

**IN THE CIRCUIT COURT OF BUTLER COUNTY
THIRTY-SIXTH JUDICIAL CIRCUIT
STATE OF MISSOURI**

CHARLES OGDEN)	
)	
Plaintiff)	
)	No.14BT_____
)	
v.)	
)	
CITY OF POPLAR BLUFF, et al.,)	
)	
Defendants)	

**MOTION FOR
TEMPORARY RESTRAINING ORDER**

COMES NOW Plaintiff, Charles Ogden, a resident of the city of Poplar Bluff and residing at 2526 Clearmont Lane, Poplar Bluff, Missouri, by counsel, who moves, pursuant to Rule 92.02(a) of the Missouri Rules of Civil Procedure, that the Court grant forthwith against Defendants, City of Poplar Bluff, Missouri, a temporary restraining order restraining and enjoining the Defendants, Defendants' agents and employees from executing Ordinance 7483 which was passed in violation of City ordinances and state statutes.

For cause, Plaintiff refers the Court to the affidavit of Charles Ogden dated March 30, 2014, attached hereto as Exhibit A, and incorporated herein by reference, which recites specific facts concerning Defendants violation of City Ordinance Section 110.120 which states:

No ordinance shall be passed except by bill and no bill shall become an ordinance unless on its final passage a majority of the members elected to the Council shall vote therefor and the "ayes" and "nays" shall be entered on the journal. Every proposed ordinance

shall be introduced to the Council in writing and shall be read by title or in full two (2) times prior to passage. Both readings may occur at a single meeting of the Council. If the proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the Council. Upon the request of any Councilman, the ordinance shall be read in full. No bill shall become an ordinance until it shall have been signed by the officer presiding at the meeting of the Council at which it shall have been passed. (R.O. 2007 §2-157; Ord. No. 5215 §1, 10-3-88)

Furthermore, the Defendants are in violation of RSMo §77.080 regarding Cities of the Third

Class which mirrors the City ordinance:

Every proposed ordinance shall be introduced to the council in writing and shall be read by title or in full two times prior to passage, both readings may occur at a single meeting of the council. If the proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the council.

As stated in the affidavit, Defendants passed Bill 7666 / Ordinance 7483 without providing the entire ordinance to the public prior to passing. The ordinance states in Section 1: “Attached hereto, marked Exhibit ‘A’ and incorporated herein by specific reference thereto as if fully set out is a copy of a proposed Asset Purchase Agreement...”

Missouri Courts have held that the provisions in state law describing the procedures to be followed in enacting ordinances are mandatory, and an ordinance passed without complying with such procedures is void. (See *Cimasi v. City of Fenton*, 659 SW2d 532, 535). Additionally, failure to comply with procedures in a city’s charter regarding the method for passing ordinances makes the ordinance void. (See *Hatfield v. Meers*, 402 SW2d 35; *McQuillen, Municipal Corporations* (3rd ed. 201`3) Sec. 16:25) Finally, an ordinance can adopt a document through the principle of incorporation by reference only if the document is part of the public record. (See *McQuillen, Municipal Corporations* , sec. 16:12, *McKee v. City of Geneva*, 280 Ga. 411, 627 SE2d 555, 557 (2006), *City of Hazard v. Collins*, 304 Ky 379, 200 SW2d 933 (1947))

WHEREAS Defendants did not make the Purchase Agreement public record prior to passing Bill 7666 / Ordinance 7483; Defendants did not attach the Purchase Agreement as Exhibit A in the enacting Ordinance; and Defendants passed the Ordinance by reading the only the title of the ordinance.

WHEREFORE Plaintiff prays that this Court enter its immediate temporary restraining order and void ordinance 7483 and enjoin the City of Poplar Bluff from enacting said ordinance.

Respectfully submitted,

[filed electronically]

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Attorney for Charles Ogden

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AFFIDAVIT OF CHARLES OGDEN

COMES NOW Affiant, Charles Ogden of 2526 Clearmont Lane, Poplar Bluff, Missouri, and being duly sworn, does state upon his oath that the following facts are true and correct to the best of his information, knowledge and belief:

1. On March 17, 2014, City Council did convene and have public discussion on Bill No. 7666 / Ordinance 7483.
2. Only part of Bill 7666 / Ordinance 7483 was available for viewing prior to City Council passing it.
3. Bill No. 7666 / Ordinance 7483 makes reference to an attached Exhibit A which was to be part of the ordinance.
4. Exhibit was not attached to the Bill 7666 / Ordinance 7483 and was not available before or during said City Council meeting.

5. City Manager Doug Bagby and City Attorney Wallace Duncan refused to provide Exhibit A prior to passing the Bill No. 7666 / Ordinance 7483 and further stated that Exhibit A could not be released to the public until after Bill No. 7666 / Ordinance 7483 was passed by City Council.
6. The only form of the ordinance provided at the City Council meeting was substantially in the form attached to this document as Exhibit 1 of this document.

AFFIANT SAYETH FURTHER NOT



Charles Ogden, Affiant

Subscribed and sworn to before me this 30th day of March, 2014.



Notary Public

My commission expires: 8/2/15

EXHIBIT 1

cc

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF POPLAR BLUFF, MISSOURI, TO EXECUTE AN ASSET PURCHASE AGREEMENT WITH REGARD TO THE CITY'S CABLE TELEVISION SYSTEM.

WHEREAS, the City of Poplar Bluff owns and operates a cable television system that provides cable television, high speed data, and other services to customers in and around the City of Poplar Bluff; and,

WHEREAS, due to concerns about the future viability of the current system in light of advances in technology and the City's ability to continue to operate such a system in light of ever increasing costs and a finite customer base, the City, through its Municipal Utilities Department, has explored the possibility of selling the cable television system, provided that any such sale would enable the City to retire the bonded indebtedness associated with the construction and development of the system; and,

WHEREAS, the City has retained a consulting firm, Rural Broadband, LLC, to market the City's cable system to viable cable providers in the industry, in order to assess interest and seek bids for the system; and,

WHEREAS, Rural Broadband, LLC, did receive bids from certain providers in the industry who met the standards that were established for the submission of bids; and,

WHEREAS, Rural Broadband, LLC, did determine that the highest and best bid was submitted by Telecommunications Management, LLC, a Missouri Limited Liability Company, for the assets of the City's cable system, including real and personal property, in the total amount of **SEVENTEEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$17,500,000.00)**; and,

WHEREAS, the City Council of the City of Poplar Bluff, Missouri, has been involved in

these negotiations, and after considering all matters, deems it to be in the best interests of the City and its citizens to authorize the Mayor of the City of Poplar Bluff, Missouri, to execute an Asset Purchase Agreement between the City and Telecommunications Management, LLC, relative to the sale of all assets comprising the City's cable television system, including real and personal property, and to retire the outstanding bonded indebtedness associated with the construction and development of the system as set forth more particularly hereinafter.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POPLAR BLUFF, MISSOURI, AS FOLLOWS:

Section 1. Attached hereto, marked Exhibit "A" and incorporated herein by specific reference thereto as if fully set out is a copy of a proposed Asset Purchase Agreement between the City of Poplar Bluff and Telecommunications Management, LLC, relative to the sale by the City to Telecommunications Management, LLC, of all assets comprising the City's cable television system.

Section 2. The City Council of the City of Poplar Bluff, Missouri, hereby approves the sale of the system, and further approves the Asset Purchase Agreement and authorizes the Mayor to execute the same on behalf of the City.

Section 3. That in conjunction with the sale of said assets, all outstanding bonded indebtedness associated with the construction and development of the City's cable television system will be retired.

Section 4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed insofar as they do conflict.

Section 5. This ordinance shall be in force and take effect from and after the date of its passage and approval.

READ TWO TIMES AND PASSED BY THE CITY COUNCIL OF THE CITY
OF POPLAR BLUFF, MISSOURI, THIS 17th DAY OF MARCH, 2014.

APPROVED:

MAYOR

ATTEST:

CITY CLERK