

CABLE ORDINANCE

Cable Television system Ordinance for Eliot, Maine

An Ordinance providing for Town regulation and use of cable systems, including their construction, operation and maintenance in, along, upon, across, above, 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 Town of Eliot, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Eliot of cable systems and to provide conditions accompanying the grant of cable television franchise; and providing for Town regulation of cable system operations.

Section 1. Definitions

(a) "Cable system" shall mean a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that services only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any public right-of-way;
3. A facility of a common carrier which is subject, in whole or in part, to the provisions of title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
4. An open video system that complies with Section 653 of the Communications Act; or
5. Any facilities of any electric utility used solely for operating its electric utility systems.

(b) "Cable Operator" shall mean any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system within the Town of Eliot.

(c) "Town" shall mean the Town of Eliot, Maine, a municipal corporation organized and existing under the laws in the State of Maine and the area within its territorial limits.

(d) "Franchise Fee" refers to a fee the Town may receive from a cable operator, not to exceed 5% of the cable operator's Gross Annual Revenues from the operation of the cable system to provide cable service in the Town of Eliot.

(e) "Basic Service": The minimum service tier of video programming transmitted to all Subscribers which includes, at a minimum, (1) all signals of domestic television

broadcast stations provided to any subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the cable system), (2) any Public, Educational and Governmental programming required by a Franchise Agreement to be carried on the basic tier, and (3) any additional video programming signals added to the basic tier by the cable operator.

(f) "PEG": The acronym for Public, Educational and Governmental, used in conjunction with Access Channels, support and facilities.

(g) "Franchise": The right, privilege and franchise to construct, operate and maintain a cable system, and appurtenances or parts thereof, in the streets, roads, alleys, and other Public Ways of the Town.

Section 2. Franchise Required

No person, firm or corporation shall own, install, maintain or operate within the Town or any of its public streets or other public areas within the Town any equipment or facilities for the operation of a cable system unless a franchise authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this ordinance and Maine and Federal Law and regulations, and unless said franchise is in full force and effect.

Section 3. Franchise Contract Authority and Procedure

(a) The Municipal Officers of the Town may contract on such terms and conditions and impose such fees as are in the best interests of the municipality and its residents with one or more cable operators for the operation of a cable system throughout the Town, including the granting of a franchise or franchises for the operation thereof for a period not to exceed ten (10) years. Such a franchise or franchises shall be nonexclusive.

(b) Applicants for a franchise shall pay a non-refundable filing fee to the Town of \$1,000.00 to defray the cost of public notice, advertising and other expenses incurred by the Town in acting on such application. The applications shall be filed with the Town Clerk and shall contain such information as the Town 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 business or corporate organization with a financial statement for the two previous fiscal years, an estimated ten (10) year financial projection of its proposed system and its proposed annual town franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in the construction, ownership, operation and maintenance of cable systems, including that of its officers, management and staff to be associated with the proposed operation.

(c) Any franchise agreement entered into or renewed under this ordinance may be revoked by the Municipal Officers for good and sufficient cause after due notice to the cable operator and a public hearing thereon; with the right to appeal to the York County Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

(d) Prior to the preparation by the Town of requests for proposals for franchises or renewals thereof, and as a part of any franchise renewal proceedings, the Town shall hold a Public Hearing, with at least seven days' notice by publication in a newspaper of general circulation with the Town, to solicit public comment regarding special local needs and interest with respect to cable service.

(e) Before authorizing the issuance of any such franchise agreement or agreements the Municipal Officers shall review the applicant's character, financial and technical qualifications and the adequacy and feasibility of its qualifications to operate a cable system throughout the Town, and shall conduct a Public hearing thereon with at least seven days advertised notice prior to said Public Hearing.

(f) Upon the execution of any such franchise agreement the cable operator shall file a surety company performance bond, or other form of security reasonably acceptable to the Town, in the amount of \$1,000,000.00, conditional upon the faithful performance of its obligations under such franchise agreement and full compliance with any laws, ordinances, or regulations governing said franchise and the cable system, and also evidence of such public liability insurance coverage as the Municipal Officers may require. Said performance bond may, at the discretion of the Municipal Officers, be reduced to \$50,000.00 upon the completion of the installation of said cable system in accordance with the terms of the franchise agreement.

(g) Applications for a franchise to operate a cable system in the Town and related documents are public records maintained by the Town Clerk pursuant to the State Freedom of Access Law (1 M.R.S.A. § 401 et seq. as amended from time to time) and the public has the right to inspect and copy such applications and documents during the regular business hours of the Eliot Town Clerk's office.

Section 4. Franchise Agreement Contents

Any franchise agreement entered into after the effective date of this ordinance, and any renewal of a franchise agreement, which renewal is entered into after the effective date of this ordinance, between the Town and any cable operator, shall be nonexclusive and shall contain, at a minimum, the following provisions:

- (a) A statement of the area or areas to be served by the cable operator;
- (b) A line extension policy;
- (c) A provision for renewal, the terms of which may not exceed 10 years;
- (d) A statement regarding the franchise fee, not to exceed 5% of Gross Annual Revenues.
- (e) Procedures for the investigation and resolution of the complaints by the cable operator; and
- (f) Any other terms and conditions that are in the best interests of the Town.

Section 5. Public, Educational, and Governmental Access (PEG)

- (a) Channels. Every cable system shall provide PEG access channels for the Town or its designees in accordance with the following:
- (b) Each cable operator shall provide a minimum of two channels, on the basic tier, for noncommercial public, educational and governmental ("PEG") Access use by the Town or its designee(s).
- (c) Use. The Town, or its designee(s), shall have the exclusive use of any PEG Access Channels pursuant to FCC rules and regulations. Use of PEG Access Channels shall be for non-commercial purposes only. Use of PEG Access Channels shall be subject to such rules as the Town, or its designee(s), may adopt. All such PEG Access Channels shall be included in the Basic Service tier.
- (d) Charges. There shall be no charge by the cable operator for the use of the PEG Access Channels.

Section 6. Amendment

The Board of Selectmen as the Municipal Officers of the Town shall have the exclusive power to enact and amend this Ordinance. The Board of Selectmen shall provide at least seven days' notice of any hearing on any proposed amendment to this Ordinance, and notice of such hearings shall be provided by publication in a newspaper of general circulation within the Town as well as by the posting of an attested copy in some conspicuous, public place in the Town together with a return on the notice in accordance with 30-A M.R.S.A. § 2523 as amended from time to time. Pursuant to 30-A M.R.S.A. § 3008, such amendments shall become effective immediately.

Section 7. Compliance with all Laws

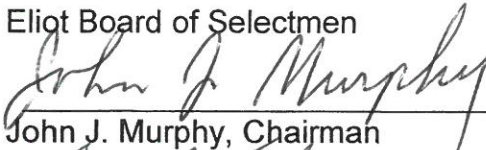
Cable operators shall at all times comply with all applicable Federal, State and Local Laws, statutes, rules, regulations, ordinances, codes and orders.

Section 8. Severability

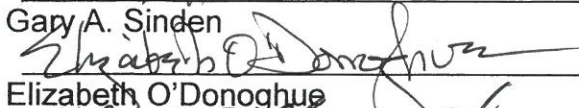
Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

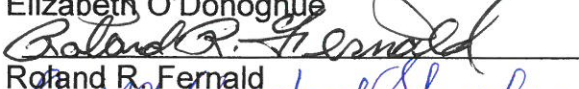
Enacted by the Eliot Board of Selectmen on July 27, 2006

Eliot Board of Selectmen


John J. Murphy, Chairman


Gary A. Sinden


Elizabeth O'Donoghue


Roland R. Fernald


Ann. M. Shapleigh/Shisler