

**STATE OF MAINE**

**COUNTY OF YORK**

**CITY OF SACO**

**I. CALL TO ORDER** – On Monday, June 15, 2015 at 7:00 p.m. a Council Meeting was held in the City Hall Auditorium.

**II. ROLL CALL OF MEMBERS** – Mayor Donald Pilon conducted a roll call of the members and determined that the Councilors present constituted a quorum. Councilors present: David Precourt, Leslie Smith Jr., Bette Brunswick, Kevin Roche, Arthur Tardif, Eric Cote and Nathan Johnston. Interim City Administrator Cheryl Fournier was also present.

**III. PLEDGE OF ALLEGIANCE**

**IV. GENERAL:**

**CERIFICATE OF ACHIEVMENT FOR EXCELLENCE IN FINANCIAL REPORTING JUNE 2014**

The Certificate of Achievement for Excellence in Financial Reporting has been awarded to City of Saco by the Government Finance Officers Association of the United States and Canada (GFOA) for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management.

An award of Financial Reporting Achievement has been awarded to the individual(s), department or agency designated by the government as primarily responsible for preparing the award-winning CAFR. This has been presented to: Cheryl Fournier, Finance Director.

The CAFR has been judged by an impartial panel to meet the high standards of the program including demonstrating a constructive “spirit of full disclosure” to clearly communicate its financial story and motivate potential users and user groups to read the CAFR.

The GFOA is a nonprofit professional association serving approximately 17, 500 government finance professionals with offices in Chicago, IL. and Washington, D.C.

**V. PUBLIC COMMENTS**

John Harkins, 4 Christopher Terrace – Mr. Harkins congratulated the city on receiving the CAFR Award and for he also thanked the Police Dept for getting the small grant. He was looking for more background material on the asset forfeiture.

Barbara Colman, Saco Resident – Ms. Colman noted that the Council was not speaking loud enough to be heard on TV and that the meeting is coming through all garbled. Can the city please fix the system so that the public can get more knowledge because everyone needs knowledge?

**VI. AGENDA**

**A. CABLE FRANCHISE RENEWAL ASCERTAINMENT – (PUBLIC HEARING)**

Time Warner’s current cable franchise with Saco ends on October 31, 2017. Time Warner sent a renewal commencement letter to the City on March 12, 2015. Pursuant to the federal Cable Act, the City must conduct a public ‘proceeding’ (hearing) to ascertain local cable-related needs and interests within six months of the City receiving Time Warner’s renewal commencement letter or the City loses important Cable Act formal renewal process legal rights. Thus the City has scheduled a June 15, 2015 Franchise Renewal Public Ascertainment Hearing to be conducted by the City Council in its capacity as Local Franchising Authority (LFA). The purpose of the Ascertainment Hearing is to gather preliminary testimony and comments pertaining to local cable needs and to hear about the provider’s past performance/compliance, with priority usually given to future needs. The attached Ascertainment Hearing Opening Statement provides further details about the purpose and conduct of the hearing. This June 15<sup>th</sup> hearing is early in the renewal process and there will be further opportunity along the way to supplement the Ascertainment Record. Additional ascertainment proceedings may be conducted by the Council or

by a designated Cable Advisory Committee or staff, as determined by the City.

Among the primary objectives of renewal ascertainment are the following: Gathering of comments and/or data about local equipment and capital and operating budget and technical needs (general comments at this stage), often focusing on Public, Educational and/or Government (PEG) Access equipment, facilities, channels, video origination locations and operations; and gathering testimony about customer service, consumer protection, franchise administration, right-of-way management, insurance, indemnification, performance bond, local channel allocations; regular cable system service, service to school(s) and municipal buildings, service area and other cable-related needs and interests.

The end-product of Ascertainment is usually an ‘Ascertainment Report, Findings and Contingent Request for Proposals’ which assembles needs data and serves as a platform for negotiations, and is usually issued approximately 12 – 15 months prior to franchise expiration. Once the Ascertainment Report issues the City requests and schedules negotiations sessions with Time Warner. The Cable Act expressly authorizes ‘informal’ renewal negotiations to facilitate the process. This involves exchanges of a draft renewal franchise document and ‘informal’ negotiations sessions. In the event that the informal renewal process results in impasse and failure to resolve, the City may issue a formal renewal process ‘Request for Proposals’ (issued to the incumbent cable operator only), directing the cable operator to provide a written renewal proposal. Following receipt of a written renewal proposal, the parties usually manage to negotiate an agreement; however, the City has and reserves the right to deny renewal if the company’s renewal proposal is not responsive to local needs. Issuance of an RFP is necessary to maintain denial rights and upon issuance the ascertainment process must be closed. Thus the Cable Act essentially provides for a ‘dual track’ of concurrent and overlapping formal and informal renewal procedures.

At this stage, the bottom line is that to prepare for the June 15, 2015 Ascertainment Hearing the City should identify and reach out to potential sources of testimony about local cable needs and make the public and stakeholders aware of the June 15<sup>th</sup> opportunity for public participation.

Councilor Brunswick moved, Councilor Precourt seconded to open the Public Hearing for the Cable Television License Renewal.

Melinda Poore, Vice President of Government Relations for Time Warner, based in Portland - Ms. Poore was here to listen to comments and address any outstanding issues and concerns and she would be happy to facilitate a resolution to those.

Ron Michaud, Bayview Road – Mr. Michaud inquired whether this was a 10 year, 5 year or theoretically how long is this contract was going to last? Attorney Bill August noted that it was negotiable. Right now we have a 10 year contract. Mr. Michaud noted that it has been about 15 years since we have had an ascertainment meeting and technology has changed. He brought up some things that he has noticed need addressing such as: Channel 3 needs to be available to all Time Warner customers regardless of the package they choose and if they only have internet connections. Many years ago live stream was a thought because we didn’t have it in place but live streaming is not only capable but should be a routine item. At the very least the contract should provide all Saco residents, regardless of the contract, should have access to our meetings. My understanding is that some packages don’t include Channel 3 and if you don’t have cable, you only have internet you may not have live streaming abilities unless we provide it. In order to do this we will need to upgrade our equipment upstairs in order to do live streaming on a regular basis and I’m sure the equipment up stairs needs significant upgrades since the last time we signed this contract 15 years ago. We need to ask Time Warner to help us in upgrading our equipment and make live streaming a routine part of the process. The young lady who came up here a few minutes ago talked about sound. We should have HD quality audio and video for our broadcasting capabilities and this is pretty routine and standards items that they should be able to work with us to get that for our customers. The Chamber needs new video and audio equipment within this chamber. As a person who has been on all sides of this issue including sitting at home trying to listen to the Council meeting, the audio we have known for years is a challenging thing. We have an opportunity to work with our theoretical partners (Time Warner) as we move forward providing services to our community for another 5, 10 or 15 years and that should be a routine part of the process as well. I’m sure they have the technical capability of providing us with the equipment we need in order to help us make this

chamber audible for people at home as well as in this chamber and this should be part of the contract expectations. If we do the contract for 10 years or longer, we should have a automatic 5 year reopener because technology changes rapidly. We shouldn't wait another 15 years to do an ascertainment hearing because allot can happen with improvements on the equipment side. Another item is that I think we have been fortunate working with Time Warner and we do have a public contact location on the Industrial Park Road. This is a incredibly important facility for people in Saco as well as other communities. You can actually meet a representative from Time Warner versus calling a 1-800 number. This was included in the old contract and it should be included in the new one as well. The last item is that Economic Development today is quite different than it was in the past. One of the critical pieces is the internet infrastructure. We should be looking very closely to the services we are providing to the downtown area, Saco Island and our Industrial Parks to make sure that whatever services we are providing are the top of the line services. So that fiver based services or entities that want to move to our community would have good internet access to make their companies viable. This is a critical component to growing our future economy and this is the time to sit down with our providers of services to ask them to work with us to make sure we provide the right infrastructure for our community.

Claire Dube, 812 Portland Rd – Ms. Dube felt that the Cable company should be offering a good basic and affordable package on cable and internet to people who can't afford the bigger packages. She felt the prices have gone up quite a bit and didn't know where they were going in the future. If you don't have an antenna and you're a senior citizen and can't afford cable then you won't have any TV. There are allot of little add on fees and I don't know if it has to be that way. They have their regulatory fees and then add on fees and each person's bill is a little bit different which is frustrating and for the lay person it is very difficult. This should be made more simple so that everybody should be able to afford cable to be able to watch TV. Does this contract address prices or is that something that is not negotiable? Attorney Bill August stated that the cable franchise can't regulate rates or prices do to federal cable act because congress deregulated the local government price negotiating powers. Time Warner can be mindful of offering a simple package for seniors. Ms. Dube stated that maybe Time Warner can be mindful and offer an affordable package for seniors and people that want the other packages can get those.

Melida Poore – Ms. Poore noted that pricing is a big concern for customers and we do offer a couple of different packages that don't have sports programming in them because the sports programming shoots the prices up. We do have the basic tier which is the entry level which is around \$20 a month and it has the public educational and government access channels, so every customer that we have does have the access to the peg channels. Then we also have the family tier as well as a TV essentials tier and those are around \$50 a month. The franchise agreement only oversees the video cable portion of Time Warner Cables services throughout the City of Saco and internet services are classified differently under federal law. We do offer an internet essentials program that has about \$15 a month for a 3 x 1 broadband service for customers.

Neil Schuster, 433 Ferry Road – Ms. Schuster noted that cable TV services are a monopoly. They want to be basically the one TV company that provides services throughout the State of Maine. This was a good opportunity to explore alternative technology and get RFP's from other companies and don't just think we can negotiate a good deal with Time Warner because if Time Warner knows there is nobody else out there coming in, where is the incentive for them to come through with some creative ideas and options? We are in a small town and have a limited population so that limits the negotiability on that. But, that is why I would also like to suggest a limited time frame on the contract and the other thing that we can do is look at surrounding communities and gain a larger population that gains a stronger body to negotiate with some other competition. AT & T, Universe and some other companies out there. I think that there is no one out there that would say that any particular cable company is great in terms of answering to the customer. But I do know that friends that I have that live in other States and communities where there are multiple options, they get more service for less price than what I'm paying here in Saco and that is due to the competition. So if there is some way in the couple of years that we have before we sign a contract with Time Warner, I wonder if there is some ability to look at some alternatives then I would highly encourage you to do that. I would be willing to participate in the process as well to learn about what other options we have. We all know that cable companies are under great scrutiny for their customer service and you read consumer reports about the top 2 companies that have the worst customer service and Time Warner is one of them. One of the common things you hear about cable is that customers would just like to pick for top 5 channels they

want to watch and not have the 150 other ones that they never look at. We hear from the cable companies that say well your prices are just going to go up. Maybe that is so and maybe it is not if there is some competition, so other companies to look at and some other options. If we can manage those costs and if we can really take a look at that there may be some opportunities out there. An example of one of my customer service experiences with the office here is Saco and I would encourage that if we do sign with Time Warner, that that office be maintained. He was there at about 12:30 p.m. with 10-12 people in line with 2 service reps. No matter what the person was there for the focus of the customer service rep was to try to sell them additional service. When one service rep came back from lunch, there were still about 10 people in line and one of the other service reps got up and left the office with their lunch. Let's look at some other options and create some competition in this highly monopolized market. It certainly would be worth looking at. Attorney Bill August pointed out that the existing license is non-exclusive.

Melinda Poore – Ms. Poore pointed out that these were all great comments and in the video marketing place it is very competitive. You have Netflix, Hulu and you have allot of over the top providers providing a ton of content that is that a la carte format that people are looking for. There is also Direct TV and Dish and they are fierce competitors. I think the video market place is more competitive now than it ever has been and it is dramatically changing the way that people watch TV.

Patricia Erikson, Dir. Of Communication at Thornton Academy, 438 Main St. – Ms. Erikson stated that T.A. is contracted to provide some taping and broadcasting service for Channel 3 and it has been as great opportunity to have a partnership with the community over the past 10 years and provides some opportunity for citizens to see what is going on here in the council chambers and also at the Middle School and High School. It is my understanding that the City Council is interested in expanding what is covered so there is interest in the growth of that coverage. T.A. has valued this partnership in the opportunity for technical education that it has given students to the point where in the past year we raised significant funds privately and invested in creating a new media center on campus. Within the new media center there is a new TV media studio and control room. So just underscore the value of the partnership and how much we honor that and have invested in that through our facility. Along with that though are some challenges increasingly so you hear the echo from what I'm saying with what people have said here before me. Increasingly, we are having to teach our new media students about how lagging behind in technology Channel 3 is. All of our camera work and all of our production work is in high definition, but Channel 3 is in standard definition. So this is one of the obstacles we face in broadcasting is we have to adopt that new media work to technologically obsolete broadcasting. We have the original nexus box and software and hardware wise we are working with extremely old equipment and people complain that they are not able to tell what program is on when. When we provide broadcasting services to the city we are not able to inform the people as to what is happening when on TV and this is service that people are accustomed to on cable is being able to see what is happening when. We can't provide that for you. We are working with some very old software and hardware and I understand there are also some issues here which Mr. Michaud mentioned pertaining to hardware that is available here that we work with, both microphones and cameras and allot of that equipment is not working. But, I think Mr. Lawler can speak better to that.

David Lawyer, 1 Coppinger Court and Former City of Saco IT Dir. – Mr. Lawyer noted that he was a member of cable committee for several years during my tenure here. Some of the topics that Mr. Michaud said are true and some of them we have to remember that we get a cable franchise check every year to update the equipment and during my tenure at least we have brought that to the Council's attention several times and this year bring one of those years again. So that money is allocated for city resources rather than the cable TV channel. Allot of the things that Patricia was talking about are true, absolutely. We need to have a overhaul here. We have had several evaluations done of this facility and the IT Dept. has done very thing they can to keep is going with the limited resources that we were given. Allot of the things she is speaking to a more in line with the T.A. TV Agreement going forward and some of these things dovetail into the ascertainment but what we really need to do in my opinion as a citizen is get a broader cross section of folks who obtain these services and we need to find out what the citizens are asking from Time Warner and the city so we can make a better educated analysis.

Councilor Brunswick moved, Councilor Johnston seconded to close the Public Hearing subject to a reservation of rights to hold additional cable renewal ascertainment hearings during the pending renewal process, and subject to

the Ascertainment Record remaining open, and be it ordered that the City Council invite verbal or written comments on the Cable Television License Renewal. Further move to approve the order. The motion passed with seven (7) yeas.

**CITY OF SACO  
LEGAL NOTICE  
Cable Television License Renewal  
Public Ascertainment Hearing, June 15, 2015**

A public hearing will be held on Monday, June 15, 2015 at 7:00 p.m. at Saco City Hall at 300 Main Street, Saco, MA, concerning Time Warner Cable (the "Licensee") and the proposed renewal of its non-exclusive cable license. Members of the public are encouraged to comment and testify at this hearing concerning the performance of Time Warner and local cable needs for a future renewal license. This hearing is held pursuant to the federal Cable Act, 47 U.S.C. 546 and applicable law. Public records pertaining to the renewal will be available for inspection and copying at City Hall, c/o Office of the City Administrator. The hearing will be conducted by the Saco City Council, acting in its statutory capacity as cable license Issuing Authority under the Cable Act to ascertain local cable needs and public comment on a possible license renewal. For further information please contact Bill August, Esq., Epstein & August, LLP, 617-548-3735. By order of the City Council

**B. AMENDMENT TO CODE §78-1 REGARDING CABLE FRANCHISING – (FIRST READING)**

The City of Saco is currently in the cable television franchise renewal process. Federal and state law provides regulatory frameworks for cable licensing. This proposed cable amendment ensures the City's franchise renewal process and ascertainment of cable franchise renewal needs are consistent with the federal and state cable licensing statutes, Saco Code §78-1 on cable franchising should be amended as explained immediately below.

1. The federal Cable Act provides, "a franchising authority may not grant an exclusive franchise ..." (47 U.S.C §541(a)(1)) ; however, Saco §78-1 provides for Saco issuance of exclusive cable franchises, which is inconsistent with the federal Cable Act non-exclusivity provision and is anti-competitive. Accordingly, Saco City Code §78-1 should be amended to provide for Saco issuance of non-exclusive cable franchises, and the exclusivity language should be deleted. This can be implemented by the amendment language shown by underscore in the draft proposed amendment to §78-1 below. As the existing Saco Time Warner cable franchise is already non-exclusive, the foregoing amendment would not negatively impact any cable provider; however, the amendment is in order to prevent the risk of future prohibited issuance of an exclusive franchise.
2. ME. REV. STAT. ANN. Title 30-A, Chapter 141, §3008(4)(A) provides that municipal cable franchising ordinances, if adopted, "must include" provisions for a public process to identify local cable needs; a public comment period; filing of cable franchise applications and related documents as public records; and provision for defraying the costs of public notice, advertising and other expenses in acting upon the application. Accordingly, Saco City Code §78-1, which codifies the City Council's authority to contract for the grant of franchises, should incorporate the cable franchising requirements mandated by state law (as listed directly above). Incorporation of the state-mandated franchising provisions into Saco Code §78-1 can be implemented by the amendment language shown by underscore in the draft revised §78-1 below

Councilor Johnston moved the City Council hereby Ordains and Approves the First Reading of the document titled, "Grant of Franchise §78-1 Amendment May 18, 2015", and further move to set the Public Hearing for July 6, 2015 and to include the 2 edits as presented earlier today.

Attorney Bill August noted that Time Warner earlier today sent 2 essentially clerical edits to the Code Amendment. I would like to know procedurally if we need to do anything to have those edits before the Council as either part of this reading or a subsequent reading. One is truly minimal changing the words "community antenna television system" to "cable system" which is the common parlance. I don't have any issue with the amendments but I just wanted to check the procedure to see if we have to note them to be a part of the first reading. The other technical amendment was in clause #D of the original draft that's in the item commentary. The new language provides for

and existing Main Law that applications and related renewal documents if part of the renewal process be public records. Oh no, excuse me, the second technical amendment was that if there are fees for assessments that that be subject to federal law. Time Warner wanted to add the word “subject” to the limitations in federal law. Also, that is not a change but just a clarification because all cable licensing is subject to federal law anyhow. So I’m not commenting on the merits of the edits, I just want to make sure they are part of the process so we don’t miss out on that.

Interim Administrator Cheryl Fournier noted that you would just change the motion to include the edits that are here that Bill mentioned.

Mayor Pilon noted that we would change the motion to include the edits and Councilor Johnston agreed.

Councilor Precourt seconded the motion. The motion passed with seven (7) yeas.

### **Grant of Franchise §78-1 Grant of Franchise Amendment (May 18, 2015)**

**New language is shown by underscore and wording to be deleted with strikethrough lines.**

#### **§ 78-1 Grant of franchise.**

The City Council may contract, on such terms and conditions as are in the best interests of the city, including the grant of ~~an exclusive~~ a non-exclusive franchise(s) for a period not to exceed 10 years, for the placing and maintenance of community antenna television systems and appurtenances or parts thereof along public ways, including contracts with operators of such systems which receive the services of television signal transmission offered by any public utilities using public ways for such transmission and subject to the City cable television franchising process including, but not being limited to, procedures mandated by ME. REV. STAT. ANN. Title 30-A, Part 2, Subpart 4, Chapter 141, §3008 (4)(A), as follows:-

A. The holding of a public proceeding to ascertain special local needs or interests before issuing a cable television franchise(s), and such proceeding shall include a period for public comment on the needs to be addressed in the franchising process and in a request for proposals if any;

B. The filing of franchise applications and related documents as public records, with reasonable notice to the public that the records are open to inspection during reasonable hours;

C. A reasonable opportunity for public input before granting franchises; and

D. The assessment of reasonable fees or other lawful appropriation of funds to defray the costs of public notice, advertising and other expenses incurred by the municipality in acting upon applications.

Further to the implementation of cable television franchising, the City Council, in its capacity as cable television franchise franchising authority, shall have any and all rights and powers set forth in or available pursuant to applicable federal, state and local law, including but not limited to the federal Cable Communications Act of 1984 as codified at 47 United States Code §521 et seq.

## **VII. CONSENT AGENDA**

Councilor Precourt moved, Councilor Smith seconded to approve Consent Agenda items #A, B and C as follows:

A. Be it Ordered that the City Council approve the minutes for June 1, 2015 and further move to approve the order;

B. Be it Ordered that the City Council does hereby approve with reference to York County Superior Court Docket #CR-14-1218--Criminal Forfeiture, of the transfer of assets to the City of Saco, pursuant to 15 M.R.S. §5824(3) and/or §5826(6). Further move to approve the order;

C. Be it Ordered that the City Council grant the application for a License to operate Games of Chance as follows: Pull Tickets – 2 games and Queen of Hearts – 1 game from July 1, 2015 to Sept. 30, 2015 as submitted by the Biddeford & Saco Elks #1597. Further move to approve the Order.

The motion passed with seven (7) yeas.

The complete item commentaries are listed below.

### **B. ASSET FORFEITURE – ROBBINS**

The Office of the Attorney General requires the legislative body of the municipality involved in any asset forfeiture to publicly vote to approve the acceptance of the assets each and every time the courts make them available for disposal. This matter, State v. Denisha Robbins involves the forfeiture of \$1,111.00.

**C. BIDDEFORD & SACO ELKS #1597 – GAMES OF CHANCE LICENSE**

Biddeford & Saco Elks #1597 has applied for a License to operate Games of Chance as follows: Pull Tickets – 2 games and Queen of Hearts – 1 game from July 1, 2015 to Sept. 30, 2015.

The applicant has submitted their application in accordance with the provisions of Title 17 M.R.S.A. Chapter 13-A, and in accordance with the Rules and Regulations promulgated by the Chief of the State Police governing the operation of Beano/Bingo or Games of Chance.

**VIII. RECESS THE MEETING AND CONVENE THE WORKSHOP**

Councilor Smith moved, Councilor Tardif seconded to recess the meeting and convene the workshop. The motion passed with seven (7) yeas. TIME: 7:50 p.m.

**IX. ADJOURN THE WORKSHOP AND RECONVENE THE MEETING**

Councilor Cote moved, Councilor Roche seconded to adjourn the workshop and reconvene the meeting. The motion passed with seven (7) yeas. TIME: 8:39 p.m.

**C. MILL BROOK QUALITY CONTROLS AND OMNIBUS MUNICIPAL – CREDIT ENHANCEMENT AGREEMENT**

Following a Public Hearing on January 5, 2015 the Saco City Council approved the following motion “I move to close the Public Hearing on City of Saco Municipal Development District #14 Maine Molecular Quality Controls and Omnibus Municipal Tax Increment Financing District Development Program, and Be it Ordered that the City Council adopt the TIF Resolution, as presented in Exhibit H, and to dispense with the reading thereof.”

Since that approval in January, the City of Saco has obtained approval from the State of Maine Department of Economic and Community Development for the above referenced TIF District. Maine Molecular Quality Controls, Inc. is prepared to close on the acquisition of Lot #8 in Mill Brook Industrial Park later this week. Last week their legal counsel requested that the Credit Enhancement Agreement, that has been drafted, be assigned to a real estate holding, LLC which will own the to be acquired Lot #8 and lease the real estate to Maine Molecular Quality Controls, Inc. Per terms of the proposed Assignment and Assumption of Credit Enhancement Agreement, Maine Molecular Quality Controls, Inc. will remain obligated under the Credit Enhancement Agreement.

Councilor Roche moved, Councilor Precourt seconded to approve the requested Assignment and Assumption of Credit Enhancement between the City of Saco and Maine Molecular Quality Controls Inc., from Maine Molecular Quality Controls Inc. to Mill Brook Q, LLC, provided that Maine Molecular Quality Controls Inc remains obligated under the Credit Enhancement Agreement. The motion passed with seven (7) yeas.

**VIII. RECESS THE MEETING AND CONVENE THE WORKSHOP**

Councilor Roche moved, Councilor Cote seconded to recess the meeting and convene the workshop. The motion passed with seven (7) yeas. TIME: 8:45 p.m.

**X. ADJOURNMENT**

Councilor Smith moved, Councilor Precourt seconded to adjourn the meeting. The motion passed with unanimous consent. TIME: 9:46 p.m.

Attest: \_\_\_\_\_  
Michele L. Hughes, City Clerk