



City of Powell, Ohio

ORDINANCE 2008-09

Adopted April 1, 2008

AN ORDINANCE DETERMINING THE VIDEO SERVICE PROVIDER FEE TO BE PAID BY A VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE CITY PURSUANT TO A STATE AUTHORIZATION; AUTHORIZING THE CITY MANAGER TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE FEE; AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio General Assembly enacted Ohio Revised Code, §§1332.21 through 1332.34, to be effective September 24, 2007, to provide a statewide “uniform regulatory framework” for the provision of cable television and/or other video service, which will substantially reduce the City of Powell’s traditional franchising authority to regulate cable and/or video service offered in the City using facilities located in the City’s public rights-of-way; and

WHEREAS, the City has a cable television franchise agreement with Time Warner Cable and pursuant to which Time Warner Cable pays franchise fees in the amount of five percent (5%) of gross revenues; and

WHEREAS, pursuant to R.C. §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 from the Director of the Ohio Department of Commerce; and

WHEREAS, R.C. §1332.23 also permits a cable operator with an effective franchise agreement to terminate its franchise with the City, at its option, by applying for a state-issued video service authorization when a competitive video service provider either gives notice that it will begin providing service to subscribers in the City or actually begins providing service to subscribers in the City, or if the F.C.C. determines that the cable operator is subject to “effective competition” in the City pursuant to 47 C.F.R. 76.907; and

WHEREAS, under R.C. §1332.32, a video service provider that is providing service to subscribers in the City pursuant to a state-issued video service authorization must pay the City a video service provider fee (“VSP Fee”) based on a percentage of the provider’s “gross revenues” derived from providing video service in the City, not to exceed five percent (5%) of such revenues; and

WHEREAS, R.C. §1332.32 requires that the percentage of gross revenues on which VSP Fee is paid must be the same as the percentage of gross revenues that a cable operator pays pursuant to a franchise agreement that is in effect, or, if there is no effective franchise agreement under which franchise fees are payable for a given calendar quarter, the VSP Fee shall be zero percent (0%) of gross revenues, unless the City determines by ordinance that the VSP Fee will be a percentage of gross revenues not to exceed five percent (5%) of gross revenues; and

WHEREAS, R.C. §1332.32(C)(2) further requires the City to provide all video service providers offering service in the City with notice of the VSP Fee requirements within ten (10) days of receiving notice from the video service provider that it will begin offering service in the City, or the video service provider is not required to pay the VSP Fee to the City; and

WHEREAS, R.C. §1332.32(B)(2)(g) provides that the VSP Fee is paid on a base of gross revenues consisting of revenues received from subscribers only, unless the City specifically determines, by ordinance uniformly applicable to all video service providers, that advertising revenues also be included in the base of gross revenues on which the VSP Fee is paid; and

WHEREAS, R.C. §1332.32(B)(2)(g) requires the City to promptly notify affected video service providers of the ordinance determining to include advertising revenues in the base of gross revenues on which the VSP Fee is paid, but provides that the requirement to include advertising revenues in the base

of gross revenues does not take effect until the first day of the first calendar quarter that begins more than thirty (30) days after giving such notice; and

WHEREAS, in order to minimize the negative financial impact on the City, it is the intent of this Council that the Video Service Provider Fee shall be a replacement funding source to compensate for any loss of franchise fees that are presently required by the City's current franchises with Time Warner Cable; and

WHEREAS, in order to provide timely notice to a video service provider of the VSP Fee, it is necessary for this Council to determine now that the percentage of gross revenues that shall be paid as a VSP Fee is five percent (5%) and that advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the City Manager to provide notice of the VSP Fee to a video service provider within ten (10) days of the City receiving notice that a video service provider will begin providing service in the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF POWELL, DELAWARE COUNTY, OHIO, AS FOLLOWS:

Section 1. In accordance with the requirements of R.C. §1332.32, all video service providers providing video service in the City pursuant to a video service authorization obtained from the Director of the Ohio Department of Commerce shall pay the 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 sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter.

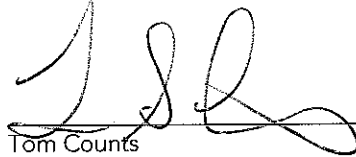
Section 2. Upon receipt of notice from a video service provider that it will begin providing video service in the City pursuant to a state-issued video service authorization, the City Manager is authorized and directed to provide such video service provider with notice of the VSP Fee as determined by this Council in Section 1 above, which notice shall be delivered in a manner that provides for proof of timely delivery.

Section 3. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. 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 Powell such emergency being for the reason that in order to ensure that the City continues to receive appropriate fees 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 City Administrator; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

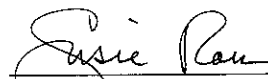
VOTE ON RULES SUSPENSION: Y 6 N 0

VOTE ON ORDINANCE 2008-09: Y 6 N 0



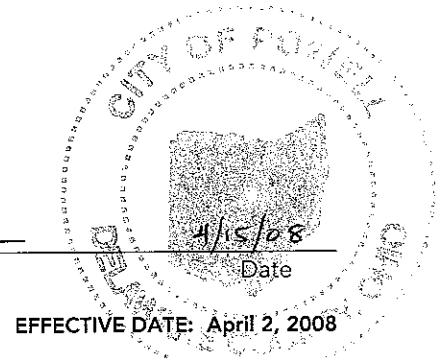
Tom Counts
Mayor

4/14/08
Date



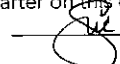
Susie Rags
City Clerk

4/15/08
Date



EFFECTIVE DATE: April 2, 2008

This legislation has been posted in accordance with the City Charter on this date 4/16/08.



Susie Rags
City Clerk

City Council
Tom Counts, Mayor

Richard Cline Don Grubbs Elmer Meider Art Schultz Dan Wiencek