

ORDINANCE NO. O2015-48

AN EMERGENCY ORDINANCE ESTABLISHING A VIDEO SERVICE PROVIDER FEE TO BE PAID BY ANY VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE CITY; AUTHORIZING THE CITY MANAGER TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE VIDEO SERVICE PROVIDER FEE

WHEREAS, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, effective September 24, 2007, to provide a statewide "uniform regulatory framework" for the provision of cable television and/or other video service (the "Video Law"); and

WHEREAS, under the Video Law a video service provider that is providing video 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 received from providing video service in the City, not to exceed five percent (5%) of such gross revenues; and

WHEREAS, the Video Law 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 in the City (the "VSP Fee Percentage") or, if there is no effective franchise agreement under which franchise fees are payable for a given calendar quarter, the VSP Fee percentage 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, the Video Law further requires the City to provide a video service provider with written notice of the VSP Fee Percentage within ten (10) days of receiving notice from the video service provider, pursuant to R.C. 1332.27(A), that it will begin offering service in the City; and

WHEREAS, the Video Law provides that advertising revenues will not be included in the gross revenues base upon which the VSP Fee Percentage is applied unless the City specifically enacts an Ordinance uniformly applicable to all video service providers requiring that advertising revenues also be included in the gross revenues base; and

WHEREAS, the Video Law requires the City to promptly notify affected video service providers of the Ordinance that requires the inclusion of advertising revenues in the gross revenues base and that requirement will not take effect until the first day of the first calendar quarter that begins more than thirty (30) days after giving such notice of the Ordinance; and

WHEREAS, in order to provide timely notice to a video service provider of the VSP Fee Percentage and of the inclusion of advertising revenues in the VSP Fee gross revenues base, it is necessary for this Council (i) to establish the VSP Fee Percentage; (ii) to include advertising revenues in the VSP Fee gross revenues base, and (iii) to authorize the Mayor to provide the appropriate notice of the VSP Fee Percentage and the inclusion of advertising revenues in gross revenues 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 COMMISSION OF THE CITY OF GALLIPOLIS, STATE OF OHIO:

Section 1. That the City Commission of the City of Gallipolis, Ohio, hereby establishes a VSP Fee that is calculated by applying a VSP Fee Percentage of five percent (5%) to the video service provider's gross revenues as defined in Section 1332.32(B) of the Video Law. For purposes of calculating the VSP Fee, the provider's gross revenues shall include advertising revenues in accordance with Section 1332.32(B)(2)(g) of the Video Law. The VSP Fee Percentage and Video Law gross revenues definition, as modified in this Ordinance, shall apply equally to all video service providers and cable television operators providing video service in the City.

Section 2. That the VSP Fee shall be paid by each video service provider providing service in the City on a quarterly basis but not sooner than forty-five (45) days nor later than sixty (60) days after the end of the each calendar quarter. R.C. §1332.32(A).

Section 3. That the City Manager is authorized and directed to provide any video service provider with notice of the VSP Fee Percentage and gross revenues definition as determined by this City Commission above, which notice shall be given by certified mail, upon receipt of notice from such video service provider that it will begin providing video service in the City pursuant to a state-issued video service authorization.

Section 4. That it is found and determined that all formal actions of the City Commission concerning and relating to the adoption of the Ordinance were adopted in an open meeting of the City Commission, and 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 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare in order to ensure that the City of Gallipolis, Ohio, receives appropriate fees from persons providing video and/or cable service in the City using the City's rights-of-way, this Ordinance shall become immediately effective upon receiving the affirmative vote of two-thirds of all member elected to the City Commission and approval of the City Manager, otherwise from and after the earliest period allowed by law, retroactive to September 23, 2015.

PASSED: October 20, 2015

ATTEST: Annette M. Handen

Annette M. Handen
Clerk of the City Commission

Steve S. Walker
President of the City Commission

The foregoing Ordinance is hereby approved as to form.

David S. [Signature]
Gallipolis City Solicitor