



2019-031

CITY OF AMESBURY
IN THE YEAR TWO THOUSAND NINETEEN

RECEIVED

19 MAY -6 PM 3:18

AMESBURY CITY CLERK

SPONSORED BY:

C. Kenneth Gray, Mayor

BILL No. 2019-

An Order to establish a Cable Public Access Enterprise Fund pursuant to M.G.L. c. 44, § 53F½ .

Summary: In accordance with Department of Revenue requirements and guidance, this Order will create a Cable Public Access Enterprise Fund pursuant to M.G.L. c. 44, § 53F½ .

Be it Ordered by the City Council of the City of Amesbury assembled, and by the authority of the same, as follows:

That a Cable Public Access Enterprise Fund is hereby adopted, created, and established pursuant to the provisions of Section 53F½ of Chapter 44 of the General Laws of the Commonwealth. This Order shall be effective July 1, 2019.

**CABLE TELEVISION PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS
SPECIAL REVENUE FUNDS**

(G.L. c. 44, § 53F½; G.L. c. 44, § 53F¾)

SUMMARY:

These guidelines explain two options now available to cities and towns to separately account for cable franchise fees collected from customers by cable companies and other cable-related monies negotiated in cable television agreements between the municipality and the cable television operator.

Those monies include fees collected from customers by the cable operator in connection with the franchise and in support of public, educational and government (PEG) programming. In addition to the imposition of these franchise fees, cable licensing agreements typically require that cable companies provide services, facilities and equipment for PEG channels, deliver cable television programming to municipal buildings, and maintain customer service quality. Under state law, cable operators also pay the municipality an annual license fee, which is based on the number of cable customers. All of these monies are general fund revenues, absent a special act treating them otherwise. [G.L. c. 44, § 53](#).

Cities and towns may now designate cable PEG access operations or services as an enterprise and separately account for all franchise fees and other revenues derived from enterprise activities in the same manner as other enterprise funds. [G.L. c. 44, § 53F½](#).

Alternatively, cities and towns may reserve the franchise fees and other cable related revenues for appropriation to support PEG access services, monitor compliance with the franchise agreement or prepare for license renewal by accepting [G.L. c. 44, § 53F¾](#) and establishing a PEG Access and Cable Related Fund.

This statute may be accepted to take effect for fiscal years beginning on or after July 1, 2015.

GUIDELINES:

I. TRANSITION TO SPECIAL REVENUE FUND

As part of the certification of general fund free cash, the Director of Accounts will close any reservations of cable franchise fees or other cable-related funds that appear on a city or town balance sheet on or after June 30, 2016 unless:

BUREAU OF ACCOUNTS

MARY JANE HANDY, DIRECTOR

- A. The city or town has accepted one of the special revenue funds, as explained in Sections II and III below, and
- B. The legislative body of the city or town has voted to have the accounting officer transfer any balance to the accepted fund at the beginning of the fiscal year the fund will start operation. The transfer may be voted as part of the acceptance or separately.

II. CABLE PUBLIC ACCESS ENTERPRISE FUND

Cities and towns may accept [G.L. c. 44, § 53F¹/₂](#) and establish an enterprise fund to separately account for all revenues and expenditures in connection with operating cable PEG access service for city or town residents, whether the service is operated by a city or town department or a contractor.

For detailed guidance on adoption of an enterprise fund, setting the annual enterprise budget, accounting for enterprise activities and operation of the fund, see the [Enterprise Funds Guidelines](#) issued by the Bureau of Accounts.

III. PEG ACCESS AND CABLE RELATED FUND

A. Local Acceptance

1. Acceptance Procedure

Acceptance of [G.L. c. 44, § 53F³/₄](#) for a PEG Access and Cable Related Fund (Fund), is by majority vote of the municipality's legislative body, subject to charter. [G.L. c. 4, § 4](#). (See attached sample acceptance vote.)

2. Revocation of Acceptance

Acceptance may be revoked, but the city or town must wait until at least three years after acceptance. Revocation is also by majority vote of the municipality's legislative body, subject to charter. [G.L. c. 4, § 4B](#).

3. Notification of Acceptance or Revocation

The city or town clerk must notify the Municipal Databank if it accepts or revokes [G.L. c. 44, § 53F³/₄](#). (See "[Notification of Acceptance or Revocation](#).") The notification should be made **as soon as possible** after the vote.

4. **Effective Date**

The Fund will begin operation for the fiscal year that begins the next July 1, unless a later fiscal year is designated in the acceptance. Revocation of the statute terminates the Fund at the end of the fiscal year in which the revocation is voted.

B. **Special Revenue Fund**

The Fund is a receipts reserved for appropriation special revenue fund.

1. **Receipts**

The following revenues received in connection with the municipality's franchise agreements may be credited to the Fund:

- a. Cable franchise fees collected by the cable operator for PEG access and received by the city or town.
- b. Annual license fees paid by the cable operator. [G.L. c. 166A, § 9](#).
- c. Other revenues received in connection with the franchise agreement.

2. **Investment**

The treasurer is the custodian of the Fund. The treasurer may invest the monies of the Fund in the same manner as general funds under [G.L. c. 44, §§ 55, 55A and 55B](#). The treasurer may pool the cash and does not have to establish a separate bank account for the Fund.

Interest earned on Fund monies belongs to the general fund.

C. **Expenditures**

An appropriation is required to spend any monies in the Fund. Appropriations are by majority vote of the legislative body and are limited to the actual unencumbered balance of the Fund at the time of the appropriation. Anticipated receipts cannot be appropriated.

Monies from the Fund may be appropriated consistent with the cable franchise agreement to:

1. Support cable PEG access service or programming for city or town residents, whether operated by a city or town department or a contractor.
2. Monitor the cable operator's compliance with the franchise agreement.
3. Prepare for renewal of the cable franchise license, including any associated expert and legal services.

Payment of bills charged to appropriations from the Fund must follow the same process used for payment of other municipal expenses. [G.L. c. 41, §§ 52 and 56](#). A payment voucher with appropriate supporting documentation is submitted to the accounting officer for placement of the bill on the treasury warrant.

D. Accounting

The accounting officer must establish and maintain the Fund as a separate account and record all activity in the Fund.

1. Receipts are recorded directly into the Fund.
3. Expenditures are recorded as direct expenditures in the Fund.
4. The unspent and unencumbered balance of an appropriation for a particular cable-related purpose is closed to the Fund.
5. The balance in the Fund at the end of a fiscal year carries forward to the next fiscal year.

E. Supplemental Appropriations

Appropriations may be made from other municipal funding sources, such as the tax levy, free cash or other available funds, to supplement and carry out cable-related purposes funded by the Fund. However, monies from these sources may not be appropriated directly into the Fund. Depending on the purpose, appropriations from the Fund could be operating or special purpose appropriations and the accounting officer would close them out in the same manner as other such appropriations.

F. Fund Revocation

If the city or town revokes its acceptance of [G.L. c. 44, § 53F¾](#), the accounting officer is to close the fund balance to the general fund at the end of the fiscal year.

SAMPLE

(Sample should not be used without the advice of municipal counsel.)

PEG ACCESS AND CABLE RELATED FUND ACCEPTANCE

Legislative Body Vote

ARTICLE/ORDER. To see if the city/town will accept [General Laws Chapter 44, Section 53F³/₄](#), which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year _____, which begins on July 1, _____ or take any other action relative thereto.

MOTION. Moved/ordered that the city/town accept [General Laws Chapter 44, Section 53F³/₄](#), which establishes a special revenue fund known as the PEG Access and Cable Related Fund, to reserve cable franchise fees and other cable-related revenues for appropriation to support PEG access services and oversight and renewal of the cable franchise agreement, the fund to begin operation for fiscal year _____, which begins on July 1, _____.