

## ORDINANCE NO. 07-76 AC CMS

### 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 CITY MANAGER 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 of Oberlin'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 of Oberlin had a cable television franchise agreement with Oberlin Cable Co-op, Inc which expired on June 19, 2001, and,

WHEREAS, on June 5, 2001, this Council, pursuant to Ordinance No 01-52 AC CMS, authorized an interim agreement with Cable Co-Op, Inc pursuant to which Oberlin Cable Co-op, Inc. continues to provide service and to pay franchise fees in the amount of five percent (5%) of gross revenues which are defined by the previous franchise to include, *inter alia*, advertising revenues, and

WHEREAS, R.C Section 1332 23 provides that a cable operator providing video service pursuant to the terms of an expired franchise on the effective date of S B 117 must apply for a video service authorization from the Director of the Ohio Department of Commerce no later than ninety (90) days from the effective date of S B 117, 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, 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 provides that 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 of the statewide franchising law on the City it is the intent of this Council to charge the maximum Video Service Provider Fee with the most expansive definition of gross revenues allowed by law; 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 Council of the City of Obelrin, Lorain County, State of Ohio, 5/7ths of all members elected thereto concurring

SECTION 1 That Subject to Ohio Revised Code Section 1332.32 taking effect, in accordance with the requirements of said 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 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 as permitted and defined by R.C 1332 32(B)(2)(g) 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** That the City Manager is hereby authorized and directed, 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, 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** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of the City of Oberlin, or to provide for the usual daily operation of a municipal department, to wit

" 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 at the earliest date possible" and shall take effect immediately upon passage

**PASSED.** 1<sup>st</sup> Reading – September 17, 2007 (E)  
2<sup>nd</sup> Reading –  
3<sup>rd</sup> Reading –

**ATTEST:**

  
Belinda B Anderson  
CLERK OF COUNCIL

  
Daniel Gardner  
PRESIDENT OF COUNCIL

**POSTED 9-18-07**

**EFFECTIVE DATE 9-18-07**