

# RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30043

2009-05

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_

March 17 \_\_\_\_\_

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**AN ORDINANCE ESTABLISHING A VIDEO SERVICE PROVIDER FEE TO BE PAID BY ANY VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE CITY OF BROOKVILLE, OHIO AND AUTHORIZING THE CITY MANAGER TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE VIDEO SERVICE PROVIDER FEE, AND DECLARING IT 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 (the “Video Law”); and

**WHEREAS**, the City of Brookville has a cable television franchise agreement with Time Warner Cable, A Division of Time Warner Entertainment Company L.P. which expires by its own terms on or about June 7, 2009 and pursuant to which Franchisee is paying franchise fees in the amount of three percent (3%) of the gross revenue it receives from cable subscribers in the City; 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 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**, 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 City Manager 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 BROOKVILLE, OHIO, THAT:**

**SECTION I:** That the Council hereby adopts the following regulations to be entitled **Chapter 743 Video Service Providers:**

**743.01 DEFINITIONS.**

- (a) “Video service” means the service defined in Ohio R.C. 1332.21(J).
- (b) “Video service authorization” or “VSA” means the authorization granted to a video service provider in accordance with the requirements of Ohio R.C. 1332.21 to 1332.34.
- (c) “Video service provider” or “VSP” means a person, firm, or corporation granted a video service authorization under Ohio R.C. 1332.21 to 1332.34.

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- (d) "Video service provider fee" or "VSP fee" means the fee paid by a VSP in accordance with the requirements of Ohio R.C. 1332.32.

## 743.02 VSP FEE.

In accordance with the requirements of Ohio R.C. 1332.32, all VSPs providing video service in the City pursuant to a VSA obtained from the Director of the Ohio Department of Commerce shall pay a VSP fee in the amount of 3% of gross revenues, as defined in Ohio R.C. Section 1332.32(B), received from providing video service in the City. Gross revenues shall not include advertising revenues. The VSP fee shall be paid quarterly, not later than 60 days after the end of each calendar quarter.

## 743.03 VSP FEE NOTICE PROVISION.

Upon receipt of notice from a VSP that it will begin providing video service in the City pursuant to a State-issued video service authorization, the City Manager or his or her designee is authorized and directed to provide such VSP with notice of the VSP fee as determined by this Council in Section 743.02, which notice shall be delivered in a manner that provides for proof of timely delivery.

## 743.04 FEE PAYMENT REQUIREMENTS.

Any VSP fee required to be paid to the City by a VSP shall be made quarterly and be remitted directly to the City via a negotiable instrument made payable to the City of Brookville, 301 Sycamore Street, Brookville, Ohio 45309, not later than 60 days after the end of a calendar quarter.


## 743.05 NOTICE REQUIREMENT.

Any notice to the City that is required of a VSP in accordance with Ohio R.C. 1332.21 through 1332.34 shall be provided in written form to the City Manager either by certified mail, express mail or upon personal delivery, all evidenced by a return receipt.

**SECTION II:** This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the citizens of the City of Brookville, Ohio and for the timely notification of the FSP Fee Percentage as required by this Ordinance. Therefore, this Ordinance shall take effect and be in force from and after its passage as provided in the Charter of the City of Brookville, Ohio.

PASSED this 17th day of March 2009.

  
Sonja M. Keaton, Clerk

  
David E. Seagraves, Mayor

## CERTIFICATE

The undersigned, Clerk of the City of Brookville, Ohio, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2009-05, passed by the Council of the City of Brookville, Ohio, on the 17th day of March 2009.

  
Sonja M. Keaton, Clerk

## CERTIFICATE OF POSTING

The undersigned, Clerk of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2009-05 was posted at the City Building, US Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the 19th day of March 2009 to the 18th day of April 2009, both days inclusive.

  
Sonja M. Keaton, Clerk