

ORDINANCE NO. 07-44 AC CMS

AN ORDINANCE AMENDING CHAPTER 909 OF THE OBERLIN CODIFIED ORDINANCES ("UTILITIES GENERALLY") TO ENACT NEW SECTION 909.07 REQUIRING THAT THE CITY OF OBERLIN MUNICIPAL UTILITIES BE THE SOLE PROVIDERS OF WATER SERVICE, ELECTRIC POWER SERVICE, AND SEWER SERVICE TO ALL NEW CUSTOMERS IN THE CITY AND DECLARING AN EMERGENCY

WHEREAS, the City of Oberlin owns and operates the Municipal Water Division, the Oberlin Municipal Light & Power Department, and the Water Environmental Protection Division (collectively the "City of Oberlin Municipal Utilities") and provides water service, electric power service, and sewer service to customers within the City of Oberlin pursuant to Chapters 911, 913, and 915 of the Oberlin Codified Ordinances, respectively; and

WHEREAS, pursuant to Section 4, Article XVIII of the Ohio Constitution, the City has exclusive power to contract for public utility services within the City's corporate boundaries; and

WHEREAS, this Council has determined that it is in the City's best interest to amend Chapter 909 of the Oberlin Codified Ordinances to enact a new Section 909.07, requiring that any new contracts for water service, electric power service, and sewer service within the City of Oberlin, including any territories annexed thereto, be entered into exclusively with the City of Oberlin Municipal Utilities.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, Lorain County, State of Ohio, five-seventh (5/7ths) of all members elected thereto concurring:

SECTION 1: That Chapter 909 of the Oberlin Codified Ordinances ("Utilities Generally") is hereby amended to enact a new Section 909.07 to read as follows:

(a) All new utility service contracts for providing water service, electric power service, or sewer service within the corporate limits of the City of Oberlin, as the same may be altered from time to time by annexation or otherwise, shall be entered into exclusively with, and such utility service shall be provided exclusively by, the Municipal Water Division, the Oberlin Municipal Light & Power Department, and the Water Environmental Protection Division ("City of Oberlin Municipal Utilities") pursuant to Chapters 911, 913, and 915, unless otherwise specifically approved by Council.

(b) Providers of water service, electric power service, or sewer service, other than the City of Oberlin Municipal Utilities, shall not, after the effective date of this Section 909.07:

(1) Provide utility service to any person or facility within the City that was not a current active customer of the provider on the effective date of this Section 909.07; or

(2) Expand, upgrade, or improve their existing facilities within the City;

or

(3) Provide service to a current customer at a location other than the location where the utility service was being provided on the effective date of this Section 909.07.

(c) Whoever violates any provision of this Section 909.07 is guilty of a minor misdemeanor, the penalty for which shall be a maximum fine of One Hundred and Fifty Dollars (\$150.00) and no imprisonment. Each subsequent violation of the same provision of this Section 909.07 shall be a misdemeanor of the fourth degree, the penalty for which shall be a maximum fine of Two Hundred and Fifty Dollars (\$250.00) and/or up to thirty (30) days imprisonment. Each day of violation of a provision of this Section 909.07 is a separate offense. Organizations shall be fined in accordance with Section 501.99(c) of the Codified Ordinances. In addition to any penalties provided for in this Section 909.07, any equitable or other remedies available may be sought by the City.

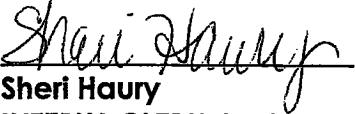
SECTION 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees or subcommittees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

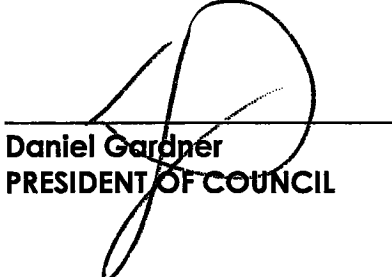
SECTION 3: That this Ordinance is hereby declared to be an emergency measure immediately necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department to wit:

“to immediately ensure that all new contracts for water service, electric power service, and sewer service in the City, including any territory annexed thereto, shall be entered into with, and such utility service shall be provided by, the City of Oberlin Municipal Utilities,” and shall take effect immediately upon passage.

PASSED: 1st Reading – May 7, 2007 (E)
2nd Reading -
3rd Reading -

ATTEST:


Sheri Haury
INTERIM CLERK OF COUNCIL


Daniel Gardner
PRESIDENT OF COUNCIL

POSTED: May 8, 2007

EFFECTIVE DATE: May 8, 2007



OBERLIN MUNICIPAL LIGHT AND POWER SYSTEM ♦ 289 SOUTH PROFESSOR STREET ♦ OBERLIN, OHIO 44074

Phone (440)775-7260

Fax (440)775-1546

MEMORANDUM

To: Gary Boyle, Interim City Manager
Re: Exclusive Right to Serve Ordinance
From: Steve Dupee, Electric Director
Date: April 27, 2007

A handwritten signature in black ink, appearing to read "A. Dupee", is written over the "From:" line of the memorandum header.

Over the last few months, Law Director Severs, Public Works Director Baumann and I have been working with Mr. John Gibbon, an attorney with the Cleveland law firm Walter and Haverfield, LLC, and a well-known expert on municipal right-of-way and cable communications issues, to draft an exclusive right to serve ordinance (copy attached) for the City's water, sewer and electric utilities. This ordinance proposes to amend Chapter 909 of the Codified Ordinances to enact a new section 909.07 requiring utility customers within the city's corporate boundaries to obtain utility services from the City. Upon the effective date of this ordinance, non-city utility providers would not be permitted to provide utility service within the City's corporate boundaries, with the exception of their current active customers. The ordinance would also prohibit the expansion, upgrade or improvement of facilities owned and operated by non-city utility providers within the city's corporate boundaries. Finally, the ordinance would stipulate that a non-city utility provider shall not provide utility service to a current active customer at a location other than the location where the utility service was being provided on the effective date of the ordinance. The primary legal authority for the draft ordinance is Section 4 of Article XVIII of the Ohio Constitution, and the Miller Act as interpreted by the Ohio Supreme Court in *State, ex rel. Toledo Edison v. City of Clyde*, 76 Ohio St. 3d 508 (1996).

Simply stated, passage of this ordinance will reaffirm our rights under the Ohio Constitution and protect the City's interests for providing utility service within our corporate boundaries as may be altered from time to time by annexation. As you well know, the City has approved the annexation of several properties in the Route 58/20 corridor and has reviewed many site plans for proposed retail and residential development plans. The City has also designed and constructed utility improvements over the last several years in the Route 58/20 corridor to prepare for impending load growth. This ordinance will serve to protect the City's interest in serving existing and new loads within the corporate boundaries, as may change from time to time by annexation, as well as the City's investments in current and future utility infrastructure.

This ordinance is the first of two related to our municipal utilities and our public right-of-ways. The second, which is in draft form and still subject to review and possible revision, speaks to the control of our public right-of-ways. It will provide an orderly process for third parties to apply to the City for the right to occupy our right-of-ways with their equipment, cables, etc. Mr. Gibbon is also assisting us with the drafting of that legislation. We hope to have that legislation ready for City Council review and approval within the next month or so.

I respectfully request that the attached ordinance be placed on the May 7th City Council agenda for emergency consideration. In the meantime, I am available to answer any questions.

/sd

cc: Eric Severs, Law Director
Jeff Baumann, Public Works Director

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WHEREAS, this Council has determined that it is in the City's best interest to amend Chapter 909 of the Oberlin Codified Ordinances to enact a new Section 909.07, requiring that any new contracts for water service, electric power service, and sewer service within the City of Oberlin, including any territories annexed thereto, be entered into exclusively with the City of Oberlin Municipal Utilities.

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