

Town of Wayne Board of Selectmen

MEMBERS: Gary Kenny, Stephanie Haines, Stephen Saunders, Peter Ault and Don Welsh

Meeting Agenda

Date: Tuesday, February 10, 2015

Time: 6:30 PM

Place: Wayne Elementary School – Gymnasium

Call Meeting to Order.

Pledge of Allegiance.

Selectmen Present / Quorum.

Meeting Minutes.

- a. **Consider approving of meeting minutes of the Wayne Board of Selectmen – January 13, 2015.**
Manager Recommendation: Move the Board to approve meeting minutes of the Wayne Board of Selectmen – January 13, 2015.

Warrants.

- a. **Consider approving of Payroll Warrant #31.**
Manager Recommendation: Move the Board to approve Payroll Warrant #31.
- b. **Consider approving of Accounts Payable Warrant #32.**
Manager Recommendation: Move the Board to approve Accounts Payable Warrant #32.
- c. **Consider approving of Payroll Warrant #31.**
Manager Recommendation: Move the Board to approve Payroll Warrant #33.
- d. **Consider approving of Accounts Payable Warrant #32.**
Manager Recommendation: Move the Board to approve Accounts Payable Warrant #34.

Business Agenda.

- a. **Reschedule Comprehensive Plan.**
Manager Recommendation: Discussion Only.
- b. **Discuss expired Cable Franchise Agreement with Time Warner Cable.**
Manager Recommendation: Discussion Only
- c. **Consider approving the Solid Waste Committee recommendation of staffing the Transfer Station on Sunday during the summer months not exceed \$3,000 (\$1,500 Wayne's share).**
Manager Recommendation: Move to approve the Solid Waste Committee recommendation of staffing the Transfer Station on Sunday during the summer months not exceed \$3,000 (\$1,500 Wayne's share).
- d. **Quit Claim Deed on Tax Acquired Property for Map 013 Lot 022-003.**
Manager Recommendation: Move to sign Quit Claim Deed on tax acquired property for Map 013 Lot 022-003 to Brooke High Pappas.

- e. **Consider signing agreement with State, that the Town of Wayne will issue a permit to the MaineDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits over municipal roads.**

Manager Recommendation: Move the Board to sign agreement with State, that the Town of Wayne will issue a permit to the MaineDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits over municipal roads.

- f. **Review Proposed Annual Town Meeting Articles for transfer and consolidation of Capital Reserve Funds.**

Manager Recommendation: Move the Board to recommend including Town Managers Proposal for Capital Reserve Funds on Annual Town Meeting Warrant.

- g. **Establishment of a Water Quality Special Revenue Account.**

Manager Recommendation: Move the Board to consolidate and transfer existing funds in the Conservation Special Revenue Account, Androscoggin Lake Special Revenue Account with the Perambulation Special Revenue Account to create a Water Quality Special Revenue Account.

- h. **Discuss Request from Senate President Mike Thibodeau "Unfunded Mandates"**

- i. **Discuss Governors Proposed Budget.**

- j. **Discuss Annual Town Report Dedication.**

- k. **Executive Session, if needed, 1 MRSA §405 (6) E Legal (if needed)**

Manager Recommendation: Move the Board to enter into Executive Session, 1 MRSA §405 (6) E Legal.

Manager Recommendation: Move the Board to exit into Executive Session, 1 MRSA §405 (6) E Legal.

Manager Recommendation: Any motion as a result of executive session.

Supplements / Abatements.

Town Manager Report.

Board Member Reports.

Public Comments.

Adjourn.

The next regularly scheduled **Board of Selectmen Meeting** is scheduled for **Tuesday February 24, 2015 at 6:30 PM** at the Wayne Elementary School - Gym.

**Town of Wayne, Maine
Select Board Meeting Minutes
Tuesday January 13, 2015
Wayne Elementary School**

Call Meeting to Order/ Selectmen Present

Gary Kenny determined quorum and called meeting to order at 6:30 PM with the following members present: Peter Ault, Stephanie Haines, Gary Kenny, Stephen Saunders, and Donald Welsh.

Others Present: Aaron Chrostowsky, Town Manager; Cathy Cook, Town Clerk

Audience: Robert Stephenson

Pledge of Allegiance

Moment of Silence for Eloise Ault who passed away January 2, 2015

Meeting Minutes

- a. A motion was made to approve the meeting minutes of the Board of Selectmen meeting on December 16, 2014. (Haines/Saunders) (5/0)

Warrants

- a. The Board approved Warrant #30 (Payroll) in the amount of \$5775.92. (Ault/ Welsh) (5/0)
- b. The Board approved Warrant #31 (Accounts Payable) in the amount of \$534,567.70. (Welsh/Saunders) (5/0)
- c. The Board approved Warrant #30 (Payroll) in the amount of \$23,626.45.(Saunders/Haines) (5/0)
- d. The Board approved Warrant #29 (Accounts Payable) in the amount of \$23,626.45. (Welsh/Saunders) (5/0)

Business Agenda

- a. **Review the Town's Ordinance for the Maintenance, Administration and Disposition of Tax Acquired Property.** No Action taken
- b. **Review 2015 Tax Acquired Property Minimum Bid Price.** The Board was moved to approve the 2015 Tax Acquired Property Minimum Bid Price. Specifically the Board voted to make each of the Low Bid Price on Properties 1-5 Lots all consistently \$700. (Saunders/Haines) (5/0)
- c. **Review Notice of Tax Acquired Property Sale.** The Board was moved to approve the Notice of Tax Property Sale.
- d. **Discuss Local Option Question Petitions.** Discussion only

- e. **Approve Proposed Budget Timeline.** The Board was moved to adopt Proposed Budget Timeline. (Welsh/Haines) (5/0)
- f. **Discussed transfer from Undesignated Fund Balance to Fire Truck Capital Reserve Fund.** The Board was moved to transfer the full amount authorized at Special Town Meeting in the amount of \$50,000 from the Undesignated Fund Balance Account to the Fire Truck Capital Reserve Fund. (Ault/Welsh) (5/0)
- g. **Reviewed Proposed Annual Town Meeting Articles for transfer and consolidation of Capital Reserve Funds.** No action taken.
- h. **Establishment of an Emergency Management Special Revenue Account.** No action taken
- i. **Establishment of a Water Quality Special Revenue Account.** No action taken.
- j. **Establishment of a Municipal Building Study Special Revenue Account.** No action taken
- k. **Consider accepting the resignation of Richard P. Spencer, Ph.D. from the RSU#38 Board of Directors.** The Board was moved to accept the resignation of Richard P. Spencer, Ph.D. from the RSU#38 Board of Directors, with regret. (Haines/Welsh) (5/0)
- l. **Consider appointing David Ault to the Wayne Memorial Day Committee.** The Board was moved appoint David Ault to the Wayne Memorial Day Committee. (Haines/Saunders) (5/0)
- m. **Consider appointing John Estrada to the Wayne Memorial Day Committee.** The Board was moved appoint John Estrada to the Wayne Memorial Day Committee. (Haines/Saunders) (5/0)
- n. **Annual Town Report Dedication.** No action taken.

Supplements / Abatements:

The Board approved 2014 Tax Abatement for Sharon Haynes and Kurt Olsen, Account # 238 in the amount of \$94.84 (Saunders/Haines) (5/0)

The Board approved 2012 Tax Abatement for Libbey, Paul R Irrevocable Trust, Account # 206 in the amount of \$122.24(Ault/Welsh) (5/0)

The Board approved 2013 Tax Abatement for Libbey, Paul R Irrevocable Trust Account # 206 in the amount of \$123.54(Ault/Welsh) (5/0)

The Board approved 2014 Tax Abatement for Libbey, Paul R Irrevocable Trust, Account # 206 in the amount of \$125.02 (Saunders/Haines) (5/0)

Town Manager Report: None

Board Member Reports:

- a. Stephanie Haines asked about the Pettengill Property and suggested idea for the Town to retain it for a town forest.

- b. Stephen Saunders suggested Town Manager send out letters to newcomers to the town to invite them to Selectboard meetings.
- c. Stephen mentioned the new Sand and Salt Shed looks well-constructed.
- d. Gary Kenny reported the fire alarm went off during the School Craft Fair in November because of a popcorn machine, and he later found out the alarm didn't reach the Winthrop dispatch.

Public Comments:

- a. None.

Adjourn.

Motion to Adjourn at 8:25 PM. (Welsh/Haines) (5/0)

The next Select Board Meeting is scheduled for Tuesday, January 27, 2014 at 6:30 p.m. at the Wayne Elementary School Gym.

Recorded by:
Cathy Cook, Town Clerk

Select Board Members

Gary Kenny

Stephanie Haines

Stephen Saunders

Peter Ault

Don Welsh

To: Selectboard
From: Aaron Chrostowsky, Town Manager
Re: Comprehensive Plan Update
Date: February 6, 2015

Comprehensive Plan Committee has completed a draft of the Comprehensive Plan. Please feel free to review and comment on this impressive document.

Due to the weather, we had to cancel the public hearing. However, we have a better draft; it is posted online for residents to review and comment. Rather, than rescheduling the hearing for this meeting, one of the state requirements is to give this public hearing 30 days' notice. As a result, we rescheduled the next public hearing on March 10, 2015.

After speaking with a representative from KVCOG regarding the comprehensive plan approval process, they explained that the new Municipal Planning Assistance office located in the Department of Agriculture, Conservation and Forestry lost two people recently and quite short staffed. The normal State Comprehensive Plan review process was 30 business days, however, they saying it is 10-weeks now. It is not likely the state is going to have the review completed by Annual Town Meeting.

Town of Wayne

P.O. Box 400; 48 Pond Road

Wayne, ME 04284

Phone: (207) 685-4983 Fax: (207) 685-3836

<http://www.waynemaine.org>

Public Hearing for Comprehensive Plan

The Board of Selectmen and the Comprehensive Planning Committee will be holding a public hearing on a draft copy of the Comprehensive Plan on **Tuesday March 10, 2015** at **6:30 PM** at the Wayne Elementary School Gymnasium. Both the Board of Selectmen and the Comprehensive Planning Committee are seeking public comments of a draft copy of the Comprehensive Plan. The Comprehensive Plan Committee intends to include your public comments, before the Committee submits this draft to the State for review. If you cannot attend this public hearing, you can email the Comprehensive Plan Committee, your comments at compplan@waynemaine.org.

The Comprehensive Plan is an important planning document identifying various community and municipal issues. Periodic revisions are required under state law, and are needed to qualify for various grants. The Town's Comprehensive Plan was last revised in 2001.

This draft copy of the Comprehensive Plan continues many existing policies, but recommends several new initiatives. Once, this draft Comprehensive Plan is approved by the State and Town Meeting, the Board of Selectmen will use the Comprehensive Plan as planning tool. The Board of Selectmen will consider several recommendations/policies as outlined in the plan over the next several years. Any new ordinance or change to zoning bylaw will still have to be adopted by the Town.

For more information, or a copy of the draft Comprehensive Plan will be available for inspection at the Town Office during normal business hours and on the Town Website at www.waynemaine.org.

townmanager@waynemaine.org

From: townmanager@waynemaine.org
Sent: Wednesday, February 04, 2015 4:20 PM
To: 'Winchenbach, Shelley'
Subject: RE: Phone Message(s)

Shelley-

Thanks for the email.

I called about the following items:

- Franchise Fee Check: Please change mailing address from: Tax Collector, 3 Lovejoy Pond Road, Wayne, ME 04284 to: Tax Collector, P.O. Box 400, Wayne, ME 04284.
- Franchise Agreement: I understand our franchise agreement expired 11/14/11. I would be interested in beginning negotiations with a new agreement. You can forward a draft proposal.
- PEG Channel: According to our expired agreement, you are required to provide us with a PEG Channel upon our request. We are interested in learning more about having a PEG Channel.
- Area Covered: I am interested in learning more about where you provide coverage in town. I would like to discuss expanding coverage in a couple of areas of town.

I look forward to discussing these issues in detail shortly. Thanks. If you have any questions, please don't hesitate to contact me at (207) 685-4983 or townmanager@waynemaine.org.

Best,
Aaron

From: Winchenbach, Shelley [<mailto:shelley.winchenbach@twcable.com>]
Sent: Wednesday, February 04, 2015 10:44 AM
To: townmanager@waynemaine.org
Subject: Phone Message(s)

Hi Aaron,

I got your message you left for me about questions you had pertaining to the franchise agreement and then I received a message you left for Melinda asking about franchise fees. I thought it might be easier to email around my daily conference calls – if you're inquiring about the franchise agreement, I show it expired 11/14/11 – I can forward you a draft proposal for your review. If you're calling about your franchise fee check; I emailed our finance division in Charlotte – your check was mailed on 1/28/15 to: Town offices of Wayne, PO Box 400, Wayne ME 04284 – in the amount of \$4,108.78. Let me know if your question pertains to something entirely different and I can follow up. Thank you!

Shelley Winchenbach
Director, Local Franchising | New England - ME/NH/MA

 Time Warner Cable®

400 Old County Road
Rockland, ME 04841
207.620.3319
shelley.winchenbach@twcable.com

AGREEMENT NO. _____

AN AGREEMENT GRANTING A FRANCHISE TO FRONTIERVISION OPERATING PARTNERS LP D/B/A/ ADELPHIA CABLE COMMUNICATIONS (THE GRANTEE) TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE TOWN OF WAYNE, MAINE (THE GRANTOR) SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM:

PREAMBLE

The Grantor does ordain that it is in the public interest to permit the use of public rights-of-way and easements for the construction, maintenance, and operation of a Cable Communications System under the terms of this Franchise, said public purpose being specifically the enhancement of communications within the territorial boundaries of the Grantor and the expansion of communications opportunities outside the territorial boundaries of the Grantor.

SECTION 1. STATEMENT OF INTENT AND PURPOSE.

The Grantor intends, by the adoption of this Franchise, to continue the development and operation of a Cable Communications System. This development can contribute significantly to the communications needs and desires of many individuals, associations and institutions.

SECTION 2. SHORT TITLE.

This agreement shall be known and cited as the Wayne Franchise Agreement. Within this document it shall also be referred to as this Franchise or the Franchise.

SECTION 3. DEFINITIONS.

For the purpose of this Franchise, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words shall and will are mandatory and may is permissive. Words not defined shall be given their common and ordinary meaning.

1. Basic Service means a group or groups of cable services distributed over the System consisting of any service tier which includes the retransmission of local television broadcast signals.
2. Cable Act means the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996 and any amendments thereto.

3. Cable Service means: (i) the one-way transmission to subscribers of video programming or other programming service; and (ii) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
4. Cable Communications System, System or Cable System shall mean a facility designed to provide Cable Service and other communications and information services.
5. FCC means the Federal Communications Commission, its designee, or any successor thereto.
6. Gross Revenues shall mean all revenues from the operation of the System within the franchise area received by Grantee from Subscribers from the basic service tier of programming and for any optional tier of programming service (including premium and pay-per-view services), customer equipment and installation charges, disconnection and reconnection charges, revenues from advertising sales less agency fees and home shopping revenues. Gross revenues shall not include that share of fees remitted to suppliers from programming services, deposits, refunds and credits made to subscribers, bad debt, non-subscriber revenues, revenue from Subscribers designated by Grantee as payment of its franchise fee obligation, or any taxes imposed on the services furnished by Grantee herein which are imposed directly on the Subscriber or user by the local or any governmental unit and collected by Grantee on behalf of that governmental unit.
7. Person means any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit.
8. Signal means any transmission of radio frequency energy or of optical information.
9. Street means the surface of and the space above and below any public street, public road, public highway, public freeway, public lane, public path, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any public easement or right-of-way now or hereafter held by the Grantor which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments and other property as may be ordinarily necessary and pertinent to a System.
10. Subscriber means any person or entity who lawfully subscribes to any Cable Service whether or not a fee is paid for such Cable Service.

SECTION 4.

GRANT OF AUTHORITY AND GENERAL PROVISIONS.

1. Grant of Franchise. The Grantor hereby grants to Grantee the non-exclusive right to construct, operate and maintain in, on, along, across, above, over and under the streets, alleys, lanes and public places of the Grantor, the poles, wires, cables, underground conduits, manholes and other facilities necessary for the maintenance and operation of a Cable Communications System throughout the entire territorial area of the Grantor to provide Cable Service and other communications and information services.
2. Level Playing Field. The Grantor agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Grantor to any other entity to provide video or other services similar to those provided by Grantee pursuant to this agreement and over which the Grantor has regulatory authority shall require that service be provided for the same territorial area of the Grantor as required by this agreement and shall not be on terms and conditions (including, without limitation, the franchise fee obligations) more favorable less burdensome to the Grantee of any such additional franchise than those which are set forth herein.

In any renewal of this franchise, the Grantor, should it seek to impose increased obligations upon Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increase obligations in the renewal, are not more burdensome and/or less favorable than those contained in the additional franchise(s) or authorizations.

3. Acceptance; Effective Date; Franchise Term. Grantee shall file its acceptance with the Grantor by countersigning this Franchise which acceptance will acknowledge that Grantee agrees to be bound by and to comply with the provisions contained herein. The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Agreement. The Franchise shall continue in full force and effect for a period of ten (10) years from the effective date.
4. Area Covered. This Franchise is granted for the entire territorial limits of the Grantor (Franchise Area). Grantee upon request will make service available to all residences within the territorial limits of the Grantor and any annexed territory: 1) in the event that such existing or annexed territory has a density of at least fifteen (15) homes per linear strand mile of cable as measured from existing cable system plant. 2) any such residence requesting service can be provided with service by a standard installation which will be no more than one hundred fifty (150) feet (Standard Installation) and 3) is not being served by a cable television system operator other than Grantee or its affiliates, an open video system or a satellite master antenna television system

SECTION 5. CABLE COMMUNICATIONS SYSTEM.

1. System Design.

1. Grantee shall rebuild or upgrade its Cable Communications System to a capacity of 860 MHz, including digital capacity. The System shall be two-way capable and designed to support both analog and digital transmission. The rebuild or upgrade shall be completed no later than June 1, 2003. Notwithstanding the foregoing, the Grantee shall be excused from the timely performance of its obligation to begin and complete any System upgrade within the times specified herein, where such delay results from the failure or delay by the Grantor, the County, any other regulatory authority, any railroad or common carrier, any electric utility, or any telecommunications carrier or local exchange carrier to issue any permits, approvals, licenses, or permissions, or to perform required make ready work upon a timely request submitted by the Grantee or its contractor representative accompanied by the tender of any required permit fee.

2. Technical Standards. The System shall be designed, constructed and operated so as to meet those technical standards promulgated by the Federal Communications Commission relating to Cable Systems contained in subpart K of part 76 of the FCC's rules and regulations as may, from time to time, be amended.

3. Emergency Alert System. Grantee will comply with the FCC's Emergency Alert System requirements throughout the Term of this Franchise.

SECTION 6. CONSTRUCTION PROVISIONS.

1. Construction Standards.

1. All installation of electronic equipment shall be durable and installed in accordance with the provisions of the National Electrical and Safety Code and National Electrical Code as amended.

2. Antennas and their supporting structures (tower) shall be painted, lighted, erected and maintained in accordance with all applicable rules and

regulations of the Federal Aviation Administration and all other applicable state or local laws, codes and regulations.

3. All of Grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system, towers, house connections, structures, poles, wire, cable coaxial cable, fixtures and appurtenances shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with the rights of any property owner, or to unnecessarily hinder or obstruct pedestrian or vehicular traffic.
4. Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.
2. Construction Codes and Permits. Grantee shall obtain all required permits from the Grantor before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the community. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the system in the community, provided such codes apply to all other similarly situated entities.
3. Repair of Streets and Property. Any and all streets or public property or private property, which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the system shall be promptly repaired by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's construction.
4. Use of Existing Poles. Grantee shall not erect, for any reason, any pole on or along any street in an existing aerial utility system without the advance written approval of the Grantor, which approval shall not be unreasonably withheld. Grantee shall exercise its best efforts to negotiate the lease of pole space and facilities from the existing pole owners for all aerial construction.
5. Undergrounding of Cable. Cable plant shall be installed underground at Grantee's expense where all existing telephone and electrical utilities are already underground. Grantee shall place cable underground in newly platted areas in concert with both the telephone and electrical utilities, to the extent Grantee is notified of such placement. In the event that any telephone or electric utilities are reimbursed by the Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone or electric utilities.

6. Reservation of Street Rights.

1. Nothing in this Franchise shall be construed to prevent the Grantor from constructing, maintaining, repairing or relocating sewers; grading, paving, maintaining, repairing, relocating and/or altering any street; constructing, laying down, repairing, maintaining or relocating any water mains; or constructing, maintaining, relocating, or repairing any sidewalk or other public work.
2. All such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure or prevent the free use and operation of the poles, wires, conduits, conductors, pipes or appurtenances of Grantee.
3. If any such property of Grantee shall interfere with the construction or relocation, maintenance or repair of any street or public improvement, whether it be construction, repair, maintenance, removal or relocation of a sewer, public sidewalk, or water main, street or any other public improvement, thirty (30) days notice shall be given to Grantee by the Grantor and all such poles, wires, conduits or other appliances and facilities shall be removed or replaced by Grantee so that the same shall not interfere with the said public work of the Grantor, and such removal or replacement shall be at the expense of Grantee herein. Should, however, any utility company or other entity be reimbursed for relocation of its facilities as part of the same work that requires Grantee to remove its facilities, Grantee shall be reimbursed upon the same terms and conditions as such utilities or other entities.

7. Reasonable Care. Nothing contained in this Franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

8. Trimming of Trees. Grantee shall have the authority to trim trees upon and hanging over streets, alleys, sidewalks, and public places of the Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee; provided, however, all trimming shall be done, at the expense of Grantee.

9. Movement of Facilities. In the event it is necessary temporarily to move or remove any of Grantee's wires, cables, poles, or other facilities placed pursuant to this Franchise, in order to lawfully move a large object, vehicle, building or other structure over the streets of the Grantor, upon two (2) weeks notice by the Grantor to Grantee, Grantee shall move, at the expense of the person requesting the temporary removal, such of his facilities as may be required to facilitate such movements.

Grantee reserves its right to request that such expenses be paid in advance. Any service disruption provisions of this Franchise shall not apply in the event that the removal of Grantee's wires, cables, poles or other facilities results in temporary service disruptions.

SECTION 7. SERVICE PROVISIONS.

1. Programming Decisions. All programming decisions shall be at the sole discretion of Grantee.
2. Cable and Internet Service Connections.
 1. Schools and Grantor Facilities:
 - (1) Cable Service: Grantee upon written request of the Grantor, will provide and maintain one connection for Basic Service to each elementary and secondary public school, library, and Grantor administration facility, within the geographical limits of the Grantor which is located within one hundred fifty (150) feet of Grantee's distribution plant and listed in Exhibit A. Grantee will bring its connection to a specified exterior demarcation point mutually agreed upon by Grantee and such institution.
 - (2) Internet Access: In areas where and when Grantee provides internet access, Grantee upon written request of the Grantor will provide use of one cable modem and maintain one connection for internet access to one computer terminal in each elementary and secondary public school and library within the geographic limits of the Grantor and which is located within 150 feet of Grantors distribution plant and is listed in Exhibit A. Any additional costs will be borne by the requesting school or library on a time and materials basis. All such public schools and libraries receiving such service will enter into Grantee's standard installation agreement. The Grantor agrees that such institutions will not internally network Grantee's connection to any other computers, but in the event such schools and libraries wish to create an internal network, the institutions may contact Grantee for a proposal to provide such networking.
3. PEG Access Channels. Grantee will comply with the PEG Access requirements set forth on Exhibit B.

SECTION 8.

CONSUMER PROTECTION AND RIGHTS OF INDIVIDUALS.

1. Customer Service Standards. Grantee will comply with the customer service standards promulgated by the FCC in accordance with the Cable Act for as long as such standards are in effect.
 1. Grantee shall maintain on file with the Grantor at all times a current schedule of all rates and charges.
 2. Grantee shall provide written notice of changes in rates and charges as required by state and federal regulations.
2. Subscriber Complaint Practices.
 1. Grantee shall maintain an office which shall be open during normal business hours and shall maintain a publicly listed toll-free telephone number. Grantee shall maintain adequate telephone lines and personnel to respond in a timely manner to schedule service calls and answer Subscriber complaints or inquiries. Grantee shall follow all applicable federal and state regulations in responding to complaints by customers. A complaint as used in this Franchise will mean notice by a Subscriber of a billing dispute or problem with picture quality which is not resolved during or subsequent to the initial telephone or service call.
 2. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.
3. Parental Control Option. Grantee shall provide parental control devices, at reasonable cost, to Subscribers who wish to be able to prevent certain Cable Services from entering the Subscriber's home.
4. Rights of Individuals Protected.
 1. Discriminatory Practices Prohibited. Grantee shall not deny service, deny access, or otherwise discriminate against Subscribers on the basis of race, color, religion, national origin, sex, or age. Grantee shall comply at all times with all other applicable federal, and state laws, relating to nondiscrimination.
 2. Subscriber Privacy. Grantee shall comply with all privacy provisions of the Cable Act, as amended.

SECTION 9. FRANCHISE FEE PAYMENTS.

1. **Grantee shall pay to the Grantor a franchise fee equal to three percent (3%) of the Grantees Gross Revenues, as herein defined.**
2. **Payments due the Grantor under this provision shall be computed annually and shall be due and payable annually. Each payment shall be accompanied by a report showing the basis for the computation.**

SECTION 10. INSURANCE.

1. **Grantee shall maintain, throughout the term of the Franchise, liability insurance or excess liability insurance insuring Grantee and fulfilling the indemnification outlined below in the minimum amounts of:**
 - (1) **One Million Dollars (\$1,000,000.00) for bodily injury or death to any one (1) Person;**
 - (2) **Three Million Dollars (\$3,000,000.00) for bodily injury or death resulting from any one accident;**
 - (3) **Three Million Dollars (\$3,000,000.00) for all other types of liability.**
2. **Grantee shall furnish to the Grantor a certificate evidencing that a satisfactory insurance policy has been obtained. Such insurance policy shall provide that Grantor is an additional insured and provide that the Grantor should be notified thirty (30) days prior to any expiration or cancellation.**
3. **Grantee shall maintain throughout the Term of this Franchise, Workers Compensation insurance as required by applicable state law.**

SECTION 11. INDEMNIFICATION.

1. **Grantee will indemnify the Grantor and will pay all damages and penalties which the Grantor may legally be required to pay which result from any negligence by Grantee in the operation of the Cable Communications System throughout the territorial area of the Grantor. The Grantor shall give Grantee timely written notice of the making of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. In the event any such claim arises, the Grantor shall tender the defense thereof to Grantee and Grantee shall have the right to defend, settle or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If Grantor determines in good faith that its interests cannot be**

represented by Grantee, Grantee shall be excused from any obligation to represent Grantor.

2. Grantee will not be required to indemnify the Grantor for the negligent acts of the Grantor or its officials, boards, commissions, agents or employees. Further, the Grantor will indemnify and hold Grantee harmless from any claims or causes of action arising from any negligent acts by the Grantor its officials, boards, commissions, agents or employees.

SECTION 12. VIOLETIONS AND REVOCATION.

1. Franchise Violations: Whenever the Grantor believes that Grantee has allegedly violated one (1) or more terms, conditions or provisions of this Franchise, a written notice shall be given to Grantee. The written notice shall describe in reasonable detail the alleged violation so as to afford Grantee an opportunity to remedy the violation. Grantee shall have thirty (30) days subsequent to receipt of the notice in which to either correct the violation or, if the violation cannot be corrected within the thirty (30) day period, to have commenced and be diligently pursuing corrective action. Grantee may, within ten (10) business days of receipt of notice, notify the Grantor that there is a dispute as to whether a violation or failure has, in fact, occurred. Such notice by Grantee to the Grantor shall specify with particularity the matters disputed by Grantee and shall stay the running of the above-described time.

- (1) The Grantor shall hear Grantee's dispute at a regularly or specially scheduled meeting. Grantee shall have the right to subpoena and cross-examine witnesses. The Grantor shall determine if Grantee has committed a violation and shall make written findings of fact relative to its determination. If a violation is found, Grantee may petition for reconsideration.
- (2) If after hearing the dispute the claim is upheld by the Grantor, Grantee shall have ten (10) business days from such a determination to remedy the violation or failure.

The time for Grantee to correct any alleged violation shall be extended by the Grantor if the necessary action to correct the alleged violation is of such a nature or character to require more than thirty (30) days within which to perform provided Grantee commences the corrective action within the thirty (30) day period and thereafter uses reasonable diligence to correct the violation. Notwithstanding the above provisions, Grantee does not waive any of its rights under federal law.

2. Franchise Revocation: In addition to all other rights which the Grantor has pursuant to law or equity, the Grantor reserves the right to revoke, terminate or cancel this

Franchise, and all rights and privileges pertaining thereto in accordance with the following procedures and applicable federal law, in the event that:

1. Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt and Grantees creditors or Trustee in Bankruptcy do not agree to fulfill and be bound by all requirements of this Franchise; or
 2. Grantee violates a material provision of this Franchise after being notified of such violation and being given time to cure or refute the alleged violation.
3. **Revocation Procedures.** In the event that the Grantor determines that Grantee has violated any material provision of the Franchise, or any material applicable federal, state or local law, the Grantor may make a written demand on Grantee that it remedy such violation and that continued violation may be cause for revocation. If the violation, breach, failure, refusal, or neglect is not remedied within thirty (30) days following such demand or such other period as is reasonable, the Grantor shall determine whether or not such violation, breach, failure, refusal or neglect by Grantee is due to acts of God or other causes which result from circumstances beyond Grantee's control. Such determination shall not unreasonably be withheld.
1. A public hearing shall be held and Grantee shall be provided with an opportunity to be heard upon fourteen (14) days written notice to Grantee of the time and the place of the hearing. The causes for pending revocation and the reasons alleged to constitute such cause shall be recited in the notice. Said notice shall affirmatively recite the causes that need to be shown by the Grantor to support a revocation.
 2. If notice is given and, at Grantee's option, after a full public proceeding is held, the Grantor determines there is a violation, breach, failure, refusal or neglect by Grantee, the Grantor shall direct Grantee to correct or remedy the same within such reasonable additional time, in such manner and upon such reasonable terms and conditions as Grantor may direct.
 3. If after a public hearing it is determined that Grantee's performance of any of the terms, conditions, obligations, or requirements of Franchise was prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor in writing within thirty (30) days of its discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor strikes.

4. If, after notice is given and, at Grantee's option, a full public proceeding is held, the Grantor determines there was a violation, breach, failure, refusal or neglect, then the Grantor may declare, by resolution, the Franchise revoked and canceled and of no further force and effect unless there is compliance within such period as Grantor may fix, such period not to be less than thirty (30) days.
5. If the Grantor, after notice is given and, at Grantee's option, a full public proceeding is held and appeal is exhausted, declares the Franchise breached, the parties may pursue their remedies pursuant to Franchise or any other remedy, legal or equitable. Grantee may continue to operate the system until all legal appeals procedures have been exhausted.
6. Notwithstanding the above provisions, Grantee does not waive any of its rights under federal law or regulation.

SECTION 13. FORECLOSURE, RECEIVERSHIP AND ABANDONMENT.

1. Foreclosure. Upon the foreclosure or other judicial sale of the system, Grantee shall notify the Grantor of such fact and such notification shall be treated as a notification that a change in control of Grantee has taken place.
2. Receivership. The Grantor shall have the right to cancel this Franchise subject to any applicable provisions of state law, including the Bankruptcy Act, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days, or unless:
 1. Within one hundred and twenty (120) days after his election or appointment, such receiver or trustee shall have complied with all the material provisions of this Franchise and remedied all defaults thereunder; and,
 2. Such receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 14. REMOVAL, TRANSFER AND PURCHASE.

1. **Removal After Revocation.**
 1. Upon revocation of the Franchise, as provided for, the Grantee shall proceed to remove, at Grantee's expense, all or any portion of the System from all streets and public property within the Grantor. In so removing the System, Grantee shall be responsible for any repairs or damages caused by its removal and shall maintain insurance during the term of removal.
 2. If Grantee has failed to commence removal of the system, or such part thereof as was designated within thirty (30) days after written notice of the Grantor's demand for removal is given, or if Grantee has failed to complete such removal within one (1) year after written notice of the Grantor's demand for removal is given, the Grantee may abandon such System to the Grantor.
2. **Franchise Binding.** This Franchise shall be binding on successors, assigns, and transferees.

SECTION 15. MISCELLANEOUS PROVISIONS.

1. **Compliance with Laws.** Grantee and the Grantor shall conform to all state and federal laws and rules regarding cable television as they become effective, unless otherwise stated. Grantee shall also conform during the entire term of the Franchise with all generally applicable the Grantor agreements, resolutions, rules and regulations heretofore or hereafter adopted pursuant to the Grantor's lawful police powers that do not materially impair or abrogate any of the Grantee's contractual rights under this Franchise and that are not preempted by state or federal law.
2. **Compliance with Federal, State and Local Laws.** If any term, condition or provision of this Franchise or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on Grantee and the Grantor.

3. Administration of Franchise. This Franchise is a contract and except as to those changes which are the result of the Grantor's exercise of its police power in managing its rights of way and in its generally applicable regulation of commerce, neither party may make any unilateral action which materially changes the explicit mutual promises in this contract. Any changes to the Franchise must be made in writing, signed by Grantee and Grantor.
4. Franchise Requirement. In accordance with applicable law, from and after the acceptance of the Franchise, the Grantor shall not allow and it shall be unlawful for any person to construct, install or maintain within any street in the Grantor, or within any other public property of the Grantor, or within any privately owned area within the Grantor which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the Grantor, or the Grantor's official map or the Grantor's major thoroughfare plan, any equipment or facilities for distributing any television signals or radio signals through a system, unless a Franchise authorizing such use of such street or property or areas has first been obtained.
5. Reservation of Rights. Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or implied, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Grantor hereby acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitution laws, and regulations.
6. Force Majeure. With respect to any provision of this Franchise Agreement, the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon Grantee, such violation or noncompliance will be excused where such violation or noncompliance is the result of an Act of God, war, civil disturbance, strike or other labor unrest, or any event beyond Grantee's reasonable control or not reasonably foreseeable.
7. Captions. The paragraph captions and headings in this Franchise are for convenience and reference purposes only and shall not affect in any way the meaning of interpretation of this Franchise.
8. Calculation of Time. Where the performance or doing of any act, duty, matter, payment or thing is required hereunder and the period of time or duration for the performance thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

9. Written Notice. All notices, reports or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the person designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, or on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, as follows:

If to Grantor: Board of Selectmen
RR1 Box 515 Lovejoy Pond Rd.
Wayne, ME 04284 -9708

If to Grantee: Adelphia Communications Corporation
Attn: Legal Department
One North Main Street
Coudersport, PA 16915

With a copy to: FrontierVision Operating Partners LP d/b/a Adelphia Cable
Communications
Area Manager
83 Anthony Ave.
Augusta, ME 04330

Such addresses and phone numbers may be changed by either party upon notice to the other party given as provided in this section.

- J. Entire Agreement. This Franchise contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements oral or written. This agreement may not be modified except in writing signed by both parties.

SECTION 16. PUBLICATION.

This Franchise shall be signed by the _____ and attested by the clerk. The Franchise shall be published in accordance with the requirements of Grantor and state law and shall take effect upon acceptance by Grantee as set forth in Section 4 thereof.

SECTION 17. ACCEPTANCE.

Grantor by virtue of the signatures on said Agreement and Grantee by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this agreement, together forming a mutually binding contractual agreement; which cannot be amended without writing executed by both parties.

Passed and adopted this 3 day of _____, 2001.

ATTEST:

By:

Candace M. Goucher
Clerk, Town of Wayne

By:

Sally M. Jones
[Grantor Officials Name]

Its: _____

Date: _____

Accepted by FrontierVision Operating Partners LP d/b/a Adelphia Cable Communications

By:

Michael J. Rojas
Title: Executive Vice President of its General Partner's General
Partner's General Partner's Sole Owner

Its: _____

Date: November 14, 2001

Exhibit A

Cable Connections to Grantor Facilities

1. Wayne Library
2. Wayne Elementary School
3. Wayne Town Office
4. Wayne Village Fire Station
5. North Wayne Fire Station
6. Ladd Building

Internet Access to Grantor Schools and Libraries

1. Wayne Library
2. Wayne Elementary School

Exhibit B

PEG Access

Channels. Upon request, Grantee agrees to provide to the Grantor One (1) PEG Access channel for use by the Grantor. In accordance with federal law, Grantee will be entitled to use any PEG access channel capacity for the provision of other services at any time such channel capacity is not being used for the designated PEG access purposes.

Non-Commercial. An Access channel is a channel made available to Grantor by Grantee for the purpose of cablecasting non-commercial programming by Grantors residents and its administration and educational institutions. The Grantor agrees not to use the access channels to provide commercial or revenue-generating services or services that may compete, directly or indirectly, with services provided by Grantee, provided, however, that Grantor may cablecast acknowledgments of funding sources and the underwriting of programming costs.

Part I. Narrative

A. History of Cable Television

As commercial television developed in the late 1940s, there was a need to deliver broadcast signals to areas that could not receive signals because of their remoteness from antennas or because of terrain. For this reason, community antenna television (CATV) was developed in 1948 to receive signals and to distribute them by coaxial cable to subscribers for a fee.

Over time, cable television systems began to serve urban areas as well as rural areas, offering both better picture quality and, with the advent of microwave signal transmission and of communications satellites, a wider array of programming choices. As the Federal Communications Commission's (FCC) October 1995 Fact Sheet notes, in 1950, cable systems served only 14,000 homes in 70 communities, while by June 1995, 11,200 cable systems served over 60 million subscribers in over 32,000 communities.

The variety of services offered by cable systems also has increased over time. Pay-per-view; public, educational and governmental access; high-speed Internet; leased channels; two-way communications; and digital television, radio and telephone now are among the services offered by cable system operators. Cable systems' use of fiber optic lines in place of coaxial cable has increased channel capacity and the number of channels and services that can be provided.

At the same time, deregulation of telecommunications services and advances in telecommunications technology have created television signal delivery methods that compete with cable services. Telephone service providers are offering high-speed Internet services and can provide television signals over telephone lines through open video systems (OVS). Satellites now can provide direct broadcast of television signals to individual subscribers including, in some locations, local commercial channels that until now have only been available through cable television subscription.

B. Regulation of Cable Television

1. Glossary

Both State and federal laws address the regulation of cable television franchises and services. Therefore, municipalities must be careful to comply with both federal and State laws when exercising local regulatory authority.

However, before discussing the relevant federal and State laws, it may be useful to define the terms that are used in this area. Every business has its own vocabulary, and cable television is no exception.

First, what is "cable television" for purposes of regulation? As the Federal Communications Commission (FCC) explains in its October 1995 Fact Sheet:

Cable television is a video delivery service provided by a cable operator to subscribers via a coaxial cable or fiber optics. Programming delivered without a wire, by satellites or other facilities is not 'cable television' under the Commission's definition.

However, to be a "cable system" within the scope of State and federal law, the delivery of programming with a wire must use a public right-of-way.

A "cable system" typically has a "head end" that receives programming from satellites, local stations and from local studios and sends these programs to subscribers' televisions. The cable system sends these signals over coaxial cable or fiber optic cable. Cable operators frequently use fiber optic cable for long runs to avoid signal loss; fiber optic cables usually terminate in "nodes," beyond which coaxial cable is used for service connections to individual sets. Some cable systems use fiber optic cable only, but this is not the general practice.

Once the signal reaches the subscriber, the cable may be connected directly to a "cable-ready" television or to a converter box outside of the television. Cable systems may use such converter boxes to also provide connections for other services, such as digital radio or telephone or cable-modem Internet access.

The "cable operator" provides the "cable service." A cable operator must receive a "franchise" – an authorization to do business – from the appropriate governmental authority (the "franchise authority" or "franchising authority"). Either a state or its municipalities may serve as the franchise authority; approximately 10 states review and award cable franchises, while most states, like Maine, leave franchising to local governments. The franchise authority may ask the cable operator to agree in the franchise agreement or renewal to pay the franchise authority an annual franchise fee of up to 5% of the total revenue from "cable services."

Cable service is offered to subscribers in "tiers." All subscribers must subscribe to the "basic tier," which includes all local broadcast stations and any public, educational and governmental channels. Many cable operators offer a second or "standard" tier that includes the basic tier and specific additional channels. In addition, many cable operators offer particular additional channels on a per-channel fee basis ("a la carte") and offer "pay-per-view" programs so that a subscriber may view a single broadcast of a particular event or movie.

In addition to the cable service for broadcast of television programming to subscribers, cable operators may provide a separate system or network to transmit programming to serve schools and governmental institutions – this is known as an "institutional network" or "I-net."

2. Federal Law

The federal Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 (together, the "Cable Act," 47 U.S.C. §§ 521-573), establish the foundation for and the major limitations upon local regulation of cable television services.

Prior to federal regulation of cable television, there was only state and local regulation. Most frequently, municipal regulation of cable television took the form of issuing cable operators a franchise to do business in the municipality.

In the mid-1960s, the FCC adopted rules to regulate cable television. These included the 1965 "must-carry" provisions to require cable operators to carry local broadcast stations, rather than replace them with the network broadcast stations from large cities. New rules adopted in 1972 included operational standards such as franchise standards and public access requirements. The U.S. Supreme Court, however, struck down these rules. *F.C.C. v. Midwest Video Corp.*, 440 U.S. 689 (1979).

Congress has acted several times since the early 1980s to establish a framework for State, federal and local regulation of cable television.

a. Federal Cable Act of 1984.

Congress adopted the Cable Communications Policy Act of 1984 to establish for the first time a national policy on cable television issues such as: franchise and renewal processes, subscriber rates and privacy. It incorporated the local government franchise method of regulation that had become the norm for local government oversight of cable television, and provided a standard process for the awards of franchises, franchise renewal and franchise transfers.

b. Cable Act Amendments of 1992.

As the number of cable subscribers and the channel capacity of cable systems increased after Congress passed the 1984 Cable Act, competition did not increase but rates did increase. As a result, Congress passed the Cable Television Consumer Protection and Competition Act of 1992. This Act gave municipalities' limited authority to regulate cable service rates and established consumer protection and customer service requirements.

c. Federal Telecommunications Act of 1996.

As potential competition to cable systems began to appear (through telephone companies and satellite providers), Congress enacted the Federal Telecommunications Act of 1996 to deregulate the cable television industry and to allow cable operators and telephone companies to offer each other's services.

Congress restricted municipal authority to regulate rates to the lowest tier of cable services (basic service) and then only where there is no effective competition. It also defined the term "cable system" so as to exclude a telephone company's provision of video programming over telephone lines (which may be in or over a public way) from being considered a "cable system." Therefore, a telephone company offering the same video programming as a cable operator over a right-of-way is exempt from state, federal and local cable television regulations and does not need to obtain a franchise from the franchise authority.

d. FCC Regulations.

As required by the Cable Act, the FCC has promulgated extensive regulations fleshing out the federal statutes. These are found in the Code of Federal Regulations (CFR) at 47 CFR Part 76.

3. State Law

State law includes provisions regarding the local regulation of cable television services; these provisions are in addition to federal law. These provisions are briefly summarized here, and are discussed in greater detail later in this *Guide*.

Title 30-A M.R.S.A. § 3008 establishes that in Maine, the municipality is the "franchising authority" for purposes of federal law. Section 3008 requires a municipality that wishes to award a franchise to first enact a franchising ordinance that meets the standards in that section. Under this statute, the municipal officers (selectmen or councilors) have the exclusive authority to adopt such an ordinance and to enter into franchise agreements and renewals – town meeting has no authority in these areas. Section 3008 specifies that a franchise cannot have a duration of more than 15 years, and that the term of a renewal may not exceed 15 years.

State law (30-A M.R.S.A. § 3010) also contains customer service standards for cable television operators that are in addition to the standards in federal law. These standards govern credits and refunds for interruption of service, service disconnections, notices to customers regarding service quality, cable operator recording of subscriber complaints and the rights of individuals to cable service and access, free from discrimination. In addition, § 3010 requires that all franchises shall be nonexclusive and "shall include provision for access to, and facilities to make use of, one or more local public, educational and governmental access channels...."

4. Municipal Role in Regulation of Cable Television Generally

As stated above, State and federal laws establish a relatively limited role for municipalities in the regulation of cable television. This can be very frustrating to municipal officials, because the issues that matter most to residents – cable service rates and cable programming – are matters that federal law for the most part places

beyond the authority of the franchising authority to regulate. Instead, federal law generally limits the powers of franchising authorities ("any governmental entity empowered by Federal, State, or local law to grant a franchise") to the awarding of franchises, the review of any transfer of a franchise to a new cable operator and the monitoring of cable operator compliance with both the franchise agreement and the customer service provisions in the franchise agreement, the local ordinance and in State law. In Maine, the municipalities are the franchising authorities.

One way to understand the municipal role in cable television regulation under State and federal law is to examine the basis for local government authority to regulate cable television services and operators. **The fundamental basis for municipal regulation of cable television services and operators is that cable facilities use public rights-of-way – the municipal streets and ways – and so, municipalities have the right to regulate the cable services that utilize these rights-of-way.** Municipalities cannot regulate or award franchises to master antenna systems, telephone companies that provide television signals, satellite dish systems or to other television technologies that do not occupy part of the public right-of-way.

Therefore, the franchising of cable operators is one of the most important municipal functions in cable television regulation. Because cable operators use public rights of way to send television signals by coaxial and fiber optic cable, State and federal law requires cable operators to obtain a franchise from the municipality. A franchise is a right to do business. Municipalities also initiate or receive and review proposals for renewal of existing franchise agreements. As part of a franchise or franchise renewal agreement or ordinance, the municipality may require the cable operator to pay the municipality an annual franchise fee, which in essence is "rent" for use of the municipality's rights of way. Cable television franchises are non-exclusive – that is, a municipality may award more than one cable television franchise.

Another municipal function in cable television regulation – one which also is part of the franchise process – is the provision of public, educational and governmental (PEG) access programming to be broadcast over the cable system. Federal law authorizes municipalities to require a cable operator, as part of the franchise agreement, to designate channel capacity for PEG access programming to be broadcast over the cable system (47 U.S.C. § 531). However, State law **requires** franchises to "include provision for access to and facilities to make use of, one or more" PEG access channels (30-A M.R.S.A. § 3010(5)). Therefore, municipalities should insist upon equipment and facilities for PEG access when negotiating franchise agreements, or at least should not give up this right without receiving something of equal value from the cable operator.

Yet another municipal function in cable television regulation is rate regulation, **although federal law limits this authority to a very narrow area.** Municipalities may apply to the FCC for rate regulation authority, **but this authority is limited only to the lowest tier of cable services, and is allowed only where there is no effective competition as defined under federal law.** Moreover, cable operators are very

careful about pricing the lowest tier of cable service, so that there is little practical benefit to a municipality that obtains authority to regulate rates for this tier of service.

Another municipal function in cable television regulation is review of franchise transfers. When cable operators sell their operations to another entity, the municipality has the opportunity to review and approve of the transfer.

An often-overlooked municipal function in cable television regulation is monitoring compliance with franchise agreements. In addition to awarding franchises or renewals to cable operators, municipalities also monitor cable operators' compliance with the terms of the franchise agreement and with the customer service standards in State and federal law and in the franchise agreement. This can include annual receipt and review of financial reports and of customer service reports.

As the franchising authority, the municipality receives complaints regarding violations of State and federal consumer protection and customer service requirements. The municipality also receives and investigates complaints of violations of customer service standards that may be contained in the municipality's cable television ordinance or in the franchise agreement. Following up these complaints and enforcing State and federal law and the franchise agreement all are part of the municipal role in cable television regulation.

Many of these areas of municipal regulation of cable television are discussed in greater detail below in the context of specific regulatory issues.

C. Specific Issues in Municipal Regulation of Cable Television

The following paragraphs address in greater depth issues that frequently arise in local cable regulation.

1. Municipal Ordinances.

- a. Ordinance Required.** State law requires a municipality to adopt an ordinance governing the procedures for granting a franchise before it can grant a cable television franchise. Such an ordinance "shall be designed to ensure that the terms and conditions of a franchise will adequately protect the needs and interests of the municipality." 30-A M.R.S.A. § 3008(4). In particular, the ordinance must include at least the following franchise procedures: "a mechanism for determining special local needs or interests before issuing a request for proposals" (either by actively seeking to determine public needs or interests or by allowing a public comment period on proposed requests for proposals); notice to the public that franchise applications and related documents are public records open to public inspection during reasonable business hours; "a reasonable opportunity for public input" before a franchise is awarded; and "the assessment of reasonable fees to defray the costs" to the

municipality for public notice, advertising and other application review expenses. See Appendix A for sample cable television franchise ordinances.

- b. **Only Municipal Officers May Adopt Cable Television Franchise Ordinance.** The municipal officers (selectmen or councilors) have the **exclusive** authority to adopt cable television ordinances regarding the franchising and regulation of cable television systems using public ways – a town meeting may not adopt such an ordinance. 30-A M.R.S.A. § 3008(2). When adopting a cable television ordinance, the municipal officers must give seven days' notice of the meeting at which the ordinance is proposed, and this notice must be provided in the same manner as a town meeting notice (a constable or other resident to whom the notice is directed posts "an attested copy of the warrant signed by a majority of the municipal officers, stating the time and place of the meeting and the business to be acted upon in some conspicuous, public place in the town at least 7 days before the meeting, unless the town has adopted a different method of notification" and this person "shall make a return on the warrant stating the manner of notice and the time when it was given." See 30-A M.R.S.A § 2523 for a full description of town meeting posting requirements). A cable television ordinance becomes effective immediately upon enactment.

2. Franchise Agreements.

A cable operator cannot provide cable service without a franchise. 47 U.S.C. § 541(b). A franchise is a right to do business within a specific geographic area. While a franchise generally may be exclusive (limited to only one party) or non-exclusive (more than one party may be granted a franchise), as stated below, State and federal laws require cable television franchises to be **non-exclusive**. The franchise agreement documents the terms and conditions under which the cable operator agrees to provide service within the municipality. These terms and conditions are unique to that municipality, reflecting the needs and interests of that municipality's residents.

- a. **Franchises Awarded by Municipal Officers.** State law "specifically authorizes municipal officers [selectmen or councilors] pursuant to ordinances to contract on such terms and conditions and impose such fees as are in the best interests of the municipality,..., for the placing and maintenance of cable television systems and appurtenances, or parts thereof, along public ways...." 30-A M.R.S.A. § 3008(5).
- b. **Franchises Nonexclusive.** The federal Cable Act states: "a franchising authority may not grant an exclusive franchise." 47 U.S.C. § 541 (a)(1). Similarly, State law provides that "All franchises shall be nonexclusive." 30-A M.R.S.A. § 3010(5). While municipal officials may be understandably concerned about the cluttering of public ways with cable system wires and facilities if more than one franchise is awarded, a municipality "may not

unreasonably refuse to award an additional competitive franchise.” 47 U.S.C. § 541 (a)(1). This means that a municipality cannot grant a cable television franchise to only one cable operator if other cable operators submit franchise proposals that comply with the municipality’s ordinances and with State and federal law and that meet community needs and interests. (Please note that while one provision of State law (30-A M.R.S.A. § 3008(5)) states that the municipal officers may grant exclusive or nonexclusive franchises, both § 3010(5) and the federal Cable Act require cable television franchises to be nonexclusive, and so we recommend that a municipality **not** grant an exclusive franchise).

c. **Franchise Requirements.** Federal and State law list several items that franchising authorities must address, either in the franchise agreement or in the franchise process. (See Appendix C for sample franchise agreements.)

1) **Federal Requirements.** The franchising authority, in awarding a franchise, “shall assure that access to cable service is not denied to any group of potential residential cable subscribers” because of the income of residents in the area in which they live. 47 U.S.C. § 541 (a)(3). Also, the franchising authority, in awarding a franchise: “shall allow the applicant’s cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area”; “may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support”; and “may require adequate assurance that the cable operator has the financial, technical or legal qualifications to provide cable service.” 47 U.S.C. § 541 (a)(4).

2) **State Requirements.** State law requires a franchise agreement to contain: a statement of the area(s) to be served; a line extension policy; a provision for renewal; procedures for the cable operator to investigate and resolve complaints; any other terms and conditions in the municipality’s best interest; and a provision for access to, and facilities to make use of, one or more PEG access channels. 30-A M.R.S.A. §§ 3008(5) and 3010(5).

d. **Maximum Length of Franchise Agreements.** Under State law, the maximum length of a franchise agreement is fifteen years, and the maximum term of any franchise renewal also is fifteen years. 30-A M.R.S.A. § 3008(5). Therefore, franchise agreements must be periodically renewed or amended; for this reason (as well as for the reason of enforcement of the franchise agreement’s terms), **it is vitally important that the municipality keep track of the franchise agreement’s expiration date – this task should be assigned to a particular official as part of that position’s duties to insure that the franchise agreement or franchise renewal is not forgotten once it is executed.** (See Appendix G for a list of franchise expiration dates provided to MMA when this Manual was published).

- e. **Automatic Renewals.** Some franchise agreements are written to allow franchise renewal to occur solely upon the cable operator taking some specific step (greater system build out, system upgrade or channel capacity increase) and without the public input contemplated by State and federal law. It is an open question that has not been addressed by the courts as to whether such automatic renewals are lawful if these occur under a franchise agreement. It would be better for a franchise or renewal agreement that allows for automatic renewal upon some further act by the cable operator to also require meaningful public hearings and public comment prior to that renewal becoming effective.

3. Franchise Fees.

A municipality may assess the cable operator an annual "franchise fee" of up to 5% of gross revenues "derived from the operation of the cable system to provide cable services." 47 U.S.C. § 542(b). A franchise fee is "not a tax...but essentially is a form of rent: the price paid to rent use of public right-of-ways." *City of Dallas, TX et al. v. FCC*, No. 96-60427 (5th Cir. 1997). Franchise fee revenues are monetary payments from the cable operator that the municipality may use at its discretion – franchise fee revenue may be placed in the municipality's general fund or may be used in whole or in part to fund public, educational and governmental (PEG) access costs of the municipality.

The term "franchise fee" does not include: taxes, fees or assessments of general applicability (such as sales or property taxes); PEG access facility support payments required from the cable operator under a franchise in effect on October 30, 1984; and capital costs payments (for equipment and/or facilities) required from the cable operator for PEG access facilities under a franchise granted after October 30, 1984. In other words, the cable operator cannot count these amounts as part of the franchise fee.

However, while franchise fees are lawful and essentially represent a payment by the cable operator to the taxpayers in return for its use of the public ways, requiring a franchise fee can create a local political issue. This is because federal law authorizes cable operators to separately itemize local franchise fees on their monthly bills to subscribers, and so, to a subscriber, a franchise fee can look like a local tax. (Federal law also authorizes the cable operator to separately identify on customers' monthly bills any amounts of the total bill assessed to satisfy the cable operator's costs for any PEG access support required by the franchise agreement, as well as any other fee or assessment imposed by any governmental authority (State or local) on cable television services. 47 U.S.C. § 542(c). Therefore, while the municipality can bargain for provision of PEG access equipment and an institutional network as part of the franchise or franchise renewal process, the cable operator can pass the costs of this bargain on to subscribers.)

In light of a recent ruling by the FCC (discussed below), the revenue from "cable services" that may be subject to a franchise fee probably does not include revenues

from non-cable television sources, such as telephone or Internet services revenues. Recently (March 15, 2002), the Federal Communications Commission (FCC) issued a Declaratory Ruling that cable modem services offered by cable operators (cable Internet access services) are not "cable services." As a result, cable operators have informed municipalities that cable modem revenues should not be included in the calculation of franchise fees. The FCC's ruling is on appeal to the U.S. Court of Appeals for the District of Columbia.

4. **Franchise Renewal.**

Because cable television franchises have a maximum duration of fifteen years, the franchise agreement must be renewed from time to time. The federal Cable Act provides for two methods of franchise renewal – formal (47 U.S.C. § 546(a)-(g)) and informal (47 U.S.C. § 546(h)). However, there is an implied presumption of renewal, and the burden will be on the municipality that wishes to deny an application for renewal to prove that there is cause for denial.

- a. **Formal Renewal.** Either the municipal franchising authority or the cable operator may initiate the formal renewal process under 47 U.S.C. § 546(a)-(g). The municipality may initiate formal renewal by commencing a renewal proceeding between 30 and 36 months before expiration of the current franchise agreement. The cable operator may commence the formal renewal process by submitting a written renewal notice (Form 626) to the franchising authority between 30 and 36 months before expiration of the current franchise agreement. If the cable operator does not submit this notice in a timely manner, it cannot invoke the formal renewal process. Once the municipality receives a timely notice of formal renewal from the cable operator, the municipality must begin the renewal process within six months after receipt of notice. 47 U.S.C. § 546(a)(1).

The formal process has three stages.

The first stage is "ascertainment." Ascertainment is a proceeding that includes public notice of and participation in a needs assessment "identifying the future cable-related community needs and interests," and in an evaluation of the cable operator's performance during the term of the current agreement. 47 U.S.C. § 546(a)(1). The ascertainment process is of special importance to a municipality, since it identifies the community's cable-related needs and interests, and it serves as a yardstick by which to measure cable operator performance. Also, the results of the ascertainment process can serve as a basis for denial if they show that the cable operator's proposal fails to meet those needs and interests. A municipality may wish to hire a consultant to conduct the ascertainment, or may perform the ascertainment itself, but in any event, should be sure to conduct a full ascertainment. See Appendix D for a sample request for proposals for cable television consultants. The municipality may issue a request for proposals (RFP) to the cable operator at the end of the ascertainment

process; this RFP would detail municipal needs. 47 U.S.C. § 546(b). See Appendix B for a sample request for proposals for cable services.

The second stage begins upon the cable operator's submission of a proposal, either on its own initiative or in response to the municipality's RFP. 47 U.S.C. § 546(b). The municipal franchising authority has four months from the cable operator's submission of a proposal to renew the franchise or to issue a preliminary assessment of non-renewal. 47 U.S.C. § 546(c).

The latter action triggers the third stage of the formal renewal process. In this stage, the franchising authority, on its own or at the request of the cable operator, may commence an administrative proceeding to determine whether the franchise should be renewed. In making this decision, the franchising authority must consider whether: "the cable operator has substantially complied with the material terms of the existing franchise and with applicable law"; "the quality of the operator's service, including signal quality, response to customer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs"; "the operator has the financial, legal and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal"; and "the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." 47 U.S.C. § 546(c)(1). Any decision by a franchising authority to deny a proposal for renewal must be based upon one or more adverse findings under these factors. This process results in a written decision by the municipal franchising authority that an aggrieved cable operator may appeal to the courts. 47 U.S.C. § 546(e.)

A municipal franchising authority **must** use the formal process if it wishes to deny an application for renewal – it cannot deny an application through the informal renewal process (described below). Therefore, a municipality may preserve its flexibility to deny an application by beginning the formal renewal process, and then agreeing with the applicant to suspend it and to use the informal process, while reserving the right to resume the formal process. In this way, if informal negotiations break down, the municipality still has the ability to resume the formal renewal process and to deny the application.

Finally in this regard, a municipality **can** deny a proposal or application for franchise renewal where the facts support denial. It is rare that a court will uphold a municipal franchising authority's denial of a franchise renewal proposal or application. However, where the record (including a needs assessment) shows that a cable operator's proposal fails to reasonably meet the municipality's future cable television-related needs and interests, a municipality may deny the proposal; the courts will uphold such a decision and will defer to the municipality's identification of its needs and interests. *Union CATV, Inc. v. City of Sturgis, Ky.*, 107 F.3d 434 (C.A. 6th Cir. 1997).

- b. **Informal Renewal.** In the alternative, the parties may elect not to use the formal renewal process or may suspend the formal renewal process (reserving the right to later resume the formal renewal process if informal negotiations break down and denial becomes a possibility), and may negotiate using the informal renewal process of negotiation. The federal Cable Act requires adequate public notice and opportunity for public comment as part of the informal renewal process. 47 U.S.C. § 546(h). This helps to ensure that community needs and interests will be met in the franchise renewal process and to gauge the cable operator's performance. Cable television consultants indicate that most franchise renewals use the informal process, and that the informal process is preferable because of its flexibility. However, if the municipality elects to use the informal process, it still may want to conduct an ascertainment of community cable television needs and interests (including PEG access needs) and of levels of consumer satisfaction with the cable operator's services. The information obtained should be helpful to the municipality as it negotiates the franchise renewal agreement.
- c. **Renewal Considerations.** Awarding a franchise or a renewal of a franchise essentially is a "business deal." A municipality must determine what is important to its residents and then must negotiate with the cable operator to obtain those desired services and items, such as PEG access equipment and institutional networks, while understanding that these services and items have a cost that the cable operator may pass on to subscribers.

An important consideration in the negotiation of a franchise award or renewal is this—the greatest leverage a municipality has in these negotiations is the term of the agreement. Cable operators typically seek the longest term possible in order to guarantee the longest period in which to obtain a return on investment. As a result, cable operators may be willing to provide more in the way of PEG access equipment and facilities, municipal building wiring and an institutional network in return for a longer term franchise agreement.

Also, renewal is an opportune time for the municipality to ask for certain concessions from the cable operator as part of the negotiation process. For example, the municipality might ask for a five percent discount for senior citizens and/or for the economically disadvantaged.

Negotiating and drafting a franchise agreement usually requires legal counsel — it is difficult and dangerous to do this on your own. Although this costs money, the municipality presumably assesses a franchise fee upon the cable operator for the privilege of using the public right-of-way, and this franchise fee revenue can be used to pay consultants and attorneys to represent the municipality in the franchise renewal process. Appendix C contains examples of franchise renewal agreements. However, to simply follow these examples would not be appropriate, since your municipality may wish to negotiate for different items based upon the ascertainment study's identification of its cable-related needs and interests, and may have a different set of customer service concerns.

In addition, any franchise agreement or renewal agreement should state that the municipality has the right to approve or to disapprove of any proposed sale or transfer of the cable operator's franchise or of the proposed sale, transfer or change of control of the cable operator or its assets. (See the discussion of "Franchise Transfers" below.)

Finally, where more than one cable operator seeks a franchise in one municipality, federal law does not require all franchises to be granted upon identical terms and conditions. Federal law also does not require a municipality to negotiate with all applicants for a franchise, particularly when applications are submitted in the informal franchise renewal process under the federal Cable Act. Instead, federal law gives municipalities the discretion under the informal franchise renewal procedure to consider franchise renewal proposals, even if the cable operator has commenced formal renewal proceedings, but does not require the municipality to review these proposals or to engage in negotiations with the cable operator. (See 47 U.S.C. § 546(h), "Alternative renewal procedures. Notwithstanding the provisions of subsections (a) through (g) of this section, a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this section have commenced.") Thus, under federal law the municipality has discretion under the informal franchise renewal process to decide whether to act on proposals and to engage in negotiations.

- d. **Renewal Issues.** Some common issues in renewal negotiations include: system line extensions (how many homes per mile are required before the cable operator will be compelled to extend service to the homes); system upgrades (from coaxial cable to fiber optics, increase in number of channels); signal improvement; service improvement; and PEG access facilities and equipment (the capital costs of which should not be included as part of the franchise fee). One issue to examine in the needs ascertainment process is whether subscribers really desire system upgrades; increased system performance and capacity may primarily benefit the cable operator by allowing it to provide more revenue-generating services (such as digital telephone, radio and television and high-speed Internet), which, for the consumer, may mean increased rates.

5. Franchise Transfers.

There has been a recent national trend toward consolidation in the telecommunications industry – larger cable operators are increasing market share by acquiring smaller cable systems. This consolidation of cable service ownership has resulted in frequent franchise transfer proceedings in Maine and nationwide. Federal law requires a cable operator to send a notice (Form 394) to the franchising authority informing it of the proposed transfer and of the proposed transferee's background and financial information. If the franchise agreement grants it the right to approve or

disapprove of the transfer, the municipality has 120 days after receipt of a complete Form 394 within which to approve or disapprove of the franchise transfer. 47 U.S.C. § 537. A municipality has 30 days after receipt of this form within which to question the accuracy of the information in this form, or else the information is deemed accepted. If a municipality fails to issue a decision within the 120 days, the request for approval is deemed granted unless the parties have agreed to an extension of time.

A franchise transfer is not an opportunity to renegotiate the franchise agreement. However, it is an opportunity to determine in what respects, if any, the current cable operator is deficient under or in violation of the franchise agreement and to require the new cable operator to cure these deficiencies and violations. The municipality can attach these requirements as conditions of approval to the transfer agreement.

6. **Rate Regulation.**

Under the federal Cable Act, municipalities have **limited** authority to regulate rates. This authority is limited to the basic tier of cable rates, and the FCC must determine there is no "effective competition" and must approve the local regulations. "Effective competition" means that: fewer than 30% of the households in the franchise area subscribe to a cable system's cable service; the franchise area is served by two or more unaffiliated video programming distributors; a multi-channel video programming distributor operated by the franchising authority for the franchise area offers video programming to at least 50% of the households; or a local exchange carrier or its affiliate offers video programming services directly to subscribers by any means except direct home satellite in the franchise area. 47 U.S.C. § 543(l)(1). However, there is no rate regulation of "small cable operators" (a cable operator that directly or through an affiliate serves in the aggregate fewer than 1 percent (1%) of all U.S. subscribers and is unaffiliated with any entities whose gross revenues exceed \$250 million) in any franchise area in which that cable operator services 50,000 or fewer subscribers where basic service was the only tier subject to rate regulation as of Dec. 31, 1994). 47 U.S.C. § 543.

In order for a municipal franchising authority to exercise rate regulation authority, it must certify to the FCC: that it will adopt and administer rate regulations that are consistent with those prescribed by the FCC; that it has the legal authority to adopt and the personnel to administer the regulations; and that the procedural laws and rules governing its rate regulation process permit a reasonable opportunity for the consideration of interested parties' views. 47 U.S.C. § 543(a)(3); 47 CFR §§ 76.910-76.917. The certification becomes effective 30 days after filing, and the municipality must adopt rate regulations consistent with FCC regulations within 120 days of the effective date of the certification. The municipality has this limited rate regulatory authority unless after notice and an opportunity for comment, the FCC finds that: the regulations or their administration is inconsistent with the FCC's regulations; the municipality lacks legal authority to adopt or personnel to administer the regulations; or there is no reasonable opportunity for interested parties' views to be considered. 47 U.S.C. § 543(a)(4). The FCC also has the power to revoke the ability of the

municipality to regulate rates on petition by a cable operator or interested party where the FCC "finds that the franchising authority has acted inconsistently with the requirements of the Cable Act." 47 U.S.C. § 543(a)(5).

7. Public, Educational and Governmental (PEG) Access.

Federal law authorizes municipalities to require the cable operator to designate channels for public, school and governmental access to the cable system. 47 U.S.C. § 531. This is known as public, educational and governmental ("PEG") access. In this way, the municipality may broadcast meetings of municipal boards (the board of selectmen or town or city council, school board and other boards, as desired by the municipality), the schools may broadcast their events and may produce their own programs and individual members of the public may produce and broadcast their own programming.

Because this is one of the few areas that federal law leaves open for negotiation in the franchise award and renewal process, PEG channels, services and equipment concerns frequently arise during franchise and franchise renewal negotiations. As explained below, municipalities can negotiate over the number of PEG access channels and over the amount of equipment a cable operator will provide in order to allow PEG access to be a reality. However, as noted above in the discussion of franchise fees, the cable operator can pass the costs of this equipment on to subscribers.

Be aware that although PEG equipment and facilities costs cannot be counted against the franchise fees, the cable operator may itemize all PEG access costs, including equipment, facilities and any operating support, on subscribers' bills and may pass these costs along to the subscribers.

The federal Cable Act does not specify the number of channels a municipality may designate. State statute – 30-A M.R.S.A. § 3010(5) – says that the franchise shall provide for one or more channels, but it should be a number that the municipality reasonably expects to be used. This number varies from municipality to municipality – most Maine municipalities have one PEG channel, while Cumberland, Gray and Gorham have two, Portland and South Portland have three and some interlocal agreements and franchises require four or more PEG channels to serve all of the municipalities that are parties to the agreement. (See Appendix E for an example of the last.) If channel capacity designated for PEG purposes is unused, the cable operator may use it for the operator's commercial purposes as provided in the municipality's rules and procedures or ordinance. 47 U.S.C.A. § 531(d).

When negotiating a franchise agreement or renewal, a municipality may want to request that the cable operator designate both analog and digital channel capacity for PEG access. As television broadcasting moves to digital signal broadcasting, it will be important to have both types of channels for future PEG needs.

The federal Cable Act requires the cable operator to place PEG access channels on the basic tier so that all subscribers may view them. 47 U.S.C.A. § 531(d). The franchise agreement should require the cable operator to place PEG stations at the lower end of the dial and to pay the reasonable costs for new logos, stationery and other expenses if it has to change the station's number and dial location.

Having a designated PEG channel or channels is only part of the equation – the municipality needs equipment and facilities to broadcast meetings and to produce and broadcast programming. A franchise agreement should require the cable operator to provide equipment and/or facilities (or in the alternative, money for equipment and/or facilities) for PEG access. It also should address replacement and repair of equipment in a manner that allows the municipality to upgrade equipment when technology changes, particularly when the franchise agreement is for a longer duration (10 years or more, for example). The willingness of cable operators to agree to provide generous (or even sufficient) amounts of PEG access equipment and supplies and to agree to repair and replace this equipment generally is proportional to the length of the term of a franchise – the longer the franchise, the greater the return on its investment in cable and equipment a cable operator can realize and the greater the amount of money that the operator is willing to provide for PEG access equipment.

The municipality also might request PEG channel switching at the head end in order to allow the PEG governmental channel to be able to switch between local and regional governmental programming.

Finally, because of the differences between public access programming and educational and government access programming, municipalities should be aware that there are special issues regarding the oversight of public access channels. While the municipal government and the school department can control what is prepared for and broadcast on the governmental and educational channels, the public access channel could be considered a public forum. Several U. S. Supreme Court justices, although not a majority, were willing to call public access television a designated public forum in *Denver Area Educational Telecommunication Consortium v. FCC*, 518 U.S. 727, 116 S. Ct. 2374 (1996). If public access is a designated public forum, then the First Amendment to the U.S. Constitution, which guarantees freedom of speech, would apply to the public access channel, and any restrictions on use of that forum would be subject to “strict scrutiny.” If this is the case, municipalities would only be able to regulate the time, place and manner – and not the content (except for “fighting words” and obscenity) – of speech presented on a public access channel. In any event, any municipality that contemplates providing public access should create a public access committee to formulate reasonable, objective criteria regarding the time, place and manner regulation of public access programming and to fairly administer these criteria.

8. Institutional Network.

A municipality may, as part of a franchise award or renewal process, ask for an institutional network to provide data transmission among municipal facilities, such as the municipal office, schools and police, fire and rescue facilities. Federal law defines an "institutional network" (or "I-net") to mean a communication network which is constructed or operated by the cable operator and which is generally available only to subscribers who are not residential subscribers. 47 U.S.C. § 531(f). Again, however, the cable operator may pass the costs of an I-net on to subscribers.

9. Wiring Public Facilities.

It is standard for franchise agreements to require that the cable operator provide cable television connections and service free of charge to all public schools and libraries and to the municipal building(s). As cable companies expand their scope of services, franchise agreements and renewals now frequently also provide for free Internet access to these same buildings, since Internet services are provided over the same cable. However, the municipality may have to pay monthly charges for the Internet services to business offices. Moreover, until the FCC decision that cable-modem services are not within the scope of "cable service" is resolved by the FCC, the courts or by Congress, cable operators may not be willing to address the provision of Internet services in the course of franchise negotiations.

10. Consumer Protection/Customer Service.

Both State and federal law provide protections and customer service guidelines for consumers of cable services (minimum response time, credits and refunds for service interruptions, records of subscriber complaints, late fee limitations and subscriber privacy protections), and impose certain requirements upon cable operators in this regard (47 U.S.C. §§ 551 and 552; 47 CFR §§ 76.910-76.917; 30-A M.R.S.A. § 3010). Franchise agreements can and should reference these requirements, and can impose additional requirements.

a. Federal Law.

Federal law establishes many rights and protections for consumers regarding cable television. 47 U.S.C. §§ 551 and 552.

- 1) **Privacy Statement.** Title 47 U.S.C. § 551 requires every cable operator to provide subscribers a written privacy statement (upon commencement of cable service and annually thereafter) informing subscribers about the nature of personally identifiable information it will collect regarding the subscriber and the use and disclosure of that information. It also prohibits cable operators from otherwise collecting personally identifiable information about a subscriber without that subscriber's prior written or electronic consent except as necessary to provide cable services and to detect thefts of

such services, and from disclosing personally identifiable information about a subscriber without that subscriber's prior written or electronic consent except as necessary to provide cable services or pursuant to a court order. A cable operator shall provide subscribers with access to their own personally identifiable information, and shall destroy personally identifiable information when it is no longer necessary. A person aggrieved by a cable operator's violation of this section may bring a civil lawsuit in the U.S. District Court and the court may award actual damages in the amount of the higher of \$100 per day or \$1,000, punitive damages and reasonable attorneys' fees and costs.

- 2) **Customer Service Obligations.** Title 47 U.S.C. § 552 authorizes a franchising authority to establish and enforce customer service requirements and construction schedules and construction-related requirements with which the cable operator must comply. It also directs the FCC to promulgate regulations that establish "standards by which cable operators may fulfill their customer service requirements," including "cable system" office hours and telephone availability; installations, outages and service calls; and cable operator-subscriber communications, including bill and refund standards. Section 552 also authorizes states and franchising authorities to enact and enforce consumer protection laws (which may be more stringent than federal law) so long as they are not specifically preempted by federal law. The municipality should incorporate these State and federal requirements into its franchise ordinance or franchise agreements.

As required by 47 U.S.C. § 552, the FCC has promulgated customer service regulations, which are contained in 47 CFR Part 76, § 76.309. These regulations authorize the franchise authority, upon 90 days' written notice of intent to enforce these standards to the cable operator, to enforce customer service standards, including the following:

- **Telephone Inquiries.** The cable operator must maintain a local, toll-free or collect call telephone access line available to subscribers 24 hours a day, seven days a week, with trained company representatives available to respond to customer telephone inquiries during normal business hours (which include at least one night per week and/or some weekend hours). An automated response system may answer calls received after normal business hours, and trained company representatives must answer these on the next business day.
- **Telephone Answer Time.** Under normal operating conditions, the telephone answer time, including wait time, shall not exceed 30 seconds from when the connection is made, and if the call needs to be transferred, the transfer time shall not exceed 30 seconds; these

standards shall be met 90% of the time, measured on a quarterly basis.

- **Busy Signal.** Under normal operating conditions, the customer will receive a busy signal tone less than 3% of the time.
- **Customer Service Center and Bill Payment Locations.** Customer service center and bill payment locations will be open at least during normal business hours (which include at least one night per week and/or some weekend hours) and will be conveniently located.
- **Installations, Outages and Service Calls.** Under normal operating conditions, the cable operator will meet the following standards at least 95% of the time measured on a quarterly basis: the cable operator will perform standard installations (those located up to 125 feet from the existing distribution system) within seven business days; the cable operator will begin work on service interruptions (loss of picture or sound on one or more channels) promptly, but no later than 24 hours after the interruption becomes known, and must begin corrective action on other service problems the next business day after notification; the cable operator must provide a specific time or a time block of up to four hours as an "appointment window" for installation and service calls (this time will be during normal business hours unless otherwise scheduled at the customer's request) and the cable operator cannot cancel an appointment after the close of business on the day before the appointment; and if the cable operator is running late, it will contact the customer to reschedule the appointment.
- **Refunds.** Cable operators will issue refund checks promptly, but no later than the earlier of the next billing cycle or 30 days or the return of cable operator-supplied equipment if service is terminated.
- **Credits.** The cable operator will issue credit for service no later than the customer's next billing cycle.

3) Customer Service Requirements.

Federal law establishes several consumer protections for cable service subscribers, including the following:

- **Billing Information.** Cable operators must provide the name, mailing address and telephone number of the franchise authority on subscriber's monthly bills. 47 CFR § 76.952.

- Charges for Customer Changes. Federal regulations strictly limit the amount that a cable operator may charge for customer-initiated changes in service tier or in operator-provided equipment. 47 CFR § 76.980.
- Negative Option Billing. A cable operator cannot charge a subscriber for service or equipment unless the subscriber affirmatively requests it by name. 47 U.S.C. § 543(f); 47 CFR § 76.981.
- Discrimination. A cable operator may provide reasonable discounts to senior citizens and to economically disadvantaged groups (those who receive federal, State or local welfare assistance), but must do so on an equal basis to all qualified subscribers in the franchise area. 47 U.S.C. § 543(e); 47 CFR § 76.983.

b. State Law.

State law also establishes several rights and protections for consumers regarding cable television. 30-A M.R.S.A. § 3010. This statute requires every cable operator/franchisee to agree to these rights and protections, which include:

- providing a subscriber, on request, with a pro rata credit or rebate if service is interrupted for six or more consecutive hours (30-A M.R.S.A. § 3010(1)(A));
- maintaining an office that is open during usual business hours, has a toll-free telephone and is capable of receiving complaints, requests for adjustments and service calls (30-A M.R.S.A. § 3010(1)(B));
- providing subscribers with 30 days' advance notice of rate increases and channel deletions (30-A M.R.S.A. § 3010(1)(C));
- disconnecting service within ten days of a customer's request for disconnection. (30-A M.R.S.A. § 3010(1-A));
- mailing a notice to subscribers upon commencement of service and annually thereafter regarding quality of service that informs subscribers how to file complaints with the cable operator, the franchising municipality and the State (30-A M.R.S.A. § 3010(2)); and
- maintaining a record or log of quality of service, equipment malfunction, billing, employee and other complaints for a period of two years. 30-A M.R.S.A. § 3010(4).

Other provisions of this statute: set forth the rights of all individuals to obtain cable services without discrimination; protect subscriber privacy; cap late fees on subscriber bills at 1.5% per month of the amount due in the bill; and make a violation of this section a violation of the Maine Unfair Trades Practices Act.

Again, municipalities may enact additional customer service standards so long as these are not preempted by State and federal law. 47 U.S.C. § 552.

11. Monitoring Compliance with Franchise Agreement.

A municipality may spend a significant amount of time and money negotiating a cable television franchise award, renewal or transfer agreement, but its terms are meaningless if the municipality fails to monitor compliance with the agreement. This is probably the most difficult task for a municipality, since the agreement may last as long as 15 years – often longer than the tenure of the selectmen, councilors, administrators and managers who negotiated the agreement.

It is important for the municipality to establish an institutional memory regarding the agreement by making a particular position responsible for monitoring compliance with the agreement. The municipality can write this duty into the job description for that position and can require periodic reports on compliance from the person in that position. In this way, there will be no gap in cable operator services and performance under the agreement. Otherwise, issues will only be raised and addressed the next time the franchise agreement is renewed or transferred.

In some municipalities, there may be no staff to perform the duty of monitoring compliance, or there may be no budget to undertake this duty. In these cases, a number of municipalities may jointly contract with a person or entity to perform this monitoring function.

To assist the municipality in monitoring the cable operator's compliance with the franchise agreement, the franchise agreement should require annual submission of financial data regarding the franchise fee calculation. The franchise agreement also should require regular submission of performance data in an understandable form regarding customer service requirements in State and federal law.

12. Coordination with Other Municipalities.

Reviewing cable operator proposals, evaluating operator performance, regulating basic tier rates, managing PEG access channels, assessing community needs and interests and negotiating franchise agreements, renewals and transfers can be time-consuming and costly tasks for a municipality to undertake individually. It may make sense to share the cost of legal and technical consultants with other municipalities served by the same cable operator. This can be done by a services agreement or contract, or by an interlocal agreement among the participating municipalities. A sample of an interlocal agreement for this purpose is included in Appendix E.

Coordination of effort with other municipalities can result in greater negotiating leverage and greater benefits to each participant than might occur if each municipality acted alone. For example, the Towns of Buxton, Hollis, Limerick, Limington, Standish and Waterboro formed the "Saco River Cable Committee" to jointly negotiate franchise renewals with the same cable operator (see "Request for Proposal for Renewal License," July 15, 1997, included in Cable Television: an Information Resource Guide prepared by MMA's Resource Center). Similarly, when Adelphia Communications acquired FrontierVision's cable holdings, some 56 Maine municipalities banded together for joint legal and technical review of the new operator and for the purpose of achieving common goals through the transfer approval process (see "Group Cable Agreement Largest in States History," *Maine Townsman* (Aug.-Sept. 1999)(Online version of *Guide*)).

13. Rights-of-Way.

Municipalities can and should regulate cable operators in their performance of work within the municipality's rights-of-way in the same manner in which they regulate utilities and others working in the municipality's rights-of-way. Utilities seeking to locate facilities, such as poles and wires, in the public right-of-way, must obtain a "location permit" under 35-A M.R.S.A. § 2503. Utilities and individuals seeking to excavate in the public way to construct or install these facilities must obtain an excavation permit under 23 M.R.S.A. §§ 2351 *et seq.* Whether a utility, a cable operator or an individual proposes to do this work, these statutes apply and a permit is required.

14. Enforcement.

As noted above, some provisions of State and federal law establish enforcement mechanisms and penalties for violation of those provisions. However, many enforcement issues arise out of violations of franchise and transfer agreements, and it is up to each municipality, as the franchising authority, to enforce the terms of its agreements and of any relevant ordinance provisions. Where State and federal law do not supply a penalty for specific violations of a franchise agreement, the franchise agreement must establish the municipality's right to seek injunctive relief, specified fines or both to address these violations. Enforcement only works if the municipality has some penalty it may impose for violation of the franchise agreement and is willing to pursue enforcement.

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 - b. National Association of Telecommunications Officers and Attorneys (NATOA) www.natoa.org
 - c. Community Television Association of Maine (CTAM): www.ctamaine.org
 - d. Miller & Van Eaton, P.L.L.C. (Washington D.C. and San Francisco law firm with large cable practice): www.millervaneaton.com
 - e. Moss & Barnett (Minneapolis law firm with large cable practice): www.moss-barnett.com
 - f. The Baller Herbst Law Group (Washington D.C. and Minneapolis law firm with large cable practice): www.baller.com

From: Kathryn Mills Woodsum <kmwoodsum@myfairpoint.net>
Sent: Tuesday, July 08, 2014 4:49 PM
To: Stefan Pakulski; Aaron Chrostowsky
Cc: Stephanie Haines; Darcy and HenryWhittemore; larrydunn@roadrunner.com; Home
Subject: PLEASE REPLY TODAY ;) - Summer residents meeting and trash collection

Greetings. Last night the Town of Readfield held their third annual summer residents meeting at the town office. One issue that came up was disposing of Saturday's waste on Sunday before the out-of-town residents head home. This issue has been ongoing for each year we have met and now they are really feeling that the town is ignoring them. As your chair, I fielded comments, concerns, complaints, and pleas, and then we brainstormed some ideas.

After about 30 minutes of discussion, we settled on the following request. *Have a location for summer residents to drop off one bag of trash on Sundays, from Memorial Day through Labor Day, for 2 or 3 hours, between the hours of 10 AM and 3 PM.* The Select Board is willing to discuss this issue at their next meeting on Monday July 7th. I asked for five minutes. They need information to make a decision by Wednesday afternoon so that the packets can be ready by 4:30 PM on Thursday.

I am asking you to read the following and then offer comments in 'Reply To All' email so we can get a feel for what the committee thinks. The cost of services for this fiscal year would have to be borne out of the current budget for the Transfer Station, or the Select Board would have to appropriate funds from their emergency fund and ask for approval at Town Meeting next year. We could budget for this in the future. Of course, this would have to open to residents in both Readfield and Wayne.

One is to have someone man the Transfer Station for a couple of hours on Sundays during the summer months. There is no desire on the part of our employees to do this as they would have no weekend day off all summer. They already work full time so these would be overtime hours, unless we altered the daily schedule to close another day, or part of a day. The minimum we can have an employee report to work for is 4 hours, and that was more than what folks were thinking of needing. This has been discussed in past years and was rejected by the Select Board and Transfer Station Manager.

Another idea would be to have a pick up system but that seems to be very inefficient, not knowing who would need service or not.

Another idea is to have a dumpster located somewhere centrally in town, perhaps at the Family Market. Though there is appeal to this idea it seems that having to have it locked and then unlocked and being open for anyone to throw stuff in could be a big issue. There would also be an issue of if the owners were willing to participate. It was suggested to do this at the Town Office.

Another idea is to have a commercial hauler truck parked centrally in town for several hours on Sunday. This seemed to be a viable idea as it might limit the filling up of the truck as opposed to the dumpster. It would be driven away and would not smell.

So I volunteered to research costs and availability, present it to you folks, and then present it to the Select Board. And all by THIS WEDNESDAY, as in tomorrow! (Don't you love me now??!!!)

What I have found is this. We have 4 commercial haulers licensed to operate at our Transfer Station.

Lookin' Good, run by Earle Welch, is a discontinued number (I think he moved to FL?)

TriTown was bought in April by **Archie's** and I left a message for the owner with their receptionist.

Jimmy Simmons was available and open to the idea of leaving a truck at the Readfield Town Office on Sundays from 9AM to Noon. He would want to be let into the TS or have a key to do so, as he doesn't want to keep the waste in his truck. (Maybe he could hold it until Monday when Stefan is at work and could let him in?) He thought the cost to be between \$100 and \$200 weekly, off the top of his head. He says his truck holds 80 customers volume, but if folks were only dropping off one bag it could hold more folk's trash.

Worthing Waste will bring a dumpster to the Readfield Town Office for a one-time fee of \$40. They could bring a 2-yard or a 4-yard container, with flip-top lids that could have chains wrapped over them to keep them closed and locked. (Someone would need to unlock and relock each Sunday.) If we thought that it would not fill up weekly, the on-all price is \$30(2-yd) or \$50 (4-yd) per pickup. If we wanted a monthly rate with weekly pickup it would be \$120 for the 4-yd.

So, what do you think?

Thanks, Kathryn

Kathryn Mills Woodsum or Steven D. Woodsum
685-9094
kmwoodsum@myfairpoint.net

**Town of Wayne, Maine
Tax Acquired Property Sale
Bid Form**

Please complete bid form and enclose with Bank Treasurer's Check made payable to the "Town of Wayne, Maine" in a sealed envelope labeled "Tax Sale Bid" with the property's map & lot number on the outside of the envelope. Complete this process separately for each property you are submitting a bid. Complete bids are due on **5:30 PM on Monday March 9, 2015** at the **Town of Wayne, P.O. Box 400 or 48 Pond Road, Wayne, ME 04284**. The Town of Wayne Board of Selectmen reserves the right to reject any and / or all bids.

Name: Brooke High Pappas
Mailing Address: 2275 Aliso Canyon Rd.
Santa Paula, CA 93060
Phone: 805-671-5311

Property: 013-022-003
Map # & Lot#

Bid Amount: \$ 10,710⁰⁰
Minimum Bid Price (at least)

CASHIER'S CHECK CUSTOMER COPY

098548

Remitter : James Breazeale

10,710 DOLLARS AND 00 CENTS

DATE

January 20, 2015

AMOUNT

\$10,710.00

Town of Wayne, Maine

FBO Brooke High Pappas

**MUNICIPAL
QUITCLAIM DEED
(Maine Statutory Short Form)**

The Inhabitants of the Municipality of Wayne, a body corporate and politic located at Kennebec County, Maine, for consideration paid, release to **Brooke High Pappas** of **2275 Aliso Canyon Road, Santa Paula, CA 93060**, the land and building in Wayne, Kennebec County, Maine.

Land and building shown of Wayne Property Tax Map **013** as Lot **022-003** described in Kennebec County Registry of Deeds at Book **10470**, Page **121**.

This deed is given for the purpose of releasing and conveying any and all rights which this grantor may have acquired by virtue of the following tax liens, which were imposed against the property and recorded in said Registry for the following year:

- **2012** taxes, tax lien recorded **June 28, 2013** in Book **11431**, Page **322**
- **2013** taxes, tax lien recorded **August 12, 2014** in Book **11768**, Page **148**

The said Inhabitants of the Municipality of Wayne have caused this instrument to be signed in its corporate name by its Town Manager, having been duly authorized by vote of the Wayne Board of Selectmen on the **27th** day of January, **2015**.

Witness

Aaron Chrostowsky
Town Manager

State of Maine
County of Kennebec, ss

January 21, 2015

Then personally appeared the above named **Aaron Chrostowsky** and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said body corporate and politic.

Before me, _____
Notary Public

Town of Wayne
DISCHARGE OF TAX LIEN MORTGAGE CERTIFICATE

Acct : 00865

Title 36, M.R.S.A. Section 943

Map Lot : 013-022-003

I, Bruce Mercier, in my capacity as TREASURER of the municipality of Wayne, hereby acknowledge that on January 21, 2015 I received full payment and satisfaction of the debt secured by the 2012 tax lien mortgage against property assessed to PAPPAS, BROOKE H PAPPAS, NICHOLAS T created by the recording of a tax lien certificate dated 6/28/2013 in Book 11431, at Page 322 of the KENNEBEC County Registry of Deeds, and in consideration thereof I hereby discharge said tax lien mortgage.

Bruce Mercier, TREASURER
Town of Wayne
Dated: January 21, 2015

ACKNOWLEDGEMENT

Wayne
State of Maine
KENNEBEC County, ss.

Personally appeared before me, on _____, the above-named Bruce Mercier, who acknowledged the foregoing to be his free act and deed in his capacity as TREASURER.

Aaron Chrostowsky, Notary Public
My commission expires: July 13, 2018

To: Selectboard
From: Aaron Chrostowsky, Town Manager
Re: MaineDOT Paving Rte. 133
Date: February 6, 2015

This construction season, MaineDOT will be paving Route 133 from Old Winthrop Road in Wayne to Route 202 Ramps in Winthrop.

They are requesting our permission in the attached agreement, "that the municipality will issue a permit for a stated period of time to the MaineDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits over municipal roads."

Town Highways (Possibly Affected)

- Cross Road
- Green True Road
- Fairbanks Road
- Lord Road
- Besse Road
- Old Winthrop Road

The State cannot force municipalities to allow overweight vehicles to travel on posted municipal roads.

MaineDOT's contractor use of municipal roads for this project will likely be de minimus (minimal). As a result I have no problem granting them access to municipal roads. They are still responsible for damage to roadways. During this construction project, I will monitor their use of municipal roads.

Manager Recommendation: Move the Board to sign agreement with State, that the Town of Wayne will issue a permit to the MaineDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits over municipal roads."



Paul R. LePage
GOVERNOR

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

David Bernhardt
COMMISSIONER

Aaron Chrostowsky, Town Manager
Town of Wayne
PO Box 400
Wayne, ME 04284-0400

1/30/15

Subject: Ultra-Thin Bonded
Wearing Course
Project No.: STP-2034(100)
Towns of Winthrop and Wayne

Dear Mr. Chrostowsky:

The Maine Department of Transportation will soon advertise the subject project for construction, and pursuant to 29-A MRSA § 2382 (7) we have established a "Construction Area". A copy of 29-A § 2382 is enclosed for your information. Also included is an agreement, which requires signature by the municipal officers, and additional background documents.

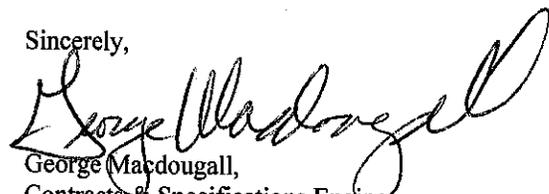
The agreement stipulates that the municipality will issue a permit for a stated period of time to the MDOT contractor for transporting construction equipment (backhoes, bulldozers, etc.) that exceed legal weight limits, over municipal roads. The agreement acknowledges the municipality's right to require a bond from the contractor to "guarantee suitable repair or payment of damages" per 29-A MRSA.

29-A MRSA § 2382 (7) states that "*the suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers*". In other words, municipal officers determine the suitability of repairs on municipal ways and bridges.

The State cannot force municipalities to allow overweight vehicles to travel on posted municipal roads. Municipal postings supersede overweight permits. However, the agreement requires municipalities to make reasonable accommodations for overweight vehicles that are operated by contractors and the MDOT in connection with the construction project.

The specific municipal roads involved are not necessarily known at present, as the contractor's plan of operation won't be known until just prior to the start of work. If the municipality plans to require a bond; the amount of the bond should be determined prior to the start of work. If the project number administratively changes, you will be notified, and the agreement modified accordingly. Please return the completed agreement to my attention. Should you have any questions, please contact me at 624-3410.

Sincerely,



George Macdougall,
Contracts & Specifications Engineer
Bureau of Project Development



PRINTED ON RECYCLED PAPER

Return this AGREEMENT, when completed, to:

Maine Department of Transportation
ATTN.: Mr. George Macdougall, Contracts & Specifications Engineer
#16 State House Station, Child Street
Augusta, Maine 04333-0016

Project No.: STP-2034(100)
Location: Towns of Winthrop
& Wayne

Pursuant to 29-A MRSA § 2382, the undersigned municipal officers of the **Town of Wayne** agree that a construction overlimit permit will be issued to the Contractor for the above-referenced project allowing the contractor to use overweight equipment and loads on municipal ways.

The municipality may require the contractor to obtain a satisfactory bond pursuant to 29-A MRSA § 2388 to cover the cost of any damage that might occur as a result of the overweight loads. If a bond is required, the exact amount of said bond should be determined prior to the use of any municipal way. The Maine DOT will assist in determining the amount of the bond if requested. A suggested format for a general construction overlimit bond is attached. A suggested format for a construction overlimit permit is also attached. This construction overlimit permit does not supersede rules that restrict the use of public ways, such as posting of public ways, pursuant to 29-A MRSA § 2395.

The maximum speed limit for trucks on any municipal way will be 25 mph (40 km per hour) unless a higher speed limit is specifically agreed upon, in writing, by the Municipal Officers.

TOWN OF WAYNE
By the Municipal Officials

Project No.: STP-2034(100)

SPECIAL PROVISION 105
CONSTRUCTION AREA

A Construction Area located in the **Towns of Winthrop and Wayne** has been established by the Maine Department of Transportation (MDOT) in accordance with provisions of 29-A § 2382 Maine Revised Statutes Annotated (MRSA).

- (a) The section of highway under construction in Kennebec County, Project No. STP-2034(100) is located on Route 133, beginning at the Route 202 Ramps in Winthrop and extending northwesterly 6.47 miles to the intersection of Old Winthrop Road in Wayne.

Per 29-A § 2382 (7) MRSA, the MDOT may “*issue permits for stated periods of time for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:*

A. Must be procured from the municipal officers for a construction area within that municipality;

B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:

(1) Withholding by the agency contracting the work of final payment under contract; or

(2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and

D. For construction areas, carries no fee and does not come within the scope of this section.”

The Municipal Officers for the **Towns of Winthrop and Wayne** agreed that an Overlimit Permit will be issued to the Contractor for the purpose of using loads and equipment on municipal ways in excess of the limits as specified in 29-A MRSA, on the municipal ways as described in the “Construction Area”.

As noted above, a bond may be required by the municipality, the exact amount of said bond to be determined prior to use of any municipal way. The MDOT will assist in determining the bond amount if requested by the municipality.

The maximum speed limits for trucks on any town way will be 25 mph (40 km per hour) unless a higher legal limit is specifically agreed upon in writing by the Municipal Officers concerned.

GENERAL GUIDANCE

CONSTRUCTION OVERLIMIT PERMIT AND BONDING

The Maine Bureau of Motor Vehicles (BMV) establishes requirements and standards for the permitting of non-divisible over dimensional and overweight vehicles and loads (collectively overlimit loads) on state roads. These state motor vehicle permits are available on-line. 29-A MRSA and Secretary of State Administrative Rules Chapters 155-157 apply. Additionally, municipalities and county commissioners may issue overweight permits for travel on municipal and county ways maintained by that municipality or county. These permits are typically single trip permits requiring vehicle registration data, intended route etc.

However, in this case we're dealing with *Construction Permits* involving overlimit loads in support of construction projects. According to 29-A MRSA § 2382 (7), a Construction Permit is a permit "for a stated period of time that may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation". According to 29-A § 2382 MRSA, the construction overlimit permit must be procured from the municipal officers for overweight loads on a municipal way in support of a construction project within that municipality.

By signing the attached agreement, the municipality agrees to issue construction overlimit permits to the MDOT construction contractor.

Frequently Asked Questions:

A. Why sign the document in advance of the actual construction contract?

Response: There are three primary reasons: First, to comply with 29-A § 2382. Second, to ensure that there are no surprises regarding the use of municipal roads by the Maine DOT contractor (to reasonably reduce risk and thus keep the cost of construction down) and third, to ensure the town is aware of its rights to control its own roads, and its rights to require a separate contractor's bond. (This is in addition to the Payment Bond and the Performance Bond the Maine DOT requires of the contractor).

B. Different roads may require different levels of scrutiny. How is a posted road handled?

Response: Despite the general construction overweight permit, the contractor cannot exceed the load limit on a posted municipal road without specific municipal permission. 29-A § 2395 MRSA notes that any ways requiring special protection (such as posted roads) will continue to be protected and overweight permits are superseded by such postings. In such a case the contractor would have to use an alternate route.

C. Is there any reason why the contractor cannot be held to indemnify and hold harmless the Municipality beyond the simple posting of a bond?

Response: The objective of our standard letter is to deal with overweight equipment and trucks on municipal ways during construction of an Maine DOT construction project. The bond merely provides a measure of protection against damage to municipal ways as a direct result of construction activity. Other areas of risk and indemnification are beyond the scope of our letter.

D. Are we required to obtain a bond?

Response: No. In fact, few municipalities have required a construction bond. It is a matter of risk management.

E. If used, what amount should be required on the bond?

Response: Previous MDOT letters used to speak about a maximum bond amount of \$14,000 / mile (\$9,000 / kilometer) of traveled length, however 29-A § 2382 sets no maximum. The amount of the bond (if any bond is required at all) is based on the individual situation. The MDOT will assist in providing a bond amount estimate if so requested.

F. Why the blanket approval?

Response: The blanket approval we seek is the reasonable accommodation by the municipality to allow the Maine DOT contractor to use town ways (if required) to haul overweight construction equipment and trucks. This theoretically gives the municipality and the MDOT time to discuss exceptions to a blanket approval. In general, this avoids unnecessary risks and saves money for all concerned in the long run.

G. Who determines the suitability of repairs?

Response: For municipal ways, the suitability of repairs may be determined by municipal officers. The MDOT will assist.

H. What is a non-divisible load?

Response: Per Chapter 157 (The Administration of Over-Dimension and Overweight Permits) under the Secretary of State administrative rules (See Rule Chapters for the Department of the Secretary of State on line), a non-divisible load is defined as: A load which, if separated into smaller loads or vehicles, would:

- 1) make it unable to perform the function for which it was intended;
- 2) destroy its value or;
- 3) require more than eight work hours to dismantle using appropriate equipment. Sealed oceangoing containers, spent nuclear materials in casks, and government-controlled military vehicles and their loads will be considered non-divisible

I. What is the standard for Overweight trucks and equipment?

Response: Overweight means a weight that exceeds the legal limits established in 29-A MRSA Chapter 21.

J. This is an unorganized township with no county or municipal roads. Why should I respond?

Response: Because of limited staff, we send out a standard letter to cover contingencies and minimize risk to the construction process. From time to time the letter may not have a practical application. In most cases of unorganized territories, the agreement is signed and returned as a matter of routine. This ensures that surprises will not be encountered after the start of construction regarding travel over municipal and county ways.

Additional tips:

False Information - Permit are invalidated by false information. A permit is invalidated by the violation of any condition specified by the terms of the permit or by false information given on the application. On evidence of such violation of falsification, the permittee may be denied additional permits.

Proper Registration - Overload permits do not relieve the registrants of vehicles from their obligations to properly register their vehicles in accordance with Motor Vehicle Laws.

Agent's Power of Attorney - If you do require a contractor's bond, make sure you have a copy of the Surety Agent's power of attorney authorizing the surety agent to sign for the surety. Keep the power of attorney with your duplicate original bond at the municipality. The contractor will also have a duplicate original.

Other bonds - The Maine DOT requires a payment bond and a performance bond of the contractor which is held against unsatisfactory performance on the part of the contractor for all construction projects over \$100,000. (The Miller Act (40 U.S.C. 270a-270f) normally requires performance and payment bonds for any federal aid construction contract exceeding \$100,000. 14 MRSA § 871 provides a similar requirement for state funded construction projects.) These bonds cover the proper performance of the contract and the payment of all employees, suppliers and subcontractors.

SPECIAL PROVISION 105
OVERLIMIT PERMITS

Title 29-A § 2382 MRSA Overlimit Movement Permits.

1. **Overlimit movement permits issued by State.** The Secretary of State, acting under guidelines and advice of the Commissioner of Transportation, may grant permits to move nondivisible objects having a length, width, height or weight greater than specified in this Title over a way or bridge maintained by the Department of Transportation
2. **Permit fee.** The Secretary of State, with the advice of the Commissioner of Transportation, may set the fee for single trip permits, at not less than \$6, nor more than \$30, based on weight, height, length and width. The Secretary of State may, by rule, implement fees that have been set by the Commissioner of Transportation for multiple trip, long-term overweight movement permits. Rules established pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.
3. **County and municipal permits.** A county commissioner or municipal officer may grant a permit, for a reasonable fee, for travel over a way or bridge maintained by that county or municipality
4. **Permits for weight.** A vehicle granted a permit for excess weight must first be registered for the maximum gross vehicle weight allowed for that vehicle.
5. **Special mobile equipment.** The Secretary of State may grant a permit, for no more than one year, to move pneumatic-tire equipment under its own power, including Class A and Class B special mobile equipment, over ways and bridges maintained by the Department of Transportation. The fee for that permit is \$15 for each 30-day period.
6. **Scope of permit.** A permit is limited to the particular vehicle or object to be moved, the trailer or semitrailer hauling the overlimit object and particular ways and bridges.
7. **Construction permits.** A permit for a stated period of time may be issued for loads and equipment employed on public way construction projects, United States Government projects or construction of private ways, when within construction areas established by the Department of Transportation. The permit:
 - A. Must be procured from the municipal officers for a construction area within that municipality;
 - B. May require the contractor to be responsible for damage to ways used in the construction areas and may provide for:
 - (1) Withholding by the agency contracting the work of final payment under contract; or

(2) The furnishing of a bond by the contractor to guarantee suitable repair or payment of damages.

The suitability of repairs or the amount of damage is to be determined by the Department of Transportation on state-maintained ways and bridges, otherwise by the municipal officers;

C. May be granted by the Department of Transportation or by the state engineer in charge of the construction contract; and

D. For construction areas, carries no fee and does not come within the scope of this section.

8. Gross vehicle weight permits. The following may grant permits to operate a vehicle having a gross vehicle weight exceeding the prescribed limit:

A. The Secretary of State, with the consent of the Department of Transportation, for state and state aid highways and bridges within city or compact village limits;

B. Municipal officers, for all other ways and bridges within that city and compact village limits; and

C. The county commissioners, for county roads and bridges located in unorganized territory.

9. Pilot vehicles. The following restrictions apply to pilot vehicles.

A. Pilot vehicles required by a permit must be equipped with warning lights and signs as required by the Secretary of State with the advice of the Department of Transportation.

B. Warning lights may be operated and lettering on the signs may be visible on a pilot vehicle only while it is escorting a vehicle with a permit on a public way.

With the advice of the Commissioner of Transportation and the Chief of the State Police, the Secretary of State shall establish rules for the operation of pilot vehicles.

9-A. Police escort. A person may not operate a single vehicle or a combination of vehicles of 125 feet or more in length or 16 feet or more in width on a public way unless the vehicle or combination of vehicles is accompanied by a police escort. The Secretary of State, with the advice of the Commissioner of Transportation, may require a police escort for vehicles of lesser dimensions.

A. The Bureau of State Police shall establish a fee for state police escorts to defray the costs of providing a police escort. A county sheriff or municipal police department may establish a fee to defray the costs of providing police escorts.

B. The Bureau of State Police shall provide a police escort if a request is made by a permittee. A county sheriff or municipal police department may refuse a permittee's request for a police escort.

C. A vehicle or combination of vehicles for which a police escort is required must be accompanied by a state police escort when operating on the interstate highway system.

10. Taxes paid. A permit for a mobile home may not be granted unless the applicant provides reasonable assurance that all property taxes, sewage disposal charges and drain and sewer assessments applicable to the mobile home, including those for the current tax year, have been paid or that the mobile home is exempt from those taxes. A municipality may waive the requirement that those taxes be paid before the issuance of a permit if the mobile home is to be moved from one location in the municipality to another location in the same municipality for purposes not related to the sale of the mobile home.

11. Violation. A person who moves an object over the public way in violation of this section commits a traffic infraction.

Section History:

PL 1993, Ch. 683, §A2 (NEW).

PL 1993, Ch. 683, §B5 (AFF).

PL 1997, Ch. 144, §1,2 (AMD).

PL 1999, Ch. 117, §2 (AMD).

PL 1999, Ch. 125, §1 (AMD).

PL 1999, Ch. 580, §13 (AMD).

PL 2001, Ch. 671, §30 (AMD).

PL 2003, Ch. 166, §13 (AMD).

PL 2003, Ch. 452, §Q73,74 (AMD).

PL 2003, Ch. 452, §X2 (AFF).

MUNICIPAL OVERLIMIT PERMIT FOR CONSTRUCTION

MUNICIPALITY: _____

Phone: 207- _____; fax: 207- _____

APPLICATION FOR OVERLIMIT PERMIT TO MOVE CONSTRUCTION EQUIPMENT AND LOADS IN EXCESS OF LEGAL LIMITS ON MUNICIPAL WAYS

Construction Time Period:

Per 29-A § 2382 (7) MRSA, application is hereby made to the MUNICIPALITY OF _____ for An Overlimit Permit to move construction equipment, material, objects or loads in excess of legal limits over ways maintained by the MUNICIPALITY in support of construction operations for the following Maine DOT project

Project Description:

Project Identification Number (PIN):

NAME OF PERMITTEE (Construction Company):

STREET/P.O. BOX:

CITY:

STATE/PROV.

ZIP / POSTAL CODE:

PHONE:

FAX:

This object or load cannot be readily reduced to the legal limits.

Signed by:

(name & title)

Permit is granted. A copy of this signed permit will be provided to the permittee as prove of permit. This permit will automatically expire at the physical completion of the above construction project. The original permit will be held on file at the municipality.

Signed:

Municipal Official

BOND # _____

Date: _____

MUNICIPAL CONSTRUCTION BOND

KNOW ALL MEN BY THESE PRESENTS: That (name of construction firm)
 _____ and the Municipality of _____, as
 principal, and _____
 _____, a corporation duly organized under the laws of the State of _____ and having a
 usual place of business _____,
 as Surety, are held and firmly bound unto the Treasurer of the Municipality of
 _____ in the sum of
 _____ and 00/100 Dollars (\$ _____)
 to be paid said Treasurer of the Municipality of _____ or
 her/his successors in office, for which payment well and truly to be made, Principal and
 Surety bind themselves, their heirs, executors and administrators, successors and assigns,
 jointly and severally by these presents.

The condition of this obligation is such that if the Principal designated as Contractor in
 the Contract to construct Project Number _____ in the Municipality of
 _____ promptly and faithfully performs the Contract,
 without damage to the municipal ways, other than normal wear and tear; then this
 obligation shall be null and void; otherwise it shall remain in full force and effect.

However, if the Principal designated as Contractor causes damage to any municipal way
 beyond normal wear and tear, in the construction of the above project through the use of
 legal weight, legal dimension trucks or equipment; or overweight or over-dimension
 equipment or trucks (as defined in 29-A MRSA) on the municipal ways, then this bond
 may be used to guarantee that the contractor either repairs or pays for the damage caused
 by the use of its equipment or trucks. The degree of damage beyond normal wear and
 tear will be determined by municipal officials with the assistance of the Maine
 Department of Transportation.

The Surety hereby waives notice of any alteration or extension of time made by the Municipality.

Signed and sealed this day of, 20.....

WITNESS:

SIGNATURES:

CONTRACTOR:

Signature.....

.....

Print Name Legibly

Print Name Legibly.....

WITNESS:

SIGNATURES SURETY:

Signature.....

Signature.....

Print Name Legibly

Print Name Legibly

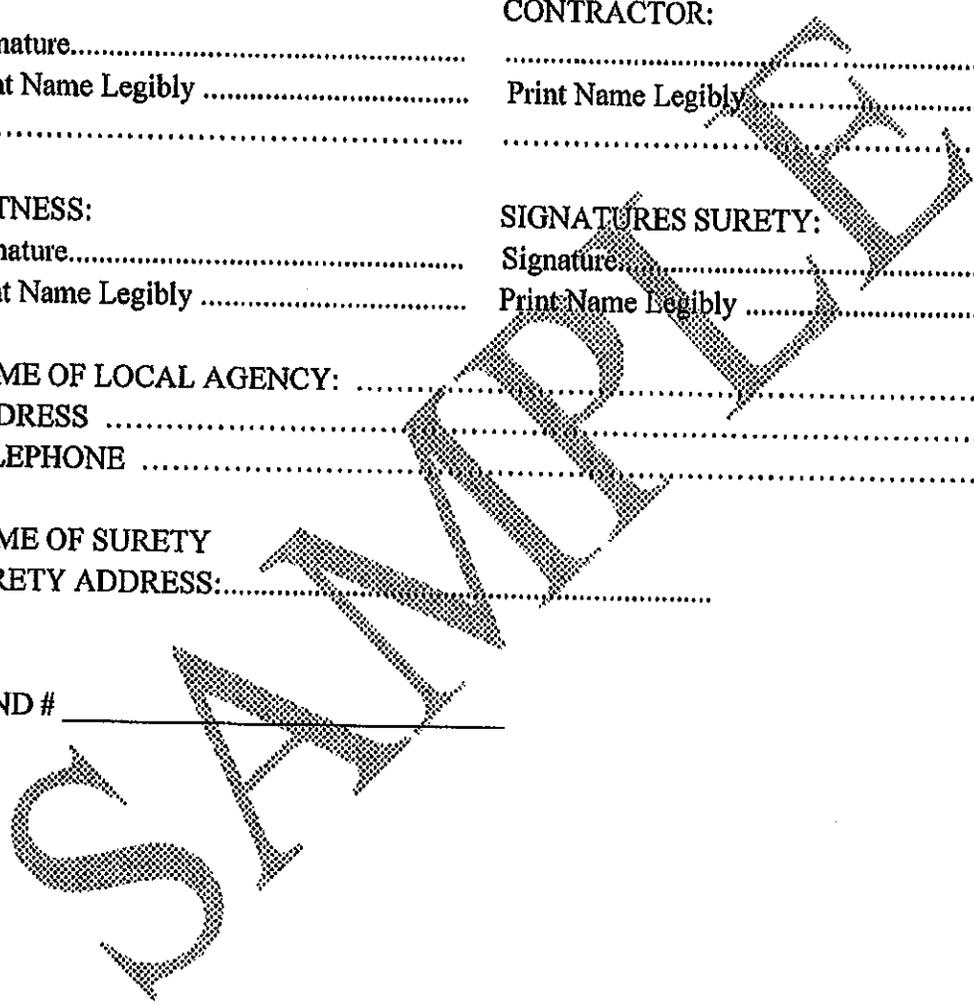
NAME OF LOCAL AGENCY:

ADDRESS

TELEPHONE

NAME OF SURETY
SURETY ADDRESS:.....

BOND # _____



Account Name	Account Number	Balance 6/30/2013	Balance 6/30/2014	Balance 12/8/2014
Capital Reserve Funds	400			
Transfer Station	421	\$ 73,572	\$ 73,572	\$ 73,572
Lord Road	431	\$ 30,411	\$ 30,411	\$ 30,410
Hardscrabble Road	432	\$ 2,811	\$ 2,811	\$ 2,811
Besse Road	437	\$ -	\$ 4,800	\$ 4,800

Roads				
Road Reserve	423	\$ 1,469	\$ 2,515	\$ (63,035)
Paving	427	\$ 21,855	\$ 51,855	\$ 111,855
Total		\$ 23,324	\$ 54,370	\$ 48,820

Municipal Building				
Future Town Office	436	\$ -	\$ 15,000	\$ 30,000
Building Maintenance	429	\$ 152	\$ 152	\$ 153
Municipal Building Study	330	\$ 800	\$ 800	\$ 800
ADA Compliance	324	\$ 1,450	\$ 1,450	\$ 1,450
Total		\$ 2,402	\$ 17,402	\$ 32,403

Land & Building	434	\$ 65	\$ 6,836	\$ 7,968
Sand/ Salt Shed	425	\$ 2,918	\$ 2,918	\$ 2,919
Footbridge	426	\$ 3,000	\$ 3,767	\$ 3,767
Town House	428	\$ 4,207	\$ -	\$ -
Fire Station	430	\$ 1,592	\$ 1,592	\$ 1,592
North Wayne School House	340	\$ -	\$ 1,246	\$ 1,246
Fire Truck	424	\$ 279,070	\$ 284,686	\$ 304,686
Fire Equipment	438	\$ -	\$ -	\$ 5,000
Fire Ponds/ Dry Hydrants	321	\$ 1,633	\$ 1,633	\$ 1,633

Road Reconstruction and Paving Capital Reserve Account

To see if the Town will vote to consolidate and transfer existing funds in the Road Capital Reserve Fund and the Paving Capital Reserve Account to the Road Reconstruction and Paving Capital Reserve Account.

Selectmen Recommend: Yes

This new Road Reconstruction and Paving Capital Reserve account will transfer existing funds from the Road Capital Reserve Account and Paving Capital Reserve Account, to be designated for the capital road projects including paving, road reconstruction, road rehabilitation, ditching, shoulder repair and replacement, chip sealing, guardrail installation, bridge and culvert replacement.

Municipal Office Building Capital Reserve Account

To see if the Town will vote to consolidate and transfer existing funds in the Future Town Office Capital Reserve Fund, Building Maintenance Capital Reserve Account, ADA Compliance Special Revenue Account with the Municipal Building Study Special Revenue to the Municipal Office Building Capital Reserve Account.

Selectmen Recommend: Yes

This new Municipal Office Building Capital Reserve account will consolidate and transfer existing funds from the Future Town Office Capital Reserve Fund, Building Maintenance Capital Reserve Account, ADA Compliance Special Revenue Account with the Municipal Building Study Special Revenue to be designated for the planning and construction of a new town office.

Dam Repair and Replacement Capital Reserve Account

To see if the Town will vote to consolidate and transfer existing funds in the Lovejoy Pond Capital Reserve Fund to the Dam Repair and Replacement Capital Reserve Account.

Selectmen Recommend: Yes

This new Dam Repair and Replacement Capital Reserve account will transfer existing funds from the Lovejoy Pond Dam Capital Reserve Account to be designated for the general repair and replacement of both the North Wayne Village (Lovejoy Pond) and Village Dams.

Technology Capital Reserve Account

To see if the Town will vote to consolidate and transfer existing funds in the Voting Machine Capital Reserve Account, Technology Capital Reserve Account with GIS Mapping Capital Reserve Account to the Technology Capital Reserve Account.

Selectmen Recommend: Yes

This new Technology Capital Reserve account will transfer existing funds from the Voting Machine Capital Reserve Account, Technology Capital Reserve Account with GIS Mapping Capital Reserve Account to be designated for the replacement of website development, sound systems, computers, photocopiers, printers, servers, PowerPoint projectors and voting machines.

Emergency Management Capital Reserve Account

To see if the Town will vote to consolidate and transfer existing funds in the Pandemic Special Revenue Account with the Wayne Rescue Special Revenue Account to create an Emergency Management Capital Reserve Account.

Selectmen Recommend: Yes

This new Emergency Management Capital Revenue account will consolidate and transfer existing funds in the Pandemic Special Revenue Account with the Wayne Rescue Special Revenue Account to be designated for the critical infrastructure damage assessments and mitigation, pandemic supplies, mass casualty supplies, shelter supplies, emergency management equipment and training, reverse 911 system, replacement and installation of a new emergency generator.

Water Quality Special Revenue Account

Move the Board to consolidate and transfer existing funds in the Conservation Special Revenue Account, Androscoggin Lake Special Revenue Account with the Perambulation Special Revenue Account to create a Water Quality Special Revenue Account.

Selectmen Recommend: Yes

This new Water Quality Special Revenue account will transfer existing funds from the Conservation Special Revenue Account, Androscoggin Lake Special Revenue Account with Perambulation Special Revenue Account to be designated for the water quality studies, invasive plant patrol and remediation, courtesy boat inspection, shoreline stabilization, erosion control remediation, pest control management, land acquisition and conservation projects.

From: KeyMunicipalOfficials-owner@imail.memun.org on behalf of FYI from Maine Municipal Association <lellis@memun.org>
Sent: Friday, January 23, 2015 2:03 PM
To: KeyMunicipalOfficials@imail.memun.org
Subject: Information request from Senate President Mike Thibodeau

To: Key Municipal Officials

All MMA Affiliate Group Presidents

Fr: Geoff Herman

Re: Distribution of information request from Senate President Mike Thibodeau

Date: January 23, 2015

Senate President Mike Thibodeau (Waldo County) has asked MMA's assistance in distributing this letter to Maine's key municipal officials and affiliate group presidents in an effort to obtain as much municipal input as possible in his effort to identify all the unfunded state mandates that municipal officials believe deserve to be reviewed for possible repeal or redesign. We are glad to oblige. I believe it is fair to say that Senator Thibodeau hopes that you share this letter with all the municipal officials and employees within your community as you feel appropriate, as well as all your colleagues in the respective affiliate groups.

Many thanks.

127th Legislature
Senate of
Maine
Senate District 11

Senator Michael D. Thibodeau
President of the Senate
3 State House Station
Augusta, ME 04333-0003
(207) 287-1500

169 Coles Corner Road
Winterport, ME 04496

January 21, 2015

Dear Municipal Leader:

I am writing to you today regarding the numerous unfunded state mandates currently in effect and the burden that they pose on Maine's communities. I have heard from my local community leaders about the oppressive effects some of these state mandates have had on their local municipal budgets. That is why I have sponsored a bill, "An Act Regarding Unfunded Mandates," this session to identify and eliminate unnecessary and costly state mandates imposed on our local communities.

Over the years the State of Maine has put into law countless mandates that have gone unfunded. Some of them are well intentioned and needed to protect our citizens. Others are onerous, costly, and have a negative impact on local municipal budgets and productivity.

I have been in communication with the Maine Municipal Association and the Waldo County Selectman's Association to assist in moving this proposal forward. However, in order for this venture to be successful, I need your help. Please identify state required mandates you find to be unnecessary, out of date, or burdensome to your community. My staff will collect the replies and work to include as many of the suggestions as we can into the bill before the Legislature.

This is a timely matter. Please reply to Melissa Simones, Director of Policy, at (207) 287-1500 or email melissa.simones@legislature.maine.gov as soon as you can. We would like all recommendations in by February 16, 2015.

Balancing budgets and prioritizing staffing needs are always challenging for our municipalities. I hope you will join me in working to eliminate burdensome mandates and increase our municipal government effectiveness.

I appreciate your time and any guidance you can provide.

Sincerely,



Michael Thibodeau
President of the Senate

State and Federal Mandates

Statutorily Required Municipal Services in Maine

This list represents a general review of services municipal government is required by law to maintain. It is not intended to be an exhaustive treatment of all relevant State and federal law. It does not account for services and obligations required by contract, local mandate, charter, ordinance, or those that result from the application of State agency rules, or, in the broadest sense, those that may arise from the operation of commercial and public activities. However, if a reader is aware of any required municipal services that should be included, please feel free to contact us.

Prepared by Michael L. Stultz and the Legal Services Department of Maine Municipal Association, Augusta, Maine. Telephone: 800-452-8786; e-mail: legal@memun.org. February 23, 2012.

Schools and Education

- 1) Education. Implement and administer public education as required by the State. 20-A M.R.S.A. § 2; ME Const. Art. VIII § 1
 - a. Duty of school units. School units must raise funds to support public education, and provide primary and secondary education in accordance with the purposes, policies, goals and objective of State law. 20-A M.R.S.A. §§ 4501-4504.
- 2) No Child Left Behind. Federally required annual student assessment. 20 U.S.C. Chapter 70
- 3) Learning Results. State-required assessment. 20-A M.R.S.A. §§ 6201-6213.
- 4) Special Education. Federally required programs for students with special needs. 20 U.S.C. Chapter 33

Roads and Public Works

- 1) Must maintain public roads. Must keep town ways maintained so as to be safe and convenient for motor vehicle travel. 23 M.R.S.A. § 3651

Sidewalks. Sidewalks existing within the right-of-way of a town way must be maintained against defects. *Wells v. Augusta*, 135 Me 314(1938)

Road obstructions. Must remove loose obstructions, shrubbery and bushes (not planted for ornamentation or profit) that pose any road safety problem. 23 M.R.S.A. § 2702

Snow and ice. Must remove snow and ice in the town way within a reasonable period of time; this includes removal from state-aid highways. 23 M.R.S.A. § 1003

Private water supplies. Must prevent damage to private water supplies as a result of construction, reconstruction or maintenance of public highways. 23 M.R.S.A. § 3659

- 2) Drains, ditches and culverts. Municipalities may install, but discretion may become obligation if installation is necessary to maintain road in safe and convenient status. Once established, they must be maintained. 23 M.R.S.A. § 3251; 30-A M.R.S.A. §§ 3401-3409
- 3) Driveways and culverts. Municipalities must at owner's expense install culverts where private driveways connect to a town way. Once installed, municipality must maintain. 23 M.R.S.A. § 705
- 4) Highway defects. Must correct defects in the road where there has been twenty-four hour notice. 14 M.R.S.A. § 8104-A
- 5) Public works. A registered professional engineer is required for any public works project exceeding a cost of \$100,000.00. 32 M.R.S.A. § 1254
- 6) Roads in compact areas. Urban compact municipalities must maintain roads within the compact area. 23 M.R.S.A. § 754
- 7) Street excavation. Municipalities must serve notice upon owners of property abutting a street or highway, and upon others, directing water and conduit connections prior to paving and repairing. 23 M.R.S.A. §§ 3351-3360-A

Land Use and Environmental Protection

- 1) Board of appeals. If a municipality establishes a zoning ordinance, it must create a board of appeals. 30-A M.R.S.A. § 4353
- 2) Solid waste disposal. Municipalities must close designated "open landfills" as determined by DEP. Closed municipal landfills require biannual groundwater testing and monitoring. 42 U.S.C. Chapter 82; 38 M.R.S.A. §§ 1310-C-1310-H-1
- 3) Publication for zoning changes. A public hearing must be held with notice posted at least thirteen days before the hearing, and published twice in a local newspaper. Additional notice requirements apply for zoning changes affecting industrial, commercial, or retail uses. 30-A M.R.S.A. § 4352
- 4) Recycling. Must meet recycling goals as set by State. 38 M.R.S.A. §§ 2132-2133

- 5) Sewers and drains. Where a public drain has been constructed, and a person has paid to connect to it, the municipality must maintain the drain. 30-A M.R.S.A. § 3403
- 6) Shoreland zoning. Must have and enforce zoning and land use controls for areas within 250 feet of normal high water line. 38 M.R.S.A. §§ 435-448
- 7) Site Location of Development Act. DEP may designate municipalities as a reviewing authority. Once so designated, municipalities must administer permits for projects requiring review under the Act. 38 M.R.S.A. § 489-A
- 8) Subdivision. Municipal subdivision review is required. 30-A M.R.S.A. §§ 4401-4408
- 9) Waste management. Municipalities must provide solid waste disposal services for domestic and commercial solid waste generated within the municipality. 38 M.R.S.A. § 1305.

Septage/sludge. Each municipality shall provide for the disposal of all refuse, effluent, sludge and any other materials from septic tanks and cesspools. 38 M.R.S.A. § 1305

Transfer stations. For those municipalities having transfer stations, they are required to comply with DEP regulations for the operation of transfer stations and solid waste storage. 38 M.R.S.A. § 1305; Rules of DEP Chapter 402

- 10) Wastewater treatment facilities. Municipalities with wastewater treatment facilities constructed in whole or in part with State funding must accept wastewater from watercraft sewage pump-out facilities. 38 M.R.S.A. § 414-B
- 11) Protection and improvement of waters. Municipalities must comply with federal law concerning pollutant and effluent controls necessary to manage water pollution. 33 U.S.C. Chapter 26; 38 M.R.S.A., Chapter 3
- 12) Wharves and fish weirs. Municipalities must examine and hold public hearings upon any application to build or extend any wharf, fish weir or trap in tidewaters within the municipal border. 38 M.R.S.A. § 1022

Public Safety and Health

- 1) Animal control. Municipalities must enforce the animal welfare laws. 7 M.R.S.A. §§ 3941-3950-A
- 2) Building inspection. Every municipality with greater than 2,000 inhabitants must appoint a building inspector (optional for municipalities with fewer than 2,000 inhabitants). 25 M.R.S.A. § 2351-A.

- 3) Maine Uniform Building and Energy Code (MUBEC). Required enforcement of MUBEC for municipalities with a population in excess of 4,000. 10 M.R.S.A. § 9724
- 4) Emergency Management. Must prepare and keep a disaster emergency plan. 37-B M.R.S.A. §§ 781-786
- 5) Fire protection. It is not clear whether fire protection is required under Maine law, but it is provided in most municipalities. Certain firefighting training requirements and equipment standards are mandated in State law. 30-A M.R.S.A. §§ 3151-3157; 26 M.R.S.A. §§ 2101 and 2104
- 6) Fire Ward/Inspector. Is mandatory if no organized fire department in the municipality. 25 M.R.S.A. § 2391
- 7) Forest fire control and costs. Municipalities are responsible in the first instance for fighting forest fires and for paying for some of the costs incurred in controlling forest fires. 12 M.R.S.A. §§ 9201-9206
- 8) Harbor Master. If requested, municipal officers shall appoint a harbor master to oversee administration and enforcement of mooring privileges for boats and vessels. 38 M.R.S.A. § 1

Boats and lighters. Where boats and lighters are used to carry stone, sand or gravel, the municipal officers shall appoint an inspector to ensure compliance with requirements for marking such boats and lighters. 38 M.R.S.A. § 123
- 9) Law enforcement and police protection. Municipalities are not required to provide police protection. Where provided, specific costs arise. 30-A M.R.S.A. §§ 2671-2678

Police officers. A full-time law enforcement officer must complete basic training requirements at the Criminal Justice Academy. 25 M.R.S.A. § 2804-C

Lost or stolen property. Disposal of lost, stolen or unclaimed property. Must keep private property in an attempt to locate the owner. 25 M.R.S.A. §§ 3501-3507
- 10) Occupational health requirements. Local government must comply with the federal OSHA of 1970 as well as similar State requirements to ensure working conditions reasonably free from health hazards or safety threats. 29 C.F.R. Chapter 17; 26 M.R.S.A. §§ 561-571
- 11) Plumbing inspection. Must appoint a plumbing inspector and ensure plumbing complies with State and local regulations. 30-A M.R.S.A. § 4221

12) Port Warden. By petition, ten or more citizens can request and municipal officers must appoint a port warden. 38 M.R.S.A. § 41

13) Public Health. Report, prevent and suppress diseases and conditions dangerous to public health. 22 M.R.S.A. § 451

Health officer. Must appoint a health officer. 22 M.R.S.A. § 451

14) Subsurface wastewater systems. Municipalities shall serve an order to remedy once receiving notice of malfunctioning subsurface wastewater disposal systems. 30-A M.R.S.A. § 3428

Licensing and Permitting and Economic Regulations

1) ATV registration. Municipalities must register ATVs. 12 M.R.S.A. § 13155

2) Alcohol. Assuming local option approval, municipal officers must act on applications for an on-premises liquor license. 28-A M.R.S.A. § 653.

a. Bottle Clubs. Municipal officers must act on applications for permission to operate a bottle club or to transfer location thereof. 28-A M.R.S.A. § 161-B

3) Automobiles. The municipal tax collector or other designated individual must collect the excise tax. 36 M.R.S.A. § 1487 and 29-A M.R.S.A. § 201

4) Beano and Bingo. Municipal officers must review applications for permission to operate beano and bingo amusements. 17 M.R.S.A. § 313

5) Birth/Marriage/Death recording/certificates. Municipal clerk must record and issue permits for births, marriages and deaths. 30-A M.R.S.A. § 2652; 19-A M.R.S.A. §§ 652 and 654 and 22 M.R.S.A. § 2702

6) Bowling alleys, shooting galleries, pool, and bagatelle and billiard rooms. Municipalities license those wishing to operate bowling alleys, shooting galleries, pool bagatelle and billiards rooms. 8 M.R.S.A. §§ 1-2

7) Building Permits. A municipal reviewing authority must review and approve all new multi-family housing accommodations before occupancy is permitted. 5 M.R.S.A. § 4582-B

8) Cable TV franchises. Municipalities must honor existing contracts, are required to issue new franchise agreements or to renew same, and they must regulate cable operator's compliance with such agreements. 30-A M.R.S.A. §§ 3008 and 3010

- 9) Closing-out sales/going out of business. Municipal officers must license. 30-A M.R.S.A. §§ 3781-3784
- 10) Concealed weapons. Municipalities issue permits. Unless there is no chief of police, can request Chief of State Police to issue permits. 25 M.R.S.A. §§ 2001-A-2006
- 11) Conversion of seasonal dwelling. Municipal plumbing inspector must issue permit before a seasonal dwelling in the shoreland zone can be converted to a year-round or principal dwelling. 30-A M.R.S.A. § 4215
- 12) Dogs and dog kennels. Municipalities must issue dog licenses and kennel licenses. 7 M.R.S.A. §§ 3921-3924 and §§ 3931-A-3939-B
- 13) Driveway entrances. Municipality must authorize ingress and egress to property inside an urban compact municipality on state highways state-aid highways. 23 M.R.S.A. § 704
- 14) Fishing/hunting/trapping. Agents for IF&W (municipal clerks usually) must issue permits for fishing, hunting and trapping. 12 M.R.S.A. Chapter 913
- 15) Games of chance. Municipal officers must sign application. 17 M.R.S.A. § 1832
- 16) Innkeeper/tavernkeeper/lodging house. Municipalities must issue permits before innkeepers, tavernkeepers or lodging houses can operate. 30-A M.R.S.A. §§ 3811-3814 and 3931
- 17) Junkyards. Must license and police junkyards and automobile recycling and automobile graveyard operations. 30-A M.R.S.A. §§ 3751-3760
- 18) Lunch wagons. Municipalities must issue licenses to any reputable person maintaining a vehicle for the sale of food. 30-A M.R.S.A. § 3931
- 19) Mobile homes and over-limit vehicles. Municipalities must issue permits before mobile homes can be moved over public roads, and before over-limit vehicles can travel on public roads. 29-A M.R.S.A. §§ 1001 and 2382
- 20) Off-track betting. Municipality must approve off-track facility where pari-mutuel wagering will occur. 8 M.R.S.A. § 275-D(5)
- 21) Pawnbrokers. Municipalities must license pawnbrokers. 30-A M.R.S.A. §3961
- 22) Pinball machines. Municipalities must license those individuals wishing to keep pinball machines for public patronage. 8 M.R.S.A. § 441

- 23) Plumbing. Municipalities, through the local plumbing inspector, must permit and oversee plumbing. 30-A M.R.S.A. § 4215 et. seq.
- 24) Poles and wires. The municipal officers or their designees must issue permits to those wishing to construct telephone, electric, or cable TV wires, gas or oil pipelines, or water, sewer or steam conduits, along a public way that is a city street or town way or a state or state-aid highway in the compact areas as defined in 23 M.R.S.A. § 754. 35-A M.R.S.A. §§ 2501-2522
- 25) Public exhibitions. Must license exhibitions of images, pageantry, sleight of hand tricks, puppet shows, circus, traveling amusement shows, feats of balancing, wire dancing, personal agility, dexterity or theatrical performances. 8 M.R.S.A. §§ 501-502
- 26) Roller skating rinks. Municipalities must license roller skating rinks. 8 M.R.S.A. §§ 601-608
- 27) Snowmobile registration. Must register snowmobiles. 12 M.R.S.A. § 13104
- 28) Special amusements. Must issue permit for live music, dancing or entertainment at businesses licensed for on-premises consumption of alcohol. 28-A M.R.S.A. § 1054
- 29) Watercraft. Must permit anyone wishing to bring into or maintain in the harbor any derelict watercraft for salvage, or anyone abandoning any watercraft in the harbor. 38 M.R.S.A. § 9
- 30) Wharves, weirs, piers and pilings. Any person wishing to build or extend any wharf, weirs, pier or trap in tidewaters must apply to the municipal officers for a license. 38 M.R.S.A. § 1022

Administration and General Government

- 1) Accounts for dog and kennel licenses. Municipalities must maintain separate accounts for the fees collected for dog and kennel licenses and also for court fines collected by the municipality. 7 M.R.S.A. § 3945
- 2) Americans with Disabilities Act. Comprehensive requirements concerning persons with disabilities in the areas of employment, public accommodations, state and local government services. 42 U.S.C. Chapter 126; 5 M.R.S.A. §§ 4551-4634; and 25 M.R.S.A. § 2701
- 3) Assessment and collection of taxes. Must assess and collect property and excise taxes. Requirements contained in Titles 36 and 30-A of the Statutes of Maine
 - a. Real property
 - b. Personal property taxes
 - c. Excise taxes

- 4) Annual Meeting. Annual meeting required at which moderator, selectmen and school committee elected. 30-A M.R.S.A. § 2525
- 5) Annual report. Must publish an annual report including post-audit. 30-A M.R.S.A. § 2801
- 6) Burying grounds. Must care for ancient burying grounds and veteran's graves in public burying grounds. 13 M.R.S.A. § 1101 and 30-A M.R.S.A. § 2901
- 7) Gifts. A gift received must be accepted by the municipal legislative body, but gifts of cash to supplement a specific appropriation already made may be accepted by the municipal officers. Conditions on gifts must be observed. 30-A M.R.S.A. §§ 5652-5655
- 8) Elections. Municipalities have election responsibilities under Title 21-A M.R.S.A. §§ 621-A-633, for federal, state, school administrative unit, caucus, and county elections.
- 9) Labor and human resource requirements and issues
 - Fair Labor Standards Act*. Municipalities must adhere to federal and State requirements establishing minimum wages, overtime pay, and to regulations regarding child labor and record keeping. 29 U.S.C. Chapter 8; 26 M.R.S.A. §§ 621-A-636 and §§ 661-672
 - Family and Medical Leave Act*. Municipalities must guarantee unpaid leave for personal and family reasons. 29 U.S.C. Chapter 28; 26 M.R.S.A. §§ 843-848
 - Uniformed Services Employment and Reemployment Act*. Municipalities cannot discriminate against members of the military in hiring and retention practices. 38 U.S.C. Chapter 43, §§ 4301-4333
 - i) Sexual harassment training. 26 M.R.S.A. § 807
 - ii) Video display terminal education and training. 26 M.R.S.A. § 252
- 10) Freedom of Access Act. Must provide public access to public records and notice of meetings. 1 M.R.S.A. §§ 408 and 409(1)
- 11) General Assistance. Municipalities are required to provide assistance in meeting basic necessities. 22 M.R.S.A. § 4305
- 12) Municipal annual solid waste report. Municipalities must report to DEP any material produced by a municipal solid waste processing facility. 38 M.R.S.A. § 1304-C
- 13) Municipal officials required by Maine law:
 - a) Animal Control Officer. 7 M.R.S.A. § 3947
 - b) Assessor. 36 M.R.S.A. § 327(3) and 30-AM.R.S.A. § 2526(5)
 - c) Board of Appeals (if zoning ordinance enacted). 30-A M.R.S.A. § 2691
 - d) Building Inspector. 25 M.R.S.A. § 2351-A
 - e) Civil Emergency Preparedness Agency Director. 37-B M.R.S.A. § 782(1)
 - f) Clerk. 30-AM.R.S.A. § 2525(2)
 - g) Code Enforcement Officer. 30-A M.R.S.A. § 4451

- h) Election (Ballot) Clerks. 30-A M.R.S.A. § 2528(8) and 21-AM.R.S.A. § 503
- i) Excise Tax Collector. 36 M.R.S.A. § 1487(1)
- j) Fence Viewers (if services requested). 30-A M.R.S.A. § 2953
- k) Fire Inspector. 25 M.R.S.A. § 2391
- l) Fire Chief. 30-A M.R.S.A. § 3153
- m) Forest Fire Warden. 12 M.R.S.A. § 8902
- n) GA Fair Hearing Authority. 22 M.R.S.A. § 4322
- o) Harbor Master (if services requested). 38 M.R.S.A. § 1
- p) Health Officer. 22 M.R.S.A. § 451
- q) Local Sealer. 10 M.R.S.A. §§ 2451 and 2452
- r) Equipment necessary to be purchased. 10 M.R.S.A. § 2354
- s) Moderator. 30-A M.R.S.A. §2521(1)
- t) Municipal Officers. 30-A M.R.S.A. § 2521 (selectmen or councilors)
- u) Overseers of the Poor. 30-A M.R.S.A. § 2526(4) and 22 M.R.S.A. § 4301(12)
- v) Plumbing Inspector. 30-A M.R.S.A. §4221
- w) Registrar of Voters. 21-A M.R.S.A. §101
- x) Road Commissioners. 30-A M.R.S.A. §2526(7)
- y) School committees and boards. 30-A M.R.S.A. § 2525(1); 20-A M.R.S.A. § 2302; 20-A M.R.S.A. §§ 1251, 1471 and 1651
- z) Shellfish Warden. Required if a municipality enacts a shellfish conservation ordinance. 12 M.R.S.A. § 6671(8)
- aa) Tax Collector. 30-A M.R.S.A. § 2525(2)
- bb) Treasurer. 30-A M.R.S.A. § 2525(2)

14) National Voter Registration Act. Processing and registration of voters. 42 U.S.C. Chapter 20; 21-A M.R.S.A. §§ 180-182

15) Post audit of accounts. Arrange annual post audit of town accounts. 30-A M.R.S.A. §5823

16) Recycled goods procurement. Review procurement procedures to encourage use of recycled goods, supplies, equipment and materials. 30-A M.R.S.A. §5656(1)

17) Records keeping and preservation.

Denials and approvals. All denials and all conditional approvals for licenses, certificates, approvals or other types of permits must be in writing. 1 M.R.S.A. §407

Employment termination. Must maintain record of decisions involving dismissal or refusal to renew contract of a public official, employee or appointee. 1 M.R.S.A. § 407

Final disciplinary action. Must maintain records of final employee disciplinary action. 30-A M.R.S.A. § 2702(1)(B)(5)

Records preservation. Local government records must be maintained and stored as required by Maine law and as directed by the State Archivist. 5 M.R.S.A. § 95-B

- 18) Revenue receipts and disbursements. Municipal treasurer necessary to receive and record all revenues and disbursements. 30-A M.R.S.A. § 5603, et. seq.
- 19) Town equipment. Municipalities are liable for their negligent acts or omissions in its ownership, maintenance, or use of its equipment, vehicles and machinery. 14 M.R.S.A. §8104-A
- 20) Town buildings. Municipalities are generally liable for their negligent acts or omissions in the construction, operation, or maintenance of any public buildings. 14 M.R.S.A. §8104-A

From: KeyMunicipalOfficials-owner@imail.memun.org on behalf of Analysis of Governor's Proposed Budget <moderator@memun.org>
Sent: Monday, January 12, 2015 9:15 AM
To: keymunicipalofficials@imail.memun.org
Subject: Review of Governor LePage's Proposed State Budget

To: All Municipal Officials

Fr: Geoff Herman

Re: Review of Governor LePage's Proposed State Budget

Date: January 12, 2015

Governor LePage's proposed state budget for the FY 2016-2017 biennium was released on Friday. A description follows of its major elements that, if enacted as proposed, would impact Maine's towns and cities and the property taxpayers that support local government. We hope that municipal officials will review this summary, review the proposed budget directly, and then start a conversation with their colleagues and state legislators to begin shaping the municipal response.

Overview. There is a lot in this budget proposal. Of central concern to local government, the Governor is proposing to eliminate the municipal revenue sharing program and eliminate the homestead property exemption for homeowners under the age of 65, while doubling the homestead exemption for homeowners 65 or older. To partially compensate for those significant cuts and shifts in property tax relief, the proposals would expand the municipal tax base in two ways. Interactive telecommunications personal property (telephone, Internet, etc.) would become subject to municipal rather than state taxation. Also made subject to municipal taxation would be 50% of the value of tax exempt institutions exceeding \$500,000 in value, excluding governmental property and churches.

The breadth and quality of the tax base is very important to municipal governments. As welcome as the Governor's tax-base proposals may be, however, the take-and-give in the proposed budget is a lopsided swap.

It is important to evaluate all elements of the proposal in the same currency. The revenue sharing program in its currently decimated state distributes \$60 million to the towns and cities for the purpose of reducing their respective property tax rates. To generate \$60 million in revenue by applying the statewide average property tax rate would require a tax base of over \$4 billion in taxable value. In comparison, the telecommunications tax base is in the range of \$600 million. A preliminary review suggests the exempt property tax base being offered is in the \$1.5 billion range after setting aside all exempt institutions under \$500,000 in value, further subtracting the first \$500,000 in value from the remaining institutions, and then cutting what value remains in half.

In other words, if the decimated revenue sharing program is worth a dollar, the Governor is proposing to take that dollar away from municipal government and give something like 50 cents back.

Here are the full details of the Governor's proposed budget, identified by the lettered section of the budget document where they are found:

Part L. Elimination of Municipal Revenue Sharing. If revenue sharing was allowed to operate as designed in law, \$158 million would be distributed to the towns and cities during FY 2016 to provide generalized property tax relief. Under the Governor's proposal, for the next fiscal year (July 1, 2015 – June 30, 2016), the revenue sharing distribution would approximate the current year's distribution at \$62.5 million. After the final monthly distribution of that allocation in July 2016, the program would be entirely eliminated. Over the biennium, the phase-out and elimination of municipal revenue sharing will provide the Legislature with \$250 million for other state funding priorities.

Part F. Homestead Exemption Changes. The current homestead property tax exemption is valued at \$10,000, with the state reimbursing the municipalities for 50% of the lost tax revenue. Beginning with the upcoming tax year (April 1, 2015), the Governor is proposing to eliminate the exemption for all homesteads owned by persons under the age of 65. The proposal would double the value of the homestead exemption for homesteaders 65 years old or older, to \$20,000. The rate of municipal reimbursement for the exemption would remain at the 50% level. Somewhere around 175,000 to 200,000 Maine households with owners under the age of 65 would lose their property tax benefit under this proposal.

Part E. Taxing Tax Exempt Property. This change to tax law would take effect on April 1, 2016 and would not apply to churches or tax exempt property owned by any government. As proposed, if the aggregate value of tax exempt property under the same ownership within the municipality exceeds \$500,000, the property would be entitled to a 50% exemption (rather than 100%) with respect to the aggregate value exceeding \$500,000. Although there are several categories of exempt property potentially affected, the proposal would primarily impact just the larger "charitable" corporations and the "literary and scientific" institutions. According to a preliminary review of the Municipal Valuation Return Statistical Summary as published by Maine Revenue Services, this expanded tax base will potentially be available to about one-third of the municipalities in Maine. For some of those 150 (approximate) towns and cities, the expanded tax base would be significant; for others, not so much. Approximately 350 towns are not hosting large enough exempt institutions for this proposal to expand their tax base, especially throughout the umbrella of Maine, including Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington and Waldo counties.

Part D. Transfer of Tax Jurisdiction for Telecommunications Property. Also taking effect for municipal purposes in the tax year beginning April 1, 2016, this proposal repeals the state's excise tax on two-way or interactive telecommunications personal property. Much of this type of property is bolted onto the cell towers located along the major highways and throughout the state. (The municipalities have always had tax jurisdiction over one-way telecommunications property, which was first generation cable t.v. infrastructure.)

Repealing the state's jurisdiction opens up this type of property to municipal taxation. The budget bill's fiscal note suggests the state will lose \$8.25 million each year of the biennium under this proposal. Under current law, the state's excise tax rate that is applied to the value of this property is the applicable property tax rate for the municipality where the property is located. Accordingly, there is apparently \$600 million (approximately) worth of this type of property in various municipalities across the state, all of which are apparently known to Maine Revenue Services as the state agency that "discovers" the property and applies the appropriate municipal mill rate. Under the Governor's proposal, when this property is discovered by the

municipal assessors, it will yield a little over \$8 million in tax revenue each year to that group of municipalities in the aggregate.

Part G. BETR to BETE Conversion. As he did two years ago, the Governor is proposing to convert all the property currently enrolled in the Business Equipment Tax Rebate program (BETR), which is fully liable to taxation, into the Business Equipment Tax Exemption program (BETE), thus making it exempt. There are a few changes from the original 2013 proposal:

- Since 2008, the only type of property that can be enrolled in BETR is retail personal property. This proposal would close off new enrollment of any property whatsoever in BETR. Since retail property is not eligible for the BETE program, this proposal represents a policy shift away from providing property tax benefits to retailers.
- The conversion of BETR property to exempt status would be accomplished over a 4 year period.
 - On April 1, 2016, 25% of the value of BETR-enrolled property would become exempt from taxation.
 - On April 1, 2017, 50% of that value would become tax exempt.
 - On April 1, 2018, 75% of that value would become tax exempt.
 - On April 1, 2019, 100% of all BETR property would be exempt from taxation.
- The retail personal property currently enrolled in the BETR program that would be converted to exempt status during this 4-year period would lose its tax exempt status on and after April 1, 2025.

The impacts of this proposal are complicated. Generally speaking, it results in municipalities losing 50% of the tax revenue associated with BETR-enrolled property when it is converted to exempt status. Because this type of property is often part of tax increment financing agreements at the local level (TIFs), the financial impacts can be especially negative for municipalities with “municipally-supported” TIFs and similarly negative for the owners of the property in the circumstances of “credit enhancement” TIFs.

Parts ZZ, DDD and KKK. General Assistance Changes. Discussed in greater detail below, there are many other significant tax policy changes in the Governor’s budget proposal. There are also many components of the proposed budget that convey impacts to local government even though they are unrelated to tax policy.

In Part ZZ of the proposed budget, laws would be repealed that allow people with non-citizen or alien status to be eligible for SNAP (formerly “food stamps”) benefits, Supplemental Security Income and Temporary Assistance for Needy Families (TANF) benefits. Following up on that change, Part DDD creates a categorical General Assistance ineligibility for a class of aliens. The proposal includes three exceptions to the general rule of ineligibility for aliens, apparently to comport with federal law.

In Part KKK, the General Assistance reimbursement formula is substantially redesigned. First, there would be a cap on reimbursement. A determination would be made of each municipality’s average distribution of General Assistance benefits over the last six years. Under this proposal, the state would be obliged to reimburse no more than 50% of that amount. The reimbursement would be issued for 90% of all

municipal claims up to 40% of the six-year average. At that point, the reimbursement rate would drop to just 10% of claims until the state’s 50% obligation was met, at which point reimbursement would stop.

Parts U and QQ. Efficiency Incentives. Part U of the proposed budget appropriates \$5 million for each year of the biennium to operate the Fund for the Efficient Delivery of Local and Regional Services, which is presumably a reprise of the Fund of the same name that was created when the voters adopted the “55%” citizen initiative (Question 1-A) in 2004. That Fund was heavily abused by the Legislature during its short four years of life, before the system to capitalize the Fund was repealed in 2009. Part QQ appropriates \$5 million annually for the parallel Fund for the Efficient Delivery of Educational Services. That Fund was also created when the voters adopted Question 1-A in 2004, but almost immediately repealed by the Legislature.

Part C. Funding for K-12 Education. Continuing with education policy, Part C of the proposed budget appropriates \$964 million as the state share of the total amount the Essential Programs and Services school funding model (EPS) calculates as necessary for FY 2016. That appropriation represents a 2% increase over the current year’s contribution of \$944 million. The total amount of money – both state and local – the EPS model identifies as necessary is \$2.085 billion, which puts the proposed state share at 46.25%, down from the current year’s share of 46.8%. In short, the proposed appropriation moves away from, rather than toward, the 55% standard adopted by the Legislature 30 years ago and the voters 10 years ago. As a result, the required local share for FY 2016 is set higher than the current required local share, at 53.75%. To meet the local share burden, the mill rate expectation is set at 8.44 mills, up from the current 8.10 mills. The recent history of the required “mill rate expectation” is provided in this table.

Fiscal Year	Mill Rate Expectation
2007	7.6
2008	7.44
2009	6.79
2010	6.69
2011	6.96
2012	7.5
2013	7.8
2014	7.86
2015	8.10
2016 (proposed)	8.44

Parts H, I, J and K. Comprehensive Tax Reform. The H – K Parts of the Governor’s proposed budget accomplish a comprehensive tax reform that borrows from the comprehensive reform efforts attempted, respectively, in 2007, 2009 and 2014. The budget documents indicate that in round numbers the sales tax changes would generate an additional \$620 million over the biennium and the income tax changes would result in a drop in state revenue from those lines in the \$750 million range, with the reduction in income tax revenue expanding in subsequent biennia. As noted above, the elimination of the municipal revenue sharing program would “save” the state budget \$250 million over the 2016-2017 biennium and over \$300 million in subsequent biennia.

The difference between the previous reform efforts and the Governor’s is that the Governor’s focuses primarily on balancing the different burdens between the sales tax and income tax in the current code, without any robust effort to balance the state’s overreliance on the property tax. An expansion of the

relatively new “property tax fairness credit” within the income tax code is included, but when the elimination of the revenue sharing program is taken into account, along with the elimination of the homestead property tax exemption for 175,000 to 200,000 Maine households, the bottom line impact will be negative for the broad majority of property taxpayers.

Sales. Parts H and I include a comprehensive expansion of the sales tax base as well as adjustments to the sales tax rates.

With respect to the base, at least 6 major new categories would be added to the list of taxable services, including recreation and amusement services, installation, repair and maintenance services, personal services, domestic and household services, personal property services and professional services. Certain exemptions for business-to-business transactions are included with the broad expansion to the sales tax base. In addition, a collection allowance would remit to retailers 0.5% of the sales taxes collected to cover their administrative costs, up to a maximum \$1,000.

The various sales tax rates would be modified as follows:

Retail Category	Formerly	Currently	Proposed for 1/1/2016
General sales	5%	5.5%	6.5%
Meals	7%	8%	6.5%
On premise liquor	7%	8%	6.5%
Lodging	7%	8%	8%
Sht. Term auto rental	10%	10%	8%
Service providers	5%	5%	6%

Estate. Part J in the tax reform package eliminates the estate tax in two steps. Under current law, the first \$2 million in any estate is exempt from the application of the estate tax. For the 2016 income tax year, the exemption threshold would be increased to \$5.5 million, and for the 2017 tax year, the estates would be entirely exempt.

Income. Part K winds down the state’s income tax rates and increases certain pension deductions and “fairness credits”. This summary will not attempt to capture all the details Here are the highlights:

- The highest marginal individual income tax rate is currently 7.95 %. It would be reduced to 5.75 % over a 4 year period.
- The highest marginal corporate income tax rate is 8.93%. It would be reduced to 6.75% over a 4 year period.
- The pension deduction for non-military pensions would be increased from \$10,000 to \$35,000 over a 5 year period. Military retirement plan benefits would be made 100% exempt beginning in 2016.
- As part of the broad expansion of the sales tax base, Maine residents would be given a refundable “sales tax fairness credit” within the income tax code. The credit would be valued at either \$250 or \$500 depending on the number of exemptions claimed on the return, and the credit would be phased out for single-filers exceeding \$15,000 in income and \$30,000 for taxpayers filing married joint returns.

- The existing property tax fairness credit would be increased by lifting the cap on the amount of property taxes that can be claimed for the credit, up to \$5,000 for taxpayers filing married joint returns. The credit would also be increased by covering 100% of the property taxes exceeding 6% of the household income rather than just 50% as is the case under current law. Finally, the maximum benefit would be increased from \$600 to \$1000 for individuals under 65 and from \$900 to \$1,500 for individuals 65 years old or older.

Parts M, Z and BB. Three Incidental Policy Changes.

- Part M of the proposed budget would change the way the “LD 1” property tax levy limit growth factor would be calculated. Under current law, the growth factor is a combination of the “10-year average real growth in total personal income” plus the actual growth in new property value in each municipality, measured as a percent. Under this proposal, the unique growth percentage of each municipality would no longer be a factor in the calculation. The growth factor would be the same for every town and city, calculated as the 10-year average nominal (rather than real) growth in total personal income. “Nominal” growth is not adjusted for inflation as is “real” growth. For example, the most recently calculated average real growth in total personal income was calculated as .86%. If calculated as nominal growth, it would have been 3.25%
- Every municipality is mandated to appoint a municipal fire warden. Part Z simply increases the state subsidy for municipal fire wardens from \$100 per year to \$400 per year.
- Part BB implements several changes to the law governing the forest management plans that landowners with property enrolled in the Tree Growth tax program are required to procure and update every 10 years in order to remain in the special and favorable Tree Growth tax category. Specifically, Part BB would:
 - Require the plan to specifically identify the type, nature and timing of the forest management activities recommended by the forester,
 - Require Tree Growth landowners to have a copy of the plan in their possession for auditing purposes,
 - Allow Maine Forest Services to continue its auditing program of randomly selected parcels, which was initiated as a pilot program in 2012,
 - Create municipal penalties in the form of reduced Tree Growth reimbursement if the municipality fails to provide timely reports to Maine Forest Services or fails to act in response to Maine Forest Services’ recommendations to withdraw noncompliant parcels, and
 - Establishes a landowner penalty to cover the circumstance of parcels being withdrawn from the program by Maine Forest Services’ post-audit recommendations, which would be a 10-year “back taxes” penalty; that is, the difference between what the landowner would have paid in taxes over the last 10 years if the property had not been enrolled and the amount of Tree Growth taxes actually paid.

Next Steps. MMA’s 70-member Legislative Policy Committee will be convening on January 22 to develop the Association’s position on the Governor’s proposed budget, along with several dozen other

legislative initiatives that have been printed and will soon be scheduled for public hearing. The request going out to all municipal officials is to share your opinion about these proposed policy changes over the next couple of weeks with your municipal colleagues, your area LPC representatives and/or MMA's advocacy staff.

Year	Dedicated to
2014	
2013	Margaret Knight; Bea Horne; Betty Bennett; Neala Jennings
2012	Edward Kallop
2011	Christopher Stevenson
2010	Priscilla Stevenson
2009	Peter Ault
2008	Marguerite "Mike" Holbrook & North Wayne School Preservation Committee
2007	Peter Burbank
2006	Lila Gale Lincoln
2005	Sally Towns
2004	WWII Veterans
2003	Peter & Lois Ault
2002	Byron & Keith Bennett
2001	Jean Dorson
2000	Wayne's Most Senior Citizens: Klaus Backmeyer, Anna Eggers, Marion Davenport, Herbert Farnham, Dorothy Reeh, Marguerite Holbrook
1999	Nelson Manter
1998	Clarence Manter
1997	Ted Goucher
1996	Maggie & Joe Tripp
1995	Warren H. Davenport
1994	Laura T. Walton
1993	not dedicated
1992	Donald L. Gatti
1991	Bob & Grace Burleigh
1990	"Maine Street 90" Steering Committee: Ed Kallop, Priscilla Stevenson, Elizabeth Reiter, Don Gatti, Patty Lincoln, Laurel Criss, Holly Stevenson
1989	Robert D. Ault
1988	Nancy Mullen
1987	Andrew Knight Jr. & The Wayne Volunteer Fire Department
1986	George E. Ladd Jr.
1985	Ruth Ault

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-14-

TOWN OF WAYNE, MAINE, a
municipal Corporation located in
Kennebec County, State of Maine,

Plaintiff,

v.

RYAN FEELY and LISE FEELY,

Defendants.

COMPLAINT

Plaintiff Town of Wayne (“Wayne” or the “Town”), by and through its undersigned attorneys, complains against the Defendants, Ryan Feeley and Lise Feely (hereinafter collectively “Defendants”), as follows:

1. Wayne is a duly organized and existing municipal corporation located in Kennebec County, Maine.
2. Defendant Lise Feely is the record owner of property located at 330 Tucker Road, Wayne, Maine (the “Property”). Upon information and belief, Defendant Ryan Feely resides at 330 Tucker Road in Wayne, Maine.
3. This action is brought to recover penalties and attorneys’ fees and costs for violations of the Town of Wayne Animal Control Ordinance and for violations of state statutes relating to animal control. A true and accurate certified copy of the Town of Wayne Animal Control Ordinance is attached to this Complaint as Exhibit A.

Violation of Local Noise Disturbance Ordinance

4. Plaintiff repeats the allegations set forth in Paragraphs 1-3 of this Complaint as if fully set forth herein.

5. The Town of Wayne Animal Control Ordinance provides that:

No owner or person having custody of any domesticated animal within the legal limits of the Town shall allow such domesticated animal to cause a nuisance by noise.

Town of Wayne Animal Control Ordinance, Part III - Provisions (G), Ex. A hereto.

6. The Town of Wayne Animal Control Ordinance defines "Owner" as:

person or persons, firm, association, or corporation, owning, keeping, harboring, or in possession of or having control of, a domesticated animal.

Town of Wayne Animal Control Ordinance, Part II (H), Ex. A hereto.

7. The Town of Wayne Animal Control Ordinance defines "Nuisance by Noise" as:

any domesticated animal unnecessarily annoying or disturbing any person by continued or repeated barking, howling or making other loud sounds or unusual noises continuously for twenty (20) minutes or intermittently for one (1) hour or more. Domesticated animals barking/alerting of trespassers on private property on which the domesticated animal is situated, dogs barking as part of an organized hunt, or dogs barking as a result of provocation shall not be deemed a nuisance.

Town of Wayne Animal Control Ordinance, Part II (G), Ex. A hereto.

8. The penalty for violation of the Town of Wayne Animal Control Ordinance is a fine of fifty dollars (\$50.00) for the first offense, and for a period of two years after the first offense, one hundred dollars (\$100.00) for any second offense, and two hundred and fifty dollars (\$250.00) for the third or any subsequent offense. Town of Wayne Animal Control Ordinance, Part III - Enforcement (D), Ex. A hereto.

9. The Town of Wayne Animal Control Ordinance also provides that any person found in violation of the ordinance is required to reimburse the Town for the attorney's fees and costs incurred in the prosecution of the action. Town of Wayne Animal Control Ordinance, Part III - Enforcement (D), Ex. A hereto.

10. Defendants have kept one or more dogs upon their property that are in violation of Part III – Provisions (G) of the Town of Wayne Animal Control Ordinance as described herein, on at least 16 occasions, including but not limited to the following dates and times:

- a. On May 25, 2014 by barking continuously or intermittently from 11:00 p.m. to 12:45 a.m.;
- b. On May 31, 2014 by barking continuously or intermittently from 6:30 p.m. until 12:00 a.m.;
- c. On June 19, 2014 by barking continuously or intermittently from 10:00 p.m. until 12:00 a.m.;
- d. On June 20, 2014 by barking continuously or intermittently from 5:15 p.m. until 6:15 p.m.;
- e. On June 21, 2014 by barking continuously or intermittently from 4:30 p.m. until 6:00 p.m.;
- f. On June 26, 2014 by barking continuously or intermittently from 10:00 p.m. until 10:45 p.m.;
- g. On July 16, 2014 by barking continuously or intermittently from 8:00 p.m. until 9:50 p.m.;
- h. On July 17, 2014 by barking continuously or intermittently from 8:15 p.m. until 10:15 p.m.;
- i. On July 22, 2014 by barking continuously or intermittently from 8:00 p.m. until 12:20 a.m.;
- j. On July 25, 2014 by barking continuously or intermittently from 8:00 p.m. until 12:30 a.m.;
- k. On July 26, 2014 by barking continuously from 3:20 a.m. until 3:45 a.m.;
- l. On July 26, 2014 by barking continuously or intermittently from 8:15 p.m. until 10:30 p.m.;
- m. On July 28, 2014 by barking continuously or intermittently from 10:45 p.m. until 11:45 p.m.;
- n. On July 29, 2014 by barking continuously or intermittently from 4:00 a.m. until 6:00 a.m.;
- o. On August 14, 2014 by barking continuously or intermittently from 8:45 p.m. until 10:30 p.m.;
- p. On October 5th, 2014 by barking continuously or intermittently from 7:00 p.m. until 8:30 p.m.

11. The dogs on the Property have been allowed to unnecessarily annoy or disturb neighbors due to their continued and repeated barking, howling and other loud sounds and unusual noises.

12. Town officials, including the Animal Control Officer for the Town of Wayne, have investigated and witnessed the disturbance and have given written and verbal warnings to the Defendants that such disturbance and annoyance must cease. The noise disturbance has not ceased.

13. The barking and noise disturbance from the dogs kept at 330 Tucker Road in Wayne constitutes a noise nuisance under the Town of Wayne Animal Control Ordinance.

Violation of Local Dog Licensing Ordinance

14. Plaintiff repeats the allegations set forth in Paragraphs 1-13 of this Complaint as if fully set forth herein.

15. The Town of Wayne Animal Control Ordinance provides that:

no dog shall be kept within the limits of the Town of Wayne unless such dog shall have been licensed by its owner in accordance with the statutes of the State of Maine. A town issued tag must be worn at all times by the dog for which the license was issued.

Town of Wayne Animal Control Ordinance, Part III – Provisions (B).

16. Despite warnings given by Town officials, Defendants have failed to apply for, and have not obtained, a dog license as required from the Town of Wayne.

17. As indicated in Paragraphs 8 and 9 above, the Town of Wayne Animal Control Ordinance provides for penalties and attorneys' fees and costs to be awarded in the event of violation of the ordinance. Wayne Animal Control Ordinance, Part III-Enforcement (D).

Violation of Local Running-at-Large Ordinance

18. Plaintiff repeats the allegations set forth in Paragraphs 1-17 of this Complaint as if fully set forth herein.

19. The Town of Wayne Animal Control Ordinance provides in pertinent part that:

It shall be unlawful for the owner of any domesticated animal, licensed or unlicensed, to permit such domesticated animal to “run at large”. Any domesticated animal found running at large may be picked up and taken to a humane shelter.

No domesticated animal, license or unlicensed, shall be permitted on town property (highways, sidewalks...) without a leash.

Town of Wayne Animal Control Ordinance, Part III – Provisions (C), Ex. A hereto.

20. The Town of Wayne Animal Control Ordinance defines “Running at Large” as a domesticated animal which is:

off the premise of the owner and not under the control and restraint of any person by means of either by [sic] a leash, cord, chain, rope or cord of sufficient strength to control the action of such domesticated animal or such other personal presence and attention as will reasonably control the conduct of such domesticated animal.

Town of Wayne Animal Control Ordinance, Part II (C), Ex. A hereto.

21. In addition to the penalties and attorneys’ fees permitted for violation of the Town of Wayne Animal Control Ordinance described above in Paragraphs 8 and 9, the Town of Wayne Animal Control Ordinance also provides that, with appropriate notice having been given:

dogs found running at large, whether or not licensed, may be seized, impounded or restrained by any law enforcement officer, animal control officer or other duly authorized person within the Town of Wayne and delivered to the person who is duly authorized to have control of impounding.

Town of Wayne Animal Control Ordinance, Part III - Enforcement (B), Ex. A hereto.

22. The Town of Wayne has received several reports that the dogs kept at the Property have been permitted to run at large.

Violations of State Dog Licensing Statute

23. Plaintiff repeats the allegations set forth in Paragraphs 1-22 of this Complaint as if fully set forth herein.

24. Title 7, Chapter 721 of the Maine statutes regulates dog licenses. Section 3921 states that no dog may be kept within the limits of the State unless the dog has been licensed by its owner or keeper in accordance with the laws of the State. 7 M.R.S.A. § 3921. Section 3922 sets forth the approved methods of licensing dogs over the age of six months in the State, which includes obtaining a license from the clerk of the municipality where the dog is kept. 7 M.R.S.A. § 3922; 3922(1)(A).

25. “Owner” means a person owning, keeping, or harboring a dog or other animal. 7 M.R.S.A. §3907(21). “Keeper” means a person in possession or control of a dog or other animal. 7 M.R.S.A. §3907(16).

26. Defendants are the owners and/or keepers of several dogs which are kept at the Property.

27. Upon information and belief, Defendants have failed to apply for, and have not obtained, dog licenses as required by 7 M.R.S.A. §3921 et seq. and owns and/or keeps the dogs on the Property in violation of the statute.

28. 7 M.R.S.A. §3924(1) provides that “[a]ny person who violates any section of this chapter commits a civil violation for which a forfeiture not to exceed \$100.00 may be adjudged”. 7 M.R.S.A. §3924(1).

Violations of State Uncontrolled Dog Statute

29. Plaintiff repeats the allegations set forth in Paragraphs 1-28 of this Complaint as if fully set forth herein.

30. Title 7, Chapter 719 of the Maine statutes regulates uncontrolled dogs. Section 3911 states that it is unlawful for any dog, licensed or unlicensed, to be at large, except when used for hunting. 7 M.R.S.A. § 3911. Section 3912 permits an animal control officer or person acting in that capacity to seize, impound or restrain an uncontrolled dog and either deliver it to the owner or deliver it to an animal shelter. 7 M.R.S.A. § 3912.

31. “At large” means off the premises of the owner and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal. 7 M.R.S.A. §3907(6).

32. Defendants are the owners and/or keepers of several dogs which are kept at the Property. Upon information and belief, Defendants have permitted the dogs to run at large on several occasions in violation of the statute.

33. 7 M.R.S.A. §3915 provides that “[a]ny person who violates this chapter commits a civil violation for which a forfeiture of not less than \$50 nor more than \$250 may be adjudged for a first violation and not less than \$100 nor more than \$500 for 2 or more violations”. 7 M.R.S.A. §3915.

WHEREFORE, the Town of Wayne respectfully requests that this Court enter judgment in its favor and grant the following relief pursuant to the Town of Wayne Animal Control Ordinance and state statute:

- a. Determine that the Defendants have permitted a noise nuisance by allowing dogs under their ownership or control to bark, howl, or make other sounds in violation of Part III - Provisions (G) of the Town of Wayne Animal Control Ordinance;

- b. Impose a monetary fine against Defendants of \$50.00 for the first offense, \$100.00 for the second offense and \$250.00 for each subsequent offense related to the noise nuisance, pursuant to Part III - Enforcement (D) of the Town of Wayne Animal Control Ordinance;
- c. Determine that the Defendants are in violation of the dog licensing requirements of the Town of Wayne Animal Control Ordinance;
- d. Impose a monetary fine against Defendants of \$50.00 for the first offense, \$100.00 for the second offense and \$250.00 for each subsequent offense for each unlicensed dog, pursuant to Part III - Enforcement (D) of the Town of Wayne Animal Control Ordinance;
- e. Determine that the Defendants have permitted their dogs to run at large in violation of Part III – Provisions (C) of the Town of Wayne Animal Control Ordinance;
- f. Impose a monetary fine against Defendants of \$50.00 for the first offense, \$100.00 for the second offense and \$250.00 for each subsequent offense for violations relating to dogs running at large, pursuant to Part III - Enforcement (D) of the Town of Wayne Animal Control Ordinance;
- g. Determine that the Defendants are in violation of the state dog licensing requirements, as set forth in 7 M.R.S.A. § 3921 et seq;
- h. Impose a monetary fine against Defendants of \$100.00 per dog for violations of state licensing statutes, pursuant to 7 M.R.S.A. §3924(1);
- i. Determine that the Defendants are in violation of the state uncontrolled dog statutes, set forth in 7 M.R.S.A. § 3911 et seq;
- j. Impose a monetary fine against Defendants of not less than \$50 nor more than \$250 for a first violation and not less than \$100 nor more than \$500 for 2 or more violations, pursuant to 7 M.R.S.A. §3915;
- k. Permit seizing and impoundment of the dogs as permitted by the Town of Wayne Animal Control Ordinance and by state statute;
- l. Award the Town its costs and attorney's fees incurred in prosecuting this action; and
- m. Order such further relief as this Court deems just and proper.

Dated at Portland, Maine this ____ day of November, 2014.

Lee K. Bragg, Bar No. 543
Brita J. Forsberg, Bar No. 8488

BERNSTEIN SHUR
100 Middle Street
P. O. Box 9729
Portland, Maine 04104-5029
(207)774-1200

Attorneys for Plaintiff
Town of Wayne

COPY

330 Tucker Road
Wayne, ME 04268
740-0449
January 21, 2015

Michele Lumbert, Clerk
Kennebec County Superior Court
95 State Street
Augusta, ME 04330

RECEIVED

JAN 26 2015

re: Town of Wayne v. Ryan Feely
2014-249

Dear Ms. Lumbert:

Enclosed for filing, please find my Answer to the Complaint and Motion to File Late Answer..

Sincerely,



Ryan G. Feely

cc: Brita J. Forsberg, Esq.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: SC-CV-14-249

TOWN OF WAYNE, MAINE, a
municipal Corporation located in
Kennebec County, State of Maine,

Plaintiff,

ANSWER TO COMPLAINT

vs.

RYAN FEELY,

Defendant

Defendant Ryan G. Feely files his answer to the December 3, 2014 Complaint filed by the Plaintiff as follows:

AFFIRMATIVE DEFENSES

Defendant has not been the owner or keeper of any dog that has been on the premises that he rents at 330 Tucker Road, Wayne, Maine.

Plaintiff is alleging that Defendant violated provisions of the town ordinance before it became effective.

1. Defendant admits the allegations contained in paragraphs 1 and 2 of the complaint.
2. Defendant denies the allegations contained in paragraphs 10, 11, 12, 13, 16, 22, 26, 27 and 32 of the complaint.
3. Defendant is without knowledge of the allegations contained in paragraphs 5, 6, 7, 8, 9, 15, 17, 19, 20, 21, 24, 25, 28, 30, 31 and 33 of the complaint and therefore denies same.
4. Defendant makes no answer as to paragraph 3 of the complaint as it is merely Plaintiff's characterization as to its cause of action.
5. Defendant answers paragraphs 4, 14, 18, 23 and 29 of the complaint as he did when they were first pled.

Wherefore, Defendant prays that the Court deny the complaint and for his costs.

Dated at Wayne, Maine, this January 21, 2015.

A handwritten signature in black ink, appearing to read "Ryan G. Feely", is written over a horizontal line.

Ryan G. Feely, Defendant pro se
330 Tucker Road
Wayne, ME 04268

740-0449

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: SC-CV-14-249

TOWN OF WAYNE, MAINE, a
municipal Corporation located in
Kennebec County, State of Maine,

Plaintiff,

MOTION TO FILE LATE ANSWER

vs.

RYAN FEELY,

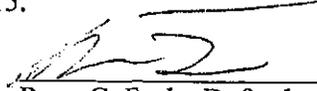
Defendant

Defendant Ryan G. Feely moves to file a late answer and in support thereof he states:

1. Services of process on him was asserted to have been accomplished by serving a person of suitable age and descretion living in the same residence as Defendant;
2. Defendant was not told by the party that received them that pleadings had been left at his residence and he found the papers in the home only after his mother had been served in hand in Portland;
3. Defendant's mother, the co-Defendant, told Defendant that she had been served and that he had been named as a party as well as her;
4. It was only after co-Defendant told him that she had been served that he found the pleadings.
5. No default has been filed against him;
6. Plaintiff is not harmed because it accomplished service on co-Defendant only on January 3, 2015 and she is within the allowed time to file responsive pleadings;
7. Defendant's agent attempted to contact opposing counsel to learn his position on this motion and was unable to reach him;
8. Defendant is filing an answer with this motion and he has meritorious defenses to the complaint that was filed.

WHEREFORE, Defendant prays that he be allowed to file an answer to the complaint.

Dated at Wayne, Maine, this January 21, 2015.



Ryan G. Feely, Defendant pro se
330 Tucker Road
Wayne, ME 04268

740-0449

To Brita J. Forsberg, Esq.:

IF YOU INTEND TO OPPOSE THE MOTION TO FILE LATE ANSWER, THEN DO NOT FAIL TO FILE A WRITTEN MEMORANDUM (ANSWER), INCLUDING ALL OBJECTIONS, DENIALS AND AFFIRMATIVE DEFENSES WITHIN 21 DAYS OF SERVICE ON YOU OF THE MOTION. YOUR FAILURE TO FILE A MEMORANDUM IN OPPOSITION MAY RESULT IN THE COURT'S ENTERING AN ORDER WITHOUT FURTHER HEARING.

Town of Wayne v. Ryan Feely

2014-249

Motion: Granted/Denied.

Dated:

Justice, Superior Court

STATE OF MAINE

SUPERIOR COURT

Kennebec _____, ss.

DISTRICT COURT

Location _____

NOTICE OF INCOMPLETE FILING

To: Lise Feely
1148 Washington Avenue
Portland, ME 04103

In the matter of:

Town of Wayne v. Lise Feely
CV-14-249

This office has received a filing from you that does not include:

- Original signature
- Filing fee - \$200.
- Appeal fee
- Registry of Deeds recording fee and envelope
- Summary Sheet
- Transcript Order form, CR-165
- Other _____

In accordance with M.R.Civ.P. 5(f) the filing is returned as incomplete. The attempted filing has not been docketed and the filing is not effective until complete.

Do not re-file the documents until all elements are complete. The filing will be docketed only when the complete filing is received.

If there was a deadline for filing, that deadline has NOT changed.

Date: 1/22/15 _____

Michèle Lambert

Clerk

cc: Brita Jorsburg, Esq.

1148 Washington Avenue
Portland, ME 04103
740-0449
January 21, 2015

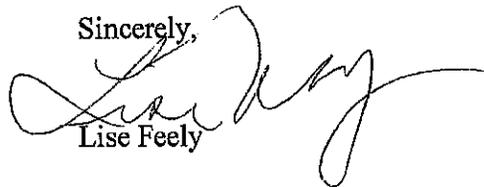
Michele Lumbert, Clerk
Kennebec County Superior Court
95 State Street
Augusta, ME 04330

re: Town of Wayne v. Lise Feely

Dear Ms. Lumbert:

Enclosed for filing, please find my Motion to Dismiss.

Sincerely,

A handwritten signature in black ink, appearing to read "Lise Feely", with a long horizontal flourish extending to the right.

Lise Feely

cc: Brita J. Forsberg, Esq.

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: SC-CV-14-249

TOWN OF WAYE, MAINE, a
municipal Corporation located in
Kennebec County, State of Maine,

Plaintiff,

vs.

SWORN
MOTION TO DISMISS
(M.R. Civ. P. 12(b)(6))

LISE FEELY,

Defendant

Defendant Lise A. Feely, being duly cautioned and sworn, deposes and moves to dismiss this action against her pursuant to Me. R Civ. P. Rule 12 (b) (6) as follows:

The complaint fails to state a cause of action against her. In support of her motion, she states:

1. Defendant Lise A. Feely owns the real property located at 330 Tucker Road, Wayne, Maine;
2. Defendant Lise A. Feely has resided in Portland, Maine since June, 2014,; prior to that date she resided in Lewiston, Maine and had lived there for some 30 years;
3. Defendant Lise A. Feely has never resided at 330 Tucker Road, Wayne, Maine;
4. Defendant Lise A. Feely purchased the subject premises on March 19, 2014 and viewed the property once before she purchased it;
5. Defendant Lise A. Feely, since her purchase, visited the subject property but once and that was Thanksgiving Day, 2014 at a family gathering;
6. Defendant Lise A. Feely has rented out the property on a month to month oral agreement since April, 2014;
7. Defendant Lise A. Feely has allowed the tenant quiet enjoyment of the premises and has not had any control over the property as to who her tenant allowed to live on the premises or whether there were animals kept there; and

8. Defendant Lise A. Feely never received any notice from the Town of Wayne that there were alleged issues with dogs prior to her having been served with this complaint.

WHEREFORE, Defendant prays that the complaint against her be dismissed and for her costs.

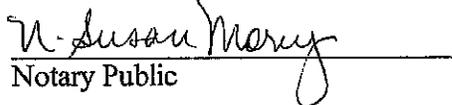
January 21, 2015


Lise A. Feely, Defendant, pro se
1148 Washington Avenue
Portland, ME 04103

740-6167

STATE OF MAINE
KENNEBEC, ss.

Then on January 21, 2015, personally appeared before me Lise A. Feely and she swore that the statements made in this motion are true and made from her own personal knowledge.


Notary Public

N. SUSAN MOREY
NOTARY PUBLIC
State of Maine
My Commission Expires
April 17, 2021

To Brita J. Forsberg, Esq.:

IF YOU INTEND TO OPPOSE THE MOTION TO DISMISS, THEN DO NOT FAIL TO FILE A WRITTEN MEMORANDUM (ANSWER), INCLUDING ALL OBJECTIONS, DENIALS AND AFFIRMATIVE DEFENSES WITHIN 21 DAYS OF SERVICE ON YOU OF THE MOTION. YOUR FAILURE TO FILE A MEMORANDUM IN OPPOSITION MAY RESULT IN THE COURT'S ENTERING AN ORDER WITHOUT FURTHER HEARING.

2015 JAN 21 PM 4:00
4700 WASHINGTON AVE
PORTLAND, ME 04103
740-6167

To: Board of Selectmen
 Budget Committee
 From: Aaron Chrostowsky, Town Manager
 Re: Budget Development/ Town Meeting Timeline
 Date: 1/10/2015

<u>Date</u>	<u>Board/Committee</u>	<u>Time</u>	<u>Activity</u>
Wed. March 4, 2015	Joint RSU/ Selectmen ¹	6:30 PM	Regular Meeting - Joint Meeting/ Draft Budget Proposal
Tues. March 10, 2015	Board of Selectmen ²	6:30 PM	Regular Meeting
Tues. March 17, 2015	Budget Committee ³	6:00 PM	Regular Meeting - Town Manager Budget Presentation - Begin Reviewing Department Budgets
Tues. March 24, 2015	Board of Selectmen ²	6:30 PM	Regular Meeting
Tues. March 31, 2015	Budget Committee ³	6:00 PM	Regular Meeting - Review Department Budgets
Tues. April 7, 2015	Board of Selectmen ²	6:30 PM	Regular Meeting
Tues. April 14, 2015	Budget Committee ³	6:00 PM	Regular Meeting - Review Department Budgets - Discuss/ Approve Final Budget Recommendation
Wed. April 15, 2015	RSU Board ¹	6:30 PM	Regular Meeting
Tues. April 21, 2015	Budget Committee ³	6:00 PM	- Budget Approval Regular Meeting
Tues. April 21, 2015	Board of Selectmen ²	6:30 PM	- Discuss/ Approve Final Budget Recommendation (if needed) Regular Meeting
Tues. April 28, 2015	Board of Selectmen	6:30 PM	- Budget Approval - Last Regular Meeting to sign Warrant Special Meeting
Tues. May 6, 2015	Board of Selectmen ²	6:30 PM	- Last Meeting to sign Warrant (if needed) Regular Meeting
Wed. May 13, 2015	RSU Board ⁴	7:00 PM	Annual School Meeting "Budget Meeting"
Tues. May 19, 2015	Board of Selectmen ²	6:30 PM	Regular Meeting - Local Option Public Hearing
Tues. June 2, 2015	Board of Selectmen ²	6:30 PM	- Consider holding Pre-Town Meeting of Draft Town Meeting Warrant Regular Meeting
Tuesday June 9, 2015	Board of Selectmen ⁵	8AM – 8PM	Annual Town Meeting "Election of Officers"
Wednesday June 10, 2015	RSU Board ⁵	8AM – 8PM	Budget Validation Referendum
	Board of Selectmen ⁵	6:00 PM	Annual Town Meeting "Budget Meeting"

Notes:

1. Maranacook High School Student Center; 2. Wayne Elementary School Gymnasium; 3. Wayne Elementary School Library
4. Maranacook High School Gymnasium; 5. Ladd Recreation Center

**RSU No. 38 - Budget Workshops
Maranacook Community High School
Student Center (unless otherwise noted)
6:30 – 8:30 p.m.**

PROPOSED SCHEDULE

- January 7*** Regular Business Meeting and Budget Overview/Goals
- January 21** Budget Workshop – Elementary, Middle & High Schools
- February 4*** *****Readfield Elementary School***** Regular Business Meeting and Budget Workshop – Technology, Special Education, English Language Learners (ELLS), Gifted & Talented
Auditor Ron Smith
- February 25** Co and Extra Curricular, Operations & Maintenance, Transportation, Miscellaneous Cost Centers/Accounts (Adult Education, Food Service, Health, Professional Development/Curriculum, Systems Administration, Debt Service)
Winter NWEA reporting
- March 4*** Regular Business Meeting; Joint Meeting with Local Select Boards re: draft FY16 budget
- March 18** Budget deliberations, follow-up and decision making
- March 25** Budget deliberations, follow-up and decision making
- April 1*** Regular Business Meeting, budget deliberations, follow-up and decision making
- April 8** Budget deliberations, follow-up and decision making
- April 15*** Budget Approval at regular Board meeting
- May 13** Budget Annual Meeting, HS gymnasium, 7:00 p.m.
- June 9** Budget Validation Referendum at individual town's polling locations

* Regular RSU Board Meeting in addition to budget workshop

Budget documents may be obtained by visiting www.maranacook.org/budget

Maranacook Area School District Regional School Unit No. 38

A Caring School Community Dedicated to Excellence

Donna H. Wolfrom, Ed.D.
Superintendent of Schools

Nancy Harriman, Ph.D.
Director of Curriculum, Instruction & Assessment

Tel. 207-685-3336

Ryan Meserve
Special Education Director

Brigette Williams
Finance Manager

Fax. 207-685-4703

RSU #38 Budget Update #2

Re: January 21, 2015 RSU #38 School Board Meeting

"Providing support for students in order to promote academic success"

The RSU #38 School Board met for a budget workshop on January 21, 2015 at 6:30 pm at the Maranacook Community High School. As we start the FY16 budget process there are many unknowns, those of largest impact being state subsidy/EPS Allocation and rate of health insurance. Last week Education Commissioner, Tom Desjardin, stated that we should receive our EPS information by the second week in February. We have no information about a date for insurance information.

Moving forward, RSU #38 administrators have met to develop the first draft of the FY16 budget. There will be many revisions to this draft as we receive more information, examine programs and staffing, and engage in budget deliberations. We will provide copies of revised drafts throughout the budget process both at our meetings and on the district's web site.

At the January 21, 2015 budget meeting, elementary principals Janet Delmar (Manchester and Mt. Vernon) and Jeff Boston (Wayne and Readfield), Maranacook Community Middle School principal, Cathy Jacobs, and Maranacook Community High School principal, Dwayne Conway, explained various staff and instructional items in their budgets. The items are included in the **Draft 1 General Fund School Summary Budget**. Please keep in mind that the budget proposal is a first draft and will be changing as we progress through the budget process.

Principals highlighted the following items that have been included in the first draft budget:

Manchester Elementary School:

Afternoon ed. tech. for Pre-K (currently paid by town of Manchester)

Mt. Vernon Elementary School:

Additional Grade 1 teacher

½ day per week each, increased time for Art, Music, Computer due to increased number of classes

½ day per week increased guidance

3 ½ days per week math interventionist

Readfield Elementary School:

Afternoon ed. tech. for Pre-K

Wayne Elementary School:

½ time Certified Literacy Specialist

1 day per week increased guidance

1 ½ days per week math interventionist

Elementary district-wide:

½ time increased nursing

Middle School:

Behavior Interventionist position

Writing Curriculum Materials

High School:

Literacy Interventionist

Math Interventionist

Textbooks, on-line textbooks, materials for new classes and to replace outdated materials.

Several charts and graphs were sent to board members and included in packets that were handed out at the January 21 meeting. Throughout the budget process additional materials will be distributed. All materials that are produced will be available on the RSU #38 web site.

Regional School Unit #38 State Valuation Yearly Comparison: Our subsidy from the state is dependent on enrollment and valuation. The best circumstance is when enrollment is up and valuation is down. You can see by this chart that every town valuation except Manchester has gone down from FY15 to FY16. Unfortunately, while valuation is down our enrollment has also gone down. We expected this decrease in enrollment due, in part, from the elimination of the Phoenix House program. (Phoenix numbers were approximately 14.)

RSU #38 Enrollment History: The next chart shows total RSU #38 enrollment. The attending line (top) shows tuition students. Residents (bottom) are those students who live in district.

RSU #38 (Elementary) Enrollment: This describes the class sizes in each elementary school as of January 5, 2015.

RSU #38 Middle School Enrollment for Semester 1 in 2014

RSU #38 High School Enrollment for Semester 1 in 2014

RSU #38/Union #42 Budget/Subsidy History: The top line is the budget history and the bottom line is the subsidy history.

RSU #38 Budget Pie Charts show a breakdown of the past three budget years. You can see that the largest portion of money goes to staff salaries, and the second largest to benefits. Other portions of the budget have remained fairly proportional in the last 3 years.

Summary of Staff Increases for FY16 Budget

New Program/Positions/Account Evaluation Templates offer an explanation of new items that are included in the Draft 1 Budget proposal.

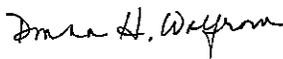
Summary of Budget Reductions from Original Requests as of January 21, 2015: After submitting original requests, administrators met to prioritize items in the budget. This chart lists those items that were cut in order to develop the first draft budget that was presented to the RSU #38 School Board. This list will continue to change throughout the FY16 budget process.

The next RSU #38 School Board meeting will be held on February 4, 2015 at the **Readfield Elementary School** in order to highlight student work on Promethean Boards. Budget topics for this meeting, which starts at 6:30 pm include Special Education, Technology, English Language Learners, Gifted and Talented. The RSU #38 School Board will continue to make decisions through their FY16 budget goal,

"Providing support for students in order to promote academic success."

We invite RSU #38 citizens to attend budget meetings in order to be informed about the FY16 budget.

Sincerely,



Donna H. Wolfrom, Ed.D.
Superintendent of Schools