

ORDINANCE No. 10-08

AN ORDINANCE ENACTING CHAPTER 1800 OF THE CITY OF BEXLEY'S CODIFIED ORDINANCES REGARDING CABLE TELEVISION SYSTEMS AND COMPETITIVE VIDEO SERVICE IN ORDER TO COMPLY WITH THE ENACTED OHIO SENATE BILL 117 AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, and such enactment provides for a "uniform regulatory framework" on a statewide basis for the provision of cable television and/or other video service,

WHEREAS, Sections 1332.21 through 1332.34 of the Ohio Revised Code ("R.C.") became effective on September 24, 2007; and

WHEREAS, R.C. Sections 1332.21 through 1332.34 substantially reduced the City of Bexley's ("City") traditional franchising authority under the Cable Communications Policy Act of 1984 as amended by the Telecommunications Act of 1996 (47 U.S.C. 521 et seq.) to regulate cable and/or video service offered in the City using facilities and equipment located in the City's public rights-of-way; and

WHEREAS, the City has a current cable television franchise agreement with Wide Open West ("WOW") which expires by its own terms on or about February 9, 2014 and pursuant to which WOW pays franchise fees up to five percent (5%) of gross revenues which are defined by the franchise agreement to include, inter alia, advertising revenues; and

WHEREAS, the City's has a current cable television franchise agreement with Time Warner which expires by its own terms on or about November 23, 2014 and pursuant to which Time Warner pays franchise fees up to five percent (5%) of gross revenues which are defined by the franchise agreement to include, inter alia, advertising revenues; and

WHEREAS, pursuant to R.C. Section 1332.23, any new video service provider intending to provide video service to subscribers in the City must apply for and obtain a video service authorization ("VSA") from the Director of the Ohio Department of Commerce; and

WHEREAS, Time Warner and AT&T have filed with the State Department of Commerce and been granted the VSA, thereby terminating any cable television franchise agreements with the City; and

WHEREAS, the City must enact regulations for a video service provider consistent with the new provisions of the R.C. establishing the City's requirements and fees for those video service providers granted a VSA; and

WHEREAS, in order for the City's ordinances to reflect the changes in the R.C. including revision of the applicable fee for video service, providing for the appropriate PEG channels, and properly addressing all remaining requirements and conditions of Sections 1332.21 through

1332.34 of the R.C., the City believes it is necessary to enact Chapter 1800 of the Codified Ordinances of the City of Bexley; and

NOW, THEREFORE, BE IT ORDAINED by the Council, of the City of Bexley state of Ohio, a _____ of the elected members concurring that:

Section 1. That Chapter 1800 of the City of Bexley Codified Ordinances is hereby enacted with the following provisions:

§ 1800.01 Definitions:

“Incumbent Cable Provider”. Any person who on the effective date of this Section is the holder of a cable franchise agreement with the City as granted pursuant to requirements of 47 U.S.C 541.

“PEG”. Activities or actions performed for the benefit of public, educational and government video programming by the City.

“Video Service”. The service defined in R.C. Section 1332.21(J).

“Video Service Authorization or VSA”. The authorization granted to a video service provider in accordance with the requirements of R.C. Sections 1332.21 to 1332.34 et seq.

“Video Service Provider Fee or VSP Fee”. The fee paid by a VSP in accordance with the requirements of R.C Section 1332.32.

“Video Service Provider or VSP”. A person, firm, or corporation granted a video service authorization under R.C. Sections 1332.21 to 1332.34 et seq.

§ 1800.02 VSP FEE. In accordance with the requirements of R.C. Section 1332.32, all VSPs providing video service in the City pursuant to a VSA obtained from the Director of the Ohio Department of Commerce shall pay a VSP Fee in the amount of five percent (5%) of gross revenues received from providing Video Service in the City, which gross revenue base shall include advertising revenues. The VSP Fee shall be paid quarterly, not later than sixty (60) days after the end of each calendar quarter.

§ 1800.03 VSP FEE NOTICE PROVISION. Upon receipt of notice from a VSP that it will begin providing Video Service in the City pursuant to a state-issued video service authorization, the City Manager or his/her designee is authorized and directed to provide such VSP with notice of the VSP Fee as determined by this Council in § 1800.02 which notice shall be delivered in a manner that provides for proof of timely delivery.

§ 1800.04 VSP ACCESS PROVISION. Upon receipt of notice from a VSP that it will begin providing Video Service in the City pursuant to a VSA, the City Manager or his/her designee is authorized and directed to provide such VSP with notice that the VSP shall be required to provide the same number of PEG channels in the City under the same service tier conditions and subject to the same channel reclamation conditions as may be proscribed by R.C. Section 1332.30(A)(1)(a-b) for the Incumbent Cable Provider with the most recent obligation in the City, which notice shall be delivered in a manner that provides for proof of timely delivery and shall state the appropriate number of PEG channels and service tiers required to be provided by the VSP within the City within one-hundred and twenty (120) days after delivery of such notice. Additionally, should no PEG channels currently be provided by an Incumbent Cable Provider with such an obligation in the City, the City Manager may provide written notice to a VSP of its obligation to provide PEG channels in accordance with R.C. Section 1332.30(B)(1).

§ 1800.05 ACCESS PROGRAMMING REQUIREMENT. In accordance with the requirements of R.C. Section 1332.30(A)(1)(a) or R.C. Section 1332.30(B)(1) when PEG channels are provided to the City by an Incumbent Cable Provider or VSP, and such PEG channels are required to be programmed by the City with at least forty (40) hours of non-character generated content per week with at least sixty per-cent (60%) of the programming being non-repeat and locally produced. For the purposes of this Section “non-repeat and locally produced” shall mean, the first three (3) playbacks of programming produced or provided by any local resident, the City, or any local public or private agency that provides services to residents of the greater metro area, or any transmission of a meeting or proceeding of any local, state, or federal governmental entity

§ 1800.06 FEE PAYMENT REQUIREMENTS. Any VSP Fee required to be paid to the City by a VSP shall be made quarterly and be remitted directly to the City via a negotiable instrument made payable to the City of Bexley, 2242 East Main Street, Bexley, Ohio 43209, not later than sixty (60) days after the end of a calendar quarter.

§ 1800.07 PEG ORIGINATION POINT. The PEG programming origination point of the City for the delivery of VSP access services shall be located at the City Hall Building located at 2242 East Main Street, Bexley, Ohio 43209,

§ 1800.08 NOTICE REQUIREMENT. Any notice to the City that is required of a VSP in accordance with of R.C. Sections 1332.21 through 1332.34 shall be provided in written form to the City Manager either by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

§ 1800.09 APPLICATION TO INCUMBENT CABLE PROVIDERS. Nothing in this Section shall apply to incumbent cable providers until they are granted a Video Service Authorization in accordance with R.C. 1332.21-1331.34 et seq.

§ 1800.99 PENALTY. Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the third degree and shall be fined not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days, or both. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

Section 2. This ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety and urgent benefit and protection of the inhabitants of the City of Bexley, such emergency being for the reason that in order to ensure that the City continues to timely receive appropriate fees and public access service provision from persons providing video and/or cable service in the City using the City's rights-of-way, it is necessary that the within ordinance become effective at the earliest possible time; wherefore, provided this ordinance receives the affirmative vote of two-thirds or more of the members elected or appointed to this Council, this ordinance shall take effect and be in force immediately upon its passage and execution by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed this 11th day of March, 2008.

John M. Brennan
Mayor - Presiding Officer

Matthew J. Lampe
President of Council

ATTEST:

Zyada
Clerk of Council

APPROVED AS TO FORM:

J. Chodor
LAW DIRECTOR

First Reading 2/12/08

Second Reading 2/26/08

{H1121062.2}

Third Reading 3/11/08 - Passed