

SPONSOR

*Smith/E Brown*

**ORDINANCE NO. 108-08**

AN ORDINANCE ESTABLISHING A VIDEO SERVICE PROVIDER FEE TO BE PAID BY ANY VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE CITY; 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 1332.24 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”), which will substantially reduce the City of Jackson’s traditional franchising authority to regulate cable and/or video service offered in the City using facilities located on the City’s public rights-of-way; 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 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 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 revenue unless the City determines by Ordinance that the VSP 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, in order to provide timely notice to a video service provider of the VSP Fee Percentage, it is necessary for this Council (i) to establish the VSP Fee Percentage; and (ii) to authorize the Mayor to provide the appropriate notice of the VSP Fee Percentage 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 JACKSON, STATE OF OHIO, as follows:

**Section One.** This Council 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 1332.23(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 Two.** 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 each calendar quarter. R.C. 1332.32(A).

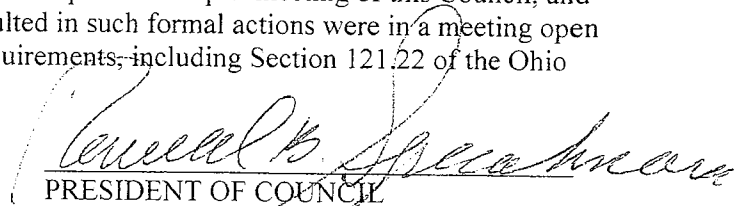
**Section Three.** That the Mayor is authorized and directed to provide any video service provider with notice of the VSP Fee Percentage as determined by this Council above, which notice shall be given by certified mail, upon receipt of notice from such video service provider that it will begin providing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

**Section Four.** This Ordinance is hereby declared to be an emergency Ordinance, necessary for the immediate preservation of the public peace, health or safety of the City of Jackson, in that it is necessary to approve this VSP Fee Percentage as notice was received from Time Warner Cable, a video service provider, by letter dated October 16, 2008, and the 10 day period has commenced, although Time Warner in the letter has agreed to extend the 10 day time limit until this Ordinance is formally adopted. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

**Section Five.** In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

**Section Six.** In is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 11-25-08

  
PRESIDENT OF COUNCIL

  
CLERK OF COUNCIL

Approved:

Date: 11-25-08

  
MAYOR