocation is ordered within five years of a prior relocation of the same facilities, which relocation was made at Grantee's expense, the City shall reimburse Grantee for any non-betterment costs on a time and material basis, provided that if a subsequent relocation is required because of the extension of a City Utility System to a previously unserved area, Grantee may be required to make the subsequent relocation at

its own expense. Nothing in this ordinance requires Grantee to relocate, remove, replace or reconstruct at its own expense its Cable System where such relocation, removal, replacement or reconstruction is solely for the convenience of the City and is not reasonably necessary for the construction or reconstruction of a Public Way or City Utility System or other City improvement. Where public funds are made available to reimburse utilities or other occupants of the Public Ways for relocation costs, Grantee shall have equal right to apply for and access such funds.

(b) Relocation of Cable System in Public Ground. City may require Grantee at Grantee's expense to relocate or remove its Cable System from Public Ground upon finding by City that the facilities have become or will become a substantial impairment to the existing or proposed public use of the Public Ground.

(c) Moving of Buildings Grantee shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures, provided that the person requesting such temporary removal, raising or lowering of the wires shall pay the expense of such temporary removal, raising, or lowering of the wires, and provided that Grantee shall not be required to remove, raise or lower its wires with less than 48 hours advance notice or mutually agreed upon time.

Section 5. VEGETATION MANAGEMENT.

Grantee shall have the authority to trim trees or other natural growth overhanging any of its television system or facilities so as to reasonably prevent branches from coming in contact with the Grantee's wires, cables, or other equipment; however the Grantee shall not engage in excessive trimming. Except during an emergency or the recovery after an emergency. Grantee shall attempt to notify the City and its residents at least three days prior to entering onto property to perform any tree trimming activities.

Section 6. FRANCHISE FEE.

Grantee shall pay to the City a municipal franchise fee in an amount equal to five (5) percent of Grantee's annual Gross Revenues. Payments shall be made to the City in monthly installments, payable within 45 days following conclusion of the month for which payment is made.

In addition:

(i) The City shall have the right to examine and verify from the records of Grantee any data relating to the Gross Revenues subject the municipal franchise fee; and

(ii) Assignment, Grantee shall have the right to assign this Franchise and its respective rights, terms and conditions, so long as the operations to be conducted by said assignee are in accordance with the applicable standards contained therein. Any such assignment to an "unrelated entity," as that term is hereinafter defined in this paragraph,

or any subsequent assignment of this Franchise to an unrelated entity, shall be subject to the prior approval of the City, which approval shall not be unreasonably denied or delayed. For purposes of this agreement, an "unrelated entity" shall be defined as a corporation or other entity which is neither partially or totally owned by nor a subsidiary of Grantee nor the partial or total owner of Grantee.

Section 7. TERM

The Franchise granted hereunder shall be for a term of five (5) years commencing on the effective date of the Franchise as set forth below, unless otherwise lawfully terminated in accordance with the terms of this Franchise. The municipal franchise fee shall become payable with the _____, 2010 billing for television service.

Section 8. POLICE POWER OF CITY.

No provision of this Franchise shall be construed to limit or abridge the authority of the City to implement and exercise police powers and regulations necessary for the safety and welfare of the inhabitants of the City of Dyer, Arkansas.

Section 9. INDEMNITY.

Grantee shall save and hold harmless the City from any and all claims for damage for which the City may become liable, as well as any costs incurred by defense of such claims by reason of the granting of this Franchise, or any act or omission of Grantee in the conduct of its operations.

Section 10. EQUAL PROTECTION

The right to use and occupy the City's Public Ways for the purpose herein provided shall not be exclusive; provided, however, that no Person shall enter into the City's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), without first obtaining a Franchise, permit, license, authorization or other agreement from the City. In the event the City authorizes or permits any Person other than the Grantee to enter into the City's Public Ways for the purpose of constructing or operating a Cable System, or for the purpose of providing Cable Service or video programming service to any part of the Service Area, including by means of an "open video system" (as such term is defined in the Cable Act), the material provisions thereof shall be reasonably comparable to those contained herein, and the obligations imposed on the grantee thereunder shall be no less burdensome nor more favorable than the obligations imposed upon the Grantee hereunder, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Section 11. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances conflicting with any of the provisions of this ordinance are hereby repealed. If any clause, sentence, or section of this ordinance should be determined to be invalid, the invalidity of any clause, sentence, or section hereof shall not affect the validity of the remainder of this ordinance.

Section 12. EMERGENCY CLAUSE.

The City Council for the City of Dyer, Arkansas, has determined that an emergency exists and this ordinance being necessary for the preservation of the health, safety and welfare of the citizens of Dyer, Arkansas, shall become law immediately upon its passage, approval and publication.

Section 13. NOTICE.

Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: (a) upon receipt when hand delivered with receipt/acknowledgment, (b) upon receipt when sent by certified, registered mail, postage prepaid, or (c) within five (5) business days after having been posted in first-class mail, postage prepaid.

The notices or responses to the Franchising Authority shall be addressed as follows:

City of Dyer, Arkansas
P.O. Box 149
Dyer, Arkansas 72935
Attention: Mayor Richard Leakey

The notices or responses to the Grantee shall be addressed as follows:

Cox Communications
901 So. George Washington Blvd.
Wichita, Kansas 67211
Attn: V.P Government Affairs

Cox Communications
4901 S. 48th Street
Springdale, AR 72762
Attention: Dir. Government Affairs

with a copy to:

Cox Communications, Inc.
1400 Lake Hearn Drive
Atlanta, Georgia 30319
Attention: Legal Department

The City and the Grantee may designate such other address or addresses from time to time by giving notice to the other in accordance with the provisions hereof.

Section 14. EFFECTIVE DATE

The effective date of this Franchise is the 17th day of November 2010, pursuant to the provisions of applicable law.

Passed, adopted and effective this 16th day of November, 2010, subject to applicable federal, state and local law.

IN WITNESS WHEREOF, the parties hereto have entered into this Franchise Agreement on _____, 2010.

FRANCHISING AUTHORITY:

City of Dyer, Arkansas

By: [Signature]
Name: Richard Kinney
Title: Mayor

Attest:
[Signature]
REC/TPSP, Clerk

GRANTEE:

CoxCom, Inc.
By: _____
Name: _____
Title: _____