

RESOLUTION NO.: 2007-R71
SPONSOR: MAYOR CROGHAN
INTRODUCED: OCTOBER 9, 2007

INTERGOV. & UTIL.
ASSIGNED TO: _____

A RESOLUTION ESTABLISHING THE VIDEO SERVICE PROVIDER FEE TO BE PAID BY A VIDEO SERVICE PROVIDER OFFERING SUCH SERVICE IN THE CITY PURSUANT TO A VIDEO SERVICE AUTHORIZATION; AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO NOTIFY THE VIDEO SERVICE PROVIDER OF THE FEE, AND DECLARING AN EMERGENCY.

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, which will substantially reduce the City of Green'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 Green has a cable television franchise agreement with Time Warner which expires by its own terms on or about May 19, 2010, and pursuant to which Time Warner pays franchise fees in the amount of four percent (4%) of gross revenues which are defined by the franchise to include fees received from subscribers; 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 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 establish now that the percentage of gross revenues on which the VSP Fee will be paid is four percent (4%) and that advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the Director of Public Service 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 RESOLVED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT AND STATE OF OHIO THAT:

SECTION ONE:

Subject to Ohio Revised Code Section 1332.32 taking effect, in accordance with the requirements of 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 four percent (4%) 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. During any quarter there is an effective franchise agreement, the VSP Fee shall be the same percentage as the franchise agreement.

SECTION TWO:

The Director of Public Service is 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, which notice may be given by overnight (return receipt), certified mail, or other manner of delivery, no later than ten (10) days from receipt of the provider's notice.

SECTION THREE:

The City of Green finds and determines that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meetings of this Council and any deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION FOUR:

Council declares this to be an emergency immediately necessary for the preservation of the public peace, health, safety and welfare of the citizens of Green. Provided that this legislation receives the affirmative vote of three-fourths of the members elected or appointed to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force at the earliest time allowed by law.

ADOPTED: NOVEMBER 13, 2007

Molly Stevens
Molly Stevens, Clerk

Bruce Marwaring
Bruce Marwaring, Council
President

APPROVED: November 13, 2007

Daniel L. Croghan
Daniel L. Croghan, Mayor

COPIED Chuck Lyons
SVCE ZONE PARK ROAD ENG
LAW FIN/MAY PLAN FIRE

ENACTED EFFECTIVE: November 13 2007

ON ROLL CALL: Colopy-*YEA* Croce-*YEA* France-*YEA* Manwaring-*YEA*
Padrutt-*YEA* Ridgeway-*YEA* Smole-*absent* Adopted 6-0

Suburbanite publication on November 19 and November 26, 2007

Molly Stevens
Molly Stevens, Clerk

10/2/2006 8:43 AM Approved as to form and content by Stephen J. Pruneski, Law Director

SP 10/2/07