

ORDINANCE NO.: 93 -2007
INTRODUCED BY: Alexander

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 VIDEO SERVICE AUTHORIZATION; AUTHORIZING THE MAYOR TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE VIDEO SERVICE PROVIDER FEE; AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, 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’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 which expires by its own terms on or about October 14, 2010, and pursuant to which Time Warner pays franchise fees in the amount of five percent (5%) of gross revenues which are defined by the franchise 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 from the Director of the Ohio Department of Commerce; and

WHEREAS, R.C. Section 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 FCC determines that the cable operator is subject to “effective competition” in the City pursuant to 47 CFR 76.907; and

WHEREAS, under R.C. Section 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. Section 1332.32 requires that the percentage of gross revenues on which VSP Fees are 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. Section 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. Section 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. Section 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 as equivalent as possible to the franchise fees required by the City's franchise with Time Warner; 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 on which the VSP Fee will be paid 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 Mayor 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 Council of the City of Richmond Heights, State of Ohio that:

Section 1. Subject to Ohio Senate Bill 117 going into legal effect, in accordance with the requirements of R.C. 1332.32 enacted thereby, 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 Video Service Provider Fees ("VSP Fees") 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. No later than ten (10) days from 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 Mayor is authorized and directed to provide such video service

provider with notice of the VSP Fee as determined by this Council above, which notice shall be delivered in a manner that provides for proof of timely delivery.

Section 3. 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 determined to be an emergency measure necessary for the preservation of the public peace, health, safety and welfare 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; wherefore, provided this Ordinance receives the affirmative vote of five members of Council elected or appointed, it shall take effect 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: _____

Daniel J. Ursu, Mayor

APPROVED: _____

ATTEST: _____

Betsy Traben
Clerk of Council

David H. Roche
President of Council