

**CHAPTER 20**

**COMMUNICATIONS**

**[Adopted Eff. 1/26/77 Under R.S.1964, T. 30, Sec. 2151  
and Subsequent Amendments Through 1/12/94]]**

**CATV Ordinance**

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**Article I**

**Sec. 20-1-1. Purposes.** The purposes of this ordinance are to provide for Town regulation and use of community antenna television 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 Cape Elizabeth, including poles, wires, cables, underground conduits, manholes, conductors and fixtures necessary for the maintenance and operation in the Town of Cape Elizabeth of community antenna television systems; and to provide conditions accompanying the grant of franchises for the construction, installation, maintenance and operation of community antenna television systems.

**Sec. 20-1-2. Definitions.**

(a) **"Community Antenna Television System"**, referred to in this Ordinance as "CATV System", shall mean any facility that, in whole or in part, receives directly or indirectly, over the air or otherwise, and amplifies or otherwise modifies signals transmitting programs broadcast by one or more television or radio stations, or originates its own signal or signals or broadcasts or re-broadcasts signals originating from any other party, and distributes such signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents or apartment dwellings under common ownership, control or management.

(b) **"Cable Television Company"** means any person, firm or corporation owning, controlling, operating, managing or leasing a CATV System within the Town of Cape Elizabeth, sometimes hereafter referred to as "the Company".

**Sec. 20-1-3. Franchise Required.** No person, firm, company, or corporation shall construct, install, maintain or operate within the Town any equipment or facilities for the operation of a CATV System unless a franchise authorizing the use of public streets or other properties or areas has first been obtained pursuant to the provisions of this Ordinance and unless said franchise is in full force and effect.

**Sec. 20-1-4. Franchise Contract Procedures**

(a) The Municipal Officers of the Town of Cape Elizabeth may grant exclusive or non-exclusive contracts, on such terms, conditions and fees as are in the best interests of the Town of Cape Elizabeth and its residents, to one or more Cable Television companies for the operation of CATV Systems throughout the Town, or any part or parts thereof, granting a franchise or franchises for the installation, construction, maintenance and operation thereof for a period not to exceed fifteen (15) years.

(b) Any person, firm or corporation desiring a franchise for the construction, installation, maintenance and operation of a CATV System within the Town of Cape Elizabeth shall make application therefor only in response to a Request for Applications issued by the Town. Any such Request for Applications shall be in a form approved by the Municipal Officers, shall be published, in a newspaper of general circulation within the Town, once in each of the three weeks next preceding the week in which applications are to be received, and shall be posted at two conspicuous places within the Town. The rules and conditions set forth by the Town in its Request for Applications shall govern all bidding procedures. The Town may in its Request for Applications reserve the right to waive any formalities in bidding procedure and to accept any particular bid, or to reject any or all such bids, if it is deemed in the best interests of the Town to do so.

(c) Each applicant for a franchise shall pay a non-refundable filing fee to the Town of Twenty-five Dollars (\$25.00) to defray the costs of public notice, advertising and the expenses of hearings relating to such application. All applications shall be filed with the Town Clerk in such form, and containing such information, as the Municipal Officers may require, including without limitation a general description of the applicant's proposed operation, a statement of all television and radio signals to be provided, a statement describing special services to be provided, a statement of its policy governing extensions of service, a schedule of proposed subscriber rates, installation and hook-up charges, and other charges, a statement detailing its business and corporate organization including a list of all stockholders, owners or partners thereof and any affiliates or subsidiaries thereof, a financial statement for the two previous fiscal years, an estimated financial projection for its proposed CATV System for the term applied for, a statement of the proposed annual Town franchise fee and the basis therefor, a statement detailing the prior operational experience of the applicant in CATV services including that of its

officers, management and staff to be associated with the proposed operation, a list of all existing franchises held by the applicant, and such other information as the Municipal Officers deem reasonably necessary for its determinations.

(d) Upon receipt of all applications pursuant to its Request for Applications, the Municipal Officers shall, with respect to each applicant, review the character and competence of the proposed management, their financial and technical qualifications, the adequacy and feasibility of their proposals to construct, maintain and operate a CATV System within the Town, and the reasonableness of the fees to be paid by each applicant. The Municipal Officers shall conduct a public hearing before the issuance of any franchise contract, at which each applicant may make such brief presentation as it desires and shall remain available for questioning by the public and the Municipal Officers; notice of special public hearing shall be posted in two conspicuous places within the Town and published in a newspaper having general circulation within the Town not less than seven days prior to the hearing.

#### **Sec. 20-1-5 Franchise Contract Terms.**

(a) Notwithstanding any other provisions included in a franchise contract by the Municipal Officers, all fees, rates, deposits or charges to subscribers including without limitation monthly subscriber rates and installation and hook-up charges, shall be fair and reasonable and shall be filed with the Municipal officers not less than 30 days prior to becoming effective. [Revised Eff. 8/10/77.]

(b) Any franchise contract granted hereunder may require the company to file such report or reports with the Municipal Officers in such form and at such times as the Municipal Officers may determine, including without limitation annual financial reports, annual facilities reports, annual service record reports, network maps, and certificates of performance.

(c) In addition to any remedies or other methods of enforcement specified in any contract franchise granted hereunder, any franchise may be revoked by the Municipal Officers for cause after due notice to the company and public hearing thereon, with the right to appeal such revocation to the Cumberland County Superior Court under Rule 80-B of the Superior Court Rules of Civil Procedure.

#### **Sec. 20-1-6. Performance Bond and Insurance Coverage**

Upon approval by the Federal Communications Commission of any franchise contract the Cable Television Company shall file and maintain a surety company performance bond in the amount of \$50,000 conditioned upon the faithful performance of said contract and full compliance with any laws, ordinances and regulations governing the same, so as to enable the Town to recover any loss, cost, damage or expense arising out of any failure to perform faithfully said franchise contract, including reasonable attorney fees and costs; when the Company commences customer service said bond shall

be reduced to \$25,000. Further, in accordance with the terms set by the Municipal Officers in said franchise contract, the Company shall file and maintain public liability insurance covering its activities in constructing, installing, maintaining and operating a CATV System in the Town. [Revised, Eff. 8/10/77]

**Sec. 20-1-7. Rules, Regulations and Procedures.** The Municipal Officers of Cape Elizabeth may:

(a) adopt such rules and regulations as they deem necessary for monitoring and regulating the construction, installation, maintenance and operation of CATV Systems in the Town;

(b) make recommendations to the Cable Television Company concerning educational and local interest programming and services;

(c) resolve any complaints, disputes or disagreements between subscribers and the Company, or concerning the installation, maintenance or operation of a CATV System; [Revised Eff. 8/10/77]

(d) conduct such public hearings and issue such appropriate orders as they may deem necessary to correct any deficiencies in the operation of any CATV System. The Municipal Officers' decisions and findings shall be final and binding upon all parties including the Company, except such decisions or findings may be appealed to the Cumberland County Superior Court under said Rule 80-B.

**Sec. 20-1-8. Construction; Separability.** All actions required or permitted hereunder shall be taken, all regulations and decisions shall be adopted, and this Ordinance shall be construed, in a manner consistent wherever possible with the regulations and requirements of the Federal Communications Commission. If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction or by any federal regulatory agency, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof. [Revised Eff. 8/10/77]