

ORDINANCE NO. 111

AN ORDINANCE RECOGNIZING THE FRANCHISE OF COXCOM, INC., TO PROVIDE VIDEO SERVICES WITHIN THE CITY OF GOSHEN, ARKANSAS; SETTING THE VIDEO SERVICE PROVIDER FEE FOR COXCOM, INC., AND ANY OTHER VIDEO SERVICE PROVIDER; SETTING FORTH THE CONDITIONS ACCOMPANYING THE FRANCHISE; AND FOR OTHER PURPOSES.

WHEREAS, on March 13, 1990, the City Council of the City of Goshen, Arkansas, passed Ordinance No. 6, which granted a new franchise to Dave's Cable TV, to operate a cable television system within the City of Goshen, Arkansas, and which superseded and nullified all such previous franchises and amendments thereto;

WHEREAS, the franchise granted by Ordinance No. 6 passed on March 13, 1990, was assignable by the franchisee and was subsequently assigned to various successors and is now held by CoxCom, Inc.;

WHEREAS, the provisions of the franchise granted by Ordinance No. 6 passed on March 13, 1990, were amended by Ordinance No. VIII passed and approved by the City Council of the City of Goshen, Arkansas on the 8th day of June, 1993;

WHEREAS, the initial term of the franchise granted by Ordinance No. 6 passed on March 13, 1990, was to expire on March 12, 2005, but that term was extended by an Ordinance adopted on April 9, 2002, and was scheduled to expire on March 12, 2020, per the terms of that renewal, however the effectiveness of that ordinance has been called into question since there is no record of it having been properly published;

WHEREAS in the 89th General Assembly Regular Session, 2013, the Arkansas legislature passed Act 276, commonly known as the Arkansas Video Service Act of 2013 ("the Act"), which was codified as Arkansas Code Annotated §§ 23-19-201, *et seq.*;

WHEREAS the Act permits Video Service Providers with existing Franchises from Governing Bodies to apply for and obtain a Franchise from the Arkansas Secretary of State, the effect thereof being that the affected Governing Body continues to receive a Video Service Provider Fee;

WHEREAS, CoxCom, Inc., according the records of the Secretary of State, on August 15, 2013, applied for and obtained from the Arkansas Secretary of State a Franchise with regard to the City of Goshen, *inter alia*, and which Franchise expires on August 15, 2023; and

WHEREAS, the City of Goshen has the right, pursuant to the Act, to set its Video Service Provider Fee for payment by the Video Service Providers' gross revenues, as defined in the Act, collected by CoxCom, Inc., and any other Video Service Provider, within the boundaries of the City of Goshen.

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

Section 1: ACKNOWLEDGMENT OF FRANCHISE

The City of Goshen, Arkansas, hereby acknowledges the Franchise issued by the Arkansas Secretary of State to CoxCom, Inc., as the incumbent Video Service Provider, as described above, which Franchise bestows upon CoxCom, Inc., all of the rights, privileges, and authority to provide Video Services set forth in the Act. CoxCom, Inc., and any other non-incumbent Video Service Provider shall comply with all requirements of the Act.

Section 2: DEFINITIONS AND CONSTRUCTION

For the purposes of this section, the terms Franchise, Governing Body, Incumbent Video Service Provider, Non-incumbent Video Service Provider, Video Service, Video Service Provider, and Video Service Provider Fee shall have the meanings set forth in Arkansas Code Annotated § 23-19-202. Further, the term, gross revenues, shall include all revenues included within the definition of that term as set forth in Arkansas Code Annotated § 23-19-206(a).

Section 3: PROTECTION OF CITY PROPERTY AND RIGHTS OF WAY

Except as provided in Ordinance 69, and any amendments thereto, or any similar ordinance enacted to protect city streets and rights of way, no fees or charges of any kind shall be imposed by the City of Goshen upon CoxCom, Inc., or upon any successors, or upon any consumer of Video Services, for the breaking or opening of any highway, street, road, avenue, alley, or other public places, or for the laying of any main, service pipe or other connections therein, except as would be generally imposed on others performing similar work under similar circumstances and conditions.

Nothing in this ordinance shall be construed as to in any manner abridge the right of the City to pass and enforce the necessary police regulations for the purpose of protecting the citizens of said City and their property and the property of CoxCom, Inc.

CoxCom, Inc., shall at all times keep and display the necessary danger signals and proper guards around all excavations and obstructions and shall keep sufficient space in good condition for the travel of vehicles on at least one side of all excavations and obstructions, and shall as soon as practicable restore all openings on the highway, road, street, avenue, alley and other public places to condition equally as good as before said openings or obstructions were made. Anything to the contrary notwithstanding, when in the judgment of CoxCom, Inc., it is necessary for the safety of the citizens, to divert or detour traffic from the area of excavations they have the power to so do upon notice to said City.

Section 4: INDEMNIFICATION

Neither CoxCom, Inc., nor any other Video Service Provider, shall do injury to any highway, road, street, avenue, alley, lane, bridge, stream or water course, park or public place, except as specifically allowed, nor with any public or private sewer or drainage system, or water lines, now or hereafter laid or constructed by the said City, or by any authorized person or corporation, but no sewer or water pipes, electric conduits, telephone or TV cables shall be so laid as to interfere unnecessarily with any telephone line, which shall have been erected or laid, prior to the time of laying such electric conduits, telephone and TV cables, sewer or water pipes. CoxCom, Inc., as incumbent Video Service Provider, as well as any other non-incumbent Video Service Provider, shall fully indemnify and save harmless the City from any and all claims for damage for which said City shall or might be made or become liable by reason of the Franchise held by such Video Service Providers to act within the boundaries of the City, or any negligence or carelessness on the part of said Video Service Provider, or because of any act or omission of a Video Service Provider in the construction and operation of its system.

Section 5: COOPERATION

CoxCom, Inc., and any other Video Service Provider shall furnish promptly to the proper authorities any and all information which may be asked for by them in regard to the size, location or depths of any of the overhead lines, underground lines, risers, conduits, service pipes, or other facilities, in any form whatsoever, and any other information in regard to its occupation of roads, highways, streets, avenues, or public grounds of said City, which they may demand.

Section 6: RELOCATIONS

(a) Relocation of Cable System Facilities in Public Ways. Within 90 days, unless extended or modified by the Mayor or the Mayor's duly appointed representative, following written notice from the City, CoxCom, Inc., or any other Video Service Provider shall, at its own expense, temporarily or permanently remove or relocate, change or alter the position of any facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration is reasonable necessary for:

1. The construction, repair, maintenance or installation of any city or other public improvement in or upon the public ways.
2. The operations of the City or other government entity in or upon the rights-of-way.

In the event CoxCom, Inc., or any other Video Service Provider fails to remove or relocate its equipment within the 90 days, said Video Service Provider shall pay \$500 per day for every day after the 90 days in which the equipment is not removed or relocated. Provided, however, that the time provided herein may be extended for delays not caused by the Video Service Provider.

(b) Emergency Removal or Relocation of Facilities. The City retains the right and privilege to cut or move any facilities located within the rights-of-way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency if CoxCom, Inc., or any other Video Service Provider is unable to timely respond; provided however, that the City will use only trained and qualified personnel for the work. The City will notify the Video Service Provider of any such actions within a reasonable time thereafter.

(c) Moving of Buildings. CoxCom, Inc., or any other Video Service Provider shall temporarily remove, raise or lower wires 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 the Video Service Provider shall not be required to remove, raise or lower its wires with less than 48 hours advance notice or mutually agreed upon time.

Section 7: VEGETATION MANAGEMENT

CoxCom, Inc., or any other Video Service Provider shall have the authority to trim trees or other natural growth overhanging any of its cable television system or facilities so as to reasonably prevent branches from coming in contact with the Video Service Provider's wires, cables, or other equipment; however the Video Service Provider shall not engage in excessive trimming. Except during an emergency or the recovery after an emergency, the Video Service Provider 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 8: VIDEO SERVICE PROVIDER FEE

CoxCom, Inc., and any other Video Service Provider providing Video Services within the City of Goshen, shall pay to the City a Video Service Provider Fee in an amount equal to 3.00% of the Video Service Provider's gross revenues from within the boundaries of the City of Goshen. Payments shall be made by the Video Service Provider to the City pursuant to the requirements of Arkansas Code Annotated § 23-19-206(c). In addition, the payment of the Video Service Provider Fee shall be accompanied by a report which satisfies the requirements of Arkansas Code Annotated § 23-19-206(g).

Section 9: AUDIT

The City reserves the right to conduct an audit of CoxCom, Inc., or any other Video Service Provider as set forth in Arkansas Code Annotated § 23-19-206(h) and to address the payment of any undisputed amount or refund due as set forth in Arkansas Code Annotated § 23-19-206(i).

Section 10: TERM

Pursuant to Arkansas Code Annotated § 23-19-203, the term of the Franchise of

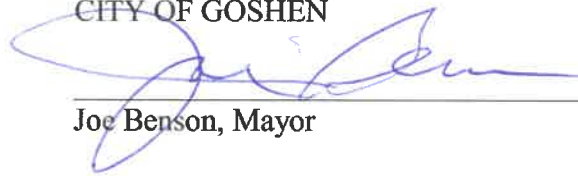
CoxCom, Inc., shall expire ten years from its effective date, i.e. August 15, 2023.

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.

PASSED AND APPROVED this 11th day of March, 2014.

CITY OF GOSHEN



Joe Benson, Mayor

ATTEST:


Sharon Baggett, City Recorder

APPROVED AS TO FORM:


Charles Harwell, City Attorney

ROLL CALL

Names Of Those Voting YEA

Andy Bethell
Lanny Samuels
Dick Seddon
Mayor Joe Benson

Names Of Those Voting NAY

Absent

Paula Anderson
Brian Buell
Max Poye