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Chapter 50 - TELECOMMUNICATIONS

ARTICLE II. CABLE TELEVISION

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Sec. 50-19. Purpose and scope of article.

This article provides for city regulation and use of the cable television system, including its construction, operation and maintenance in, along, upon, across, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the city, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for a cable television system, and provides conditions accompanying the grant of a franchise and providing for the city's regulation of cable television system operation.

(Ord. of 12-16-1996(1), § 1.1)

Sec. 50-20. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cable television company and *company* mean any person owning, controlling, operating, managing or leasing a cable television system within the city.

Cable television system means any facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, or originates its own signals produced through any of its community access channels, and distributes such signals by wire or cable to subscribing members of the public who pay for such services. The term does not include any such facility that serves fewer than 50 subscribers or that serves only the residents of one or more apartment dwellings under common ownership, control or management and commercial establishments located on the premises of the apartment dwellings.

City means the City of Auburn, organized and existing under the laws of the state, and the area within its territorial limits.

(Ord. of 12-16-1996(1), § 1.2)

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Sec. 50-21. Cable television advisory board.

- (a) *Authorized.* The municipal officers are hereby authorized to establish a cable television advisory board and to enter into an interlocal agreement with the City of Lewiston and other municipalities served by the cable system serving the city for the purpose of establishing a cable television advisory board.
- (b) *Membership.* The municipal officers are hereby authorized to appoint up to six volunteer members to the cable television advisory board for the city. In addition, the city manager or his designee shall be an advisory member to the board.
- (c) *Duties.* The cable television advisory board shall have the following duties:
 - (1) Propose such rules and regulations as it may deem necessary for monitoring the operation of the cable television system, such rules and regulations being subject to the approval of the municipal officers. All such rules and regulations shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems, but may, unless expressly preempted, be more detailed, more restrictive, or more strict than applicable Federal Communications Commission regulations.
 - (2) Make recommendations to the city and the cable television company concerning educational and local interest programming.
 - (3) Resolve complaints, disputes or disagreements between subscribers and the company.
 - (4) Advise and review the preparation of specifications for bids or requests for proposals for cable television franchises, and invite bids or issue requests for proposals for such franchises. Before issuing a request for proposals or soliciting bids, the cable television advisory board shall determine any special local needs or interests, whether by actively seeking to determine those needs or interests or by allowing a period for public comment on a proposed request for proposals. Upon receipt of bids or proposals, it shall study the bids or proposals and make recommendations on the awarding of a franchise, such recommendations being subject to the approval of the municipal officers.
 - (5) Oversee and administer the use and operation of local public, educational and governmental access facilities.

(Ord. of 12-16-1996(1), § 1.7; Ord. of 4-28-1997)

Sec. 50-22. Franchise—Required.

No person shall install, maintain or operate within the city or any of its public streets or other public areas any equipment or facilities for the operation of a cable television system unless a franchise agreement authorizing the use of the public streets or areas has first been obtained pursuant to the provisions of this article and unless the franchise agreement is in full force and effect.

(Ord. of 12-16-1996(1), § 1.3)

Sec. 50-23. Same—Granting of application; revocation of.

- (a) *Authority to grant franchise.* The municipal officers of the city may contract on such terms, conditions and fees as are in the best interest of the city and its residents with one or more cable television companies for the operation of a cable television system within the city, including the granting of nonexclusive franchise agreements for the operation thereof for a period not to exceed 15 years.

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- (b) *Application fee.* Applicants for a franchise agreement, including applicants for renewal of a franchise agreement, shall pay a reasonable fee to the city to defray the cost of public notices, advertising and other expenses relating to or incurred by the city in acting upon such applications. The amount of the fee is to be determined by the municipal officers.
- (c) *Contents of application.* The application shall be filed with the city clerk and shall contain such information as the city may require, including, but not limited to a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its previous two fiscal years, an estimated ten-year financial projection of its proposed system and its proposed annual city franchise fee or the basis for the fee, and a statement detailing the prior operational experience of the applicant in both cable television and microwave service, including that of its officers, management and staff to be associated with the proposed operation.
- (d) *Public comment.* Prior to issuing a request for proposals to any cable television company for franchise agreements or renewals, the city shall hold a public hearing or conduct some other process to determine any special local needs or interests with respect to cable television service and shall allow for a period of public comment on the request for proposals.
- (e) *Applications to be public records.* Franchise agreement applications, including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the city shall provide reasonable notice to the public that such documents are open to public inspection during reasonable hours.
- (f) *Revocation of agreement.* A franchise agreement may be revoked by the municipal officers for good and sufficient cause after due notice to the company and a public hearing thereon, with the sole right to appeal to the county superior court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

(Ord. of 12-16-1996(1), § 1.4)

Sec. 50-24. Same—Review of qualifications of applicant; public hearing.

Before authorizing the issuance of any franchise agreement under this article, including renewals, and approvals of any transfers of ownership, property or rights under franchise agreements, the municipal officers shall review the applicant's character and financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a cable television system within the city, and shall conduct a public hearing thereon with at least seven days' advertised notice prior to the public hearing. Such public hearing shall provide a reasonable opportunity for public input on the proposed franchise agreement, renewal or transfer.

(Ord. of 12-16-1996(1), § 1.5)

Sec. 50-25. Performance bond and insurance coverage.

- (a) Upon the execution of any franchise agreement under this article, the cable television company shall file a surety company performance bond in the amount and in such form as is acceptable to the city.
- (b) The city, in making this determination, may rely upon the advice of the municipal officers, the city manager, the city attorney and/or other appropriate city officials. The amount of the bond shall not be less than the estimated cost of performing any work specified in the franchise agreement and shall include the cost of dismantling the cable television system. The bond shall be conditioned upon the faithful performance of the contract and full compliance with any laws, ordinances or regulations governing such franchise agreements.
- (c) When the cable television company has completed construction of the system as set forth in the franchise agreement, and provided that the cable television company is otherwise in compliance with

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the terms of the franchise agreement, the municipal officers shall permit the company to reduce the bond to an amount sufficient to cover the cost of dismantling the system.

- (d) The cable television company shall also, upon execution of any such franchise contract, provide evidence of such public liability, copyright infringement and other insurance coverage as the municipal officers may require.
- (e) The municipal officers may opt to provide for a cash security fund in lieu of a performance bond and appropriately condition the security fund.

(Ord. of 12-16-1996(1), § 1.6)

Sec. 50-26. Contents of franchise agreement.

Each franchise agreement between the city and any cable television company shall contain, but is not limited to, the following provisions:

- (1) A statement of the areas to be served by the cable television company;
- (2) A line extension policy;
- (3) A provision for renewal, the term of which may not exceed 15 years;
- (4) Procedures for the investigation and resolution of subscriber complaints by the cable television company;
- (5) An agreement to comply with the requirements of 30-A M.R.S.A. § 3010 regarding consumer rights and protection and any amendments thereto;
- (6) Any other terms and conditions that are in the best interest of the city; and
- (7) A provision for access to, and facilities to make use of, one or more local public, educational and government access channels.

(Ord. of 12-16-1996(1), § 1.8)

Sec. 50-27. Powers and duties of city officers.

- (a) The municipal officers of the city shall, either directly or through their designees:
 - (1) Adopt such ordinances, rules and regulations as they may deem necessary for regulating the operation of a cable television system.
 - (2) Make recommendations to the cable television company concerning educational and local interest programming.
 - (3) Resolve complaints, disputes or disagreements between subscribers and the company.
 - (4) Conduct public hearings and issue such appropriate orders as they may deem necessary to enforce the provisions of this article and any regulations, rules and orders and franchise agreements, including the revocation of franchise agreements and the assessment of penalties for violations, as well as to correct any deficiencies in the operation of the system. The municipal officers' decisions and findings shall be final and binding upon all parties, including the company, except that such decision or finding may be appealed to the county superior court pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (b) All such ordinances, regulations, rules and orders of the municipal officers shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems, except that, unless expressly preempted, such ordinances, regulations,

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rules and orders may be more detailed, more strict or more restrictive than applicable Federal Communications Commission regulations.

- (c) As part of the city's enforcement authority, the municipal officers have the authority to bring legal action for damages, penalties and injunctive relief. The city shall be entitled to recover its costs, including reasonable attorney's fees, incurred in the enforcement of this article, the provisions of a franchise agreement, or any local rules or regulations adopted pursuant to this article.

(Ord. of 12-16-1996(1), § 1.9)

Sec. 50-28. Compliance with applicable regulations.

Cable television companies shall at all times comply with all applicable federal, state and local laws, statutes, rules, regulations, ordinances, codes and orders.

(Ord. of 12-16-1996(1), § 1.10)