

VILLAGE COUNCIL
VILLAGE OF NASHVILLE
BARRY COUNTY, MICHIGAN
ORDINANCE NO. 1-8-1998-B

Council member Wolff supported by Council member Kenyon moved the adoption of the following Ordinance:

AN ORDINANCE AUTHORIZING THE ESTABLISHMENT OF RULES AND PROCEDURES FOR USE OR THE VILLAGES PUBLIC, EDUCATIONAL AND GOVERNMENTAL CABLE ACCESS CHANNELS.

THE VILLAGE OF NASHVILLE ORDAINS:

SECTION 1. Purpose.

(a) The purpose of this Ordinance is to authorize the establishment of a system of rules and procedures under which members of the general public, and educational and governmental institutions, will have opportunity to produce and present local cable programming. The Village of Nashville, acting through its Cable Access Committee (hereinafter, the "Village"), desires to provide a means for residents to develop programming and communicate on issues.

(b) This Ordinance, and the rules and procedures adopted in accordance with this Ordinance, are intended to extend to all access programming irrespective of where the programming was produced. To assure compliance, each individual or group seeking to present programming on the system must first receive authorization from the Village.

SECTION 2. Adoption of Rules and Procedures.

The "Rules and Procedures" attached as Exhibit A to this Ordinance, and incorporated by reference are hereby adopted by the Village with respect to the use of access channels on the Village's cable television system. The Rules and Procedures applicable to the access channels may be modified or amended by resolution of the Village Council from time to time.

SECTION 3. Conflicts and Severability.

(a) If any term or provision of this Ordinance is invalidated by a court of competent jurisdiction the remaining provisions, terms, paragraphs, words and sections shall not be affected thereby and shall remain in full force and effect.

(b) Any and all ordinances, inconsistent or conflicting with any part of this Ordinance are hereby repealed to the extent of such inconsistency or conflict.

SECTION 4. Effective Date.

This Ordinance shall become effective twenty (20) days after its adoption or upon its publication in a newspaper of general circulation with the Village, whichever occurs later.

YEAS: Mapes, Pash, Kenyon, Greenman, Wolff, Dunham, White.

NAYS: none.

ABSTAIN: none.

ABSENT: none.

APPROVED: January 8, 1998.

Gary White
Village President

Cathy Lentz
Village Clerk

I, Cathy Lentz, hereby certify that the foregoing is a true and accurate copy of an Ordinance adopted by the Village Council of the Village of Nashville, Barry County, Michigan, at a regular meeting held on January 8, 1998.

Cathy Lentz
Village Clerk

Adopted: 1-8-1998
Published: 1-20-1998
Effective: 1-28-1998

EXHIBIT A

RULES AND PROCEDURES FOR THE USE OF ACCESS CHANNELS ON THE VILLAGE OF NASHVILLE'S CABLE TELEVISION SYSTEM

SECTION 1. Definitions.

Unless the context specifically indicates otherwise, the following terms shall have the meaning hereinafter designated.

ACCESS CHANNELS means channels made available to members of the general public, education and governmental institutions for noncommercial local cable programming.

CABLE CASTING means the distribution of programming over a cable system.

FRANCHISE means the consent agreement between Cable Michigan, Inc., and the Village of Nashville, which has authorized Cable Michigan, Inc. to build and operate a cable system.

PUBLIC ACCESS PROGRAMMING means programming produced or supplied by individuals, community groups, educational institutions, or governmental agencies residing within the area covered by the franchise.

VILLAGE means the Village of Nashville's Cable Access Committee, or its designee.

SECTION 2. Users of System.

(a) Any individual or group may use the access channel on a first come, first serve basis for the purpose of presenting noncommercial public, educational and governmental programming. Any use of the access channel that is commercial in nature is forbidden.

(b) Any group desirous of using the equipment and facilities shall designate one or more individuals as the representative of the group.

(c) There is no minimum age restriction for use of the system; however, participants under the age of eighteen (18) years must have on file with the Village a Parental/Guardian/Adult/Supervisor Consent form.

SECTION 3. User indemnity.

(a) Any user of the access channel shall agree to indemnify and hold harmless the Village, its officials, officers, committee, boards, commissions, agents and employees against any and all liability arising out of such use or the breach of these Rules and Procedures. The user shall further acknowledge that the Village, its officials, officers, committees, boards, commissions, agents and employees undertake no liability for damages, or for errors or emissions resulting from the administration of these Rules and Procedures.

(b) Any user, as well as any group which the user represents, of the access channel, equipment or facilities shall be responsible for the cost of any repair or replacement of such equipment or facilities resulting from damage, misuse, or theft which occurs while the equipment or facilities are in the user's possession or control.

SECTION 4. Scheduling and Procedures.

(a) Channel time, production equipment and facilities will be available on a first come, first serve basis, to insure the greatest availability to all access users, as further described herein.

(b) Prerecorded (videotaped) programming may be cable cast on the access channel. For technical and promotional reasons, advance scheduling is necessary. The Village will consider a user's request for a specific time slot, but the Village reserves the right, in its sole discretion, to schedule a program at a time that is consistent with its efforts to establish a significant audience for local programming.

(c) All application for program time must be completed and returned to the Village at least two (2) weeks prior to the date requested. The application must be completed when returned and include all requested information.

(d) All prerecorded programming shall be accompanied by a written description of the subject matter and general nature of the material contained therein. The Village reserves the right to fully preview all programming to determine compliance with applicable law and these Rules.

(e) Scheduling of regular time slots in a series of up to thirteen (13) weeks' duration shall be permitted, if time is available, provided that:

(1) The user demonstrates a commitment to the series by supplying the initial three (3) programs on videotape for a prerecorded series, or supplying the initial three (3) scripts for a live series, prior to the scheduling of series time, and;

(2) The user shall relinquish the right to the scheduled time slot if the programs are not provided as scheduled.

(f) Whenever the request for time slots exceeds availability, the following principles of prioritization shall apply (with the exception of regular time slots):

(1) First time users may be granted priority over regular users;

(2) A user who has not previously been scheduled in prime time, (6:00 p.m. to 11:00 p.m.), may be granted priority with respect to prime time scheduling; and

(3) Users with the least number of production hours may be granted priority over users with greater number of hours.

(g) All programming shall be produced on VHS format.

SECTION 5. Program Content and Ownership.

(a) Access users shall be solely responsible for the content of their programming and for obtaining all rights necessary to cable cast any program material. The following program material is prohibited and shall not be cable cast:

- (1) Any advertising material designed to promote the sale of commercial products or services, including advertising by or on behalf of candidates seeking public office or other ballot proposals.
- (2) Any obscene or indecent material as defined by federal and state law.
- (3) Any advertisement of or information concerning any lottery gift enterprise, or similar scheme offering prizes dependent in whole or in part on chance.
- (4) Use of unauthorized copyrighted licensed or similar material.
- (5) Any direct solicitation of funds that would benefit the user or his/her agent.
- (6) Material that defames any racial, ethnic, sexual, age or religious group.
- (7) Any avocation of violence or fighting words which are designed to invoke violence.
- (8) Noncompliance with applicable federal, state and local laws and regulations.
- (9) Any slanderous or libelous materials.
- (10) Any fraudulent or deliberate misinformation which may result in harm to any individuals.
- (11) Any program that does not contain a disclaimer at the beginning and/or end of each program. For example: "The views and comments expressed on this program are those of the participants and not those of the Village."

(b) The Village will not exercise control over the content of access programs; however, this limitation shall not prevent the Village from taking appropriate steps to ensure compliance with these Rules, including the right to preview, review and deny cable casting of programming in violation thereof.

- (1) Videotaped programs must be submitted to the Village at least five (5) days in advance of their scheduled cable cast. This requirement may be waived at the discretion of the Village. Content outlines and/or scripts for proposed "live" programming must be provided to the Village at least fourteen (14) days in advance of scheduled cable cast. The Village reserves the right to preview or review all programs and materials before or after cable casting to determine compliance with the standard set forth section 5(a). In the

event any program or programming material is determined by the Village to be in possible violation with these Rules, the Village may elect to pursue any of the following options:

- a. Discuss with the producer the ramifications of cable casting the material.
 - b. Schedule the program at a time appropriate for its content.
 - c. Run a disclaimer warning viewers of the presence of discretionary material.
 - d. Reject the program.
 - e. Present upon written appeal by the producer, the program to the Village Cable Access Committee for review.
 - f. Present upon written appeal by the producer, the program to the Village Council for final disposition.
- (c) Access programming shall include public, educational and governmental noncommercial public interest programming. The access Channel equipment and facilities shall not be used by an access user for financial gain or other commercial purpose, including the production of programming produced for sale to commercial television stations or for which the producer or other parties purchase time for such presentation on commercial television stations or cable television systems. Access programming shall not be used in connection with any advertising material designed to promote the sales of commercial products or services, or in connection with any programming in which appeals for funds are made. Advertising material includes, but is not limited to, the following:
- (1) Messages whose primary purpose is intended to promote a service, product individual trade, or business;
 - (2) Program material made available without charge by persons, corporations, or institutions which have a commercial interest in the subject matter. This provision shall not prevent the identification by name only of persons or institutions providing grants or contributions to underwrite the cost of programs unrelated to the commercial interests of the donor;
 - (3) Material which identifies any product individual service trademark or brand name in a manner which is not reasonably related to the noncommercial use of such product, service, trademark or brand name on the program.
- (d) Any user providing access programming shall be required to advise the Village whether their programs involve the use of copyrighted or licensed material or material subject to other ownership or royalty rights. If so, the user must obtain all necessary clearances and make all necessary arrangements with the program owners, copyright owners and owners of any

performing or royalty rights and before the program may be presented over the facilities of the cable system. Any violation of section 5(a) or 5(c) will subject the user to immediate forfeiture of the privilege of using the access channel, equipment and facilities with respect to such programs.

(e) An access user shall grant the Village a license to cable cast the access programming. Such license shall be exclusive in the case of access programming produced through the equipment and facilities of the Village and a user shall not otherwise publicly exhibit or distribute such programming without the prior written permission of the Village.

(f) The Village will notify producers of the nature of all viewer complaints. The Village reserves the right to review all programming for which a complaint has been registered to determine whether the program in question is in violation of these rules. Viewers wishing to file a formal complaint shall do so in writing. All formal, written complaints will be presented to the Village's Cable Access Committee for review unless resolution of the complaint can be accomplished to the satisfaction of all parties at an earlier time.

(g) All users of access time assume complete responsibility for the content of the programming provided. Any disputes which arise concerning the programming shall be resolved between the user, the complaining party and, where applicable, the Village. The Village assumes no responsibility to the user or any other party for any liabilities which may arise as a consequence of presentation of access programming and users shall defend indemnify and hold the Village harmless for all liability of any kind whatsoever, including costs of legal defense arising from the presentation of programming provided by the user. Users are cautioned, therefore, to be aware of applicable state and federal laws. Users may be required to sign a separate acknowledgment regarding the user's assumption of responsibility, indemnification and defense of the Village before using the access programming.

(h) The Village reserves the right to preempt any program for the presentation of a "special" production. In such cases, the Village will reschedule the preempted program and notify the producer or sponsor of the scheduling change.

SECTION 6. Equipment.

(a) An access user may schedule the use of equipment for the production of access programming. No user will be permitted to operate the public access equipment without first completing an application and any required Parental/Guardian/Adult Advisor Consent form. Limits are placed on the total number of hours each facility may be reserved per month to encourage use by as many individuals and organizations as possible. These hourly restrictions are as follows:

	Hours Per Session	Hours Per Month
Portable Equipment	24	96

Equipment may not be reserved for consecutive sessions.

(b) An access user shall submit a facility request form in order to reserve equipment. All requests shall be submitted in person. Facility requests forms will be processed and users will be notified only if there is a time conflict and equipment is not available.

(c) In the event a user fails to use the equipment reserved without twenty-four-hour notice of cancellation, that user may be prohibited from use of that facility and/or equipment for a period of thirty (30) days. Users showing up thirty (30) minutes late for use of reserved equipment without notification effectively relinquish their reservation which may then be available to other users. Users may also be prohibited from use of that equipment for a period of thirty (30) days. Repeated offenses may result in indefinite suspension.

(d) Users will sign the Facility Request form agreeing to be financially responsible for damage or loss of equipment during the period it is reserved in their name. Lost or damaged equipment must be replaced with equivalent equipment, as reasonably determined by the Village, within seven (7) days. Failure to comply within this time period will result in suspension from use of all facilities until the lost item has been replaced. The user will not be responsible for normal wear and tear of equipment.

(e) Portable equipment will be checked out and in by the Village or its designated agent. Equipment will be thoroughly examined both at check out and return to determine the condition of the equipment at the time. Users should allow time in their production planning for this procedure.

SECTION 7. Enforcement.

(a) The Village shall supervise and control the implementation of these Rules. The Village may also designate additional persons as necessary or advisable to assure the efficient implementation and operation of the public, educational and governmental access channel and these Rules.

The Village Council shall:

- (1) Oversee the implementation of these Rules;
- (2) Supervise and review the actions and decisions of the Cable Committee; and
- (3) Interpret the rulings of the Cable Access Committee.

(b) The Cable Access Committee shall, either directly or through authorized representative;

- (1) Supervise the implementation of these Rules;
- (2) Exercise control and institute actions against users violating these Rules or the enabling Ordinance, and complete compliance with the same;
- (3) Review applications and determine programming;
- (4) Investigate complaints of violations of these Rules;
- (5) Issue notices of violations;

- (6) Collect and disseminate information on the public, educational and governmental access channel;
- (7) Coordinate activities under these Rules; and
- (8) Perform any other actions authorized by these Rules or as necessary or advisable for the management and operation of the public, educational and governmental access channel and the enforcement of these Rules and other applicable laws and regulations.

(d) Whenever the Cable Access Committee finds that a user has violated or is violating these Rules, the Cable Access Committee may summarily suspend the user's broadcast privilege. Within a reasonable time, the Cable Access Committee shall serve upon such user a written notice stating the nature of the violation and providing a reasonable time limit for a satisfactory correction of the violation. The user shall, within the period of time stated in the notice, cease all violations and notice shall be served on the user specifying the time and place of a hearing to be held by the Cable Access Committee regarding the violation, the reasons why the action is being taken, the proposed enforcement action. The notice shall also advise the user, if it so desires, that it may show cause before the Cable Access Committee why the proposed enforcement action should not be taken. Any such hearing held by the Cable Access Committee need not follow formal evidentiary or procedural rules.

(e) A decision of the Cable Access Committee may be appealed to the Village Council, in writing, within fifteen (15) days from the date of the Cable Access Committee action. A notice of appeal shall be filed with the Village Clerk at Village Hall and the Cable Access Committee. The notice of appeal shall specify the grounds for the appeal. Failure to file a timely notice of appeal shall be deemed a waiver of the appeal.

- (1) Prior to any such hearing before the Village Council, the Cable Access Committee shall transmit to the Village Council a written summary of all substantive action taken in connection with the matter.

- (2) The Village Clerk shall fix a reasonable time for the hearing of the appeal and shall give notice of the appeal to interested parties.

- (3) The Village Council shall decide the appeal within a reasonable time. The Village Council may reverse or affirm, in whole or in part, the action appealed from, or make any order, requirement, or determination as, in its opinion, ought to be made in the case under consideration. Formal evidentiary and procedural rules need not be followed by the Village Council with respect to any such appeal.

(f) The Village reserves the right to suspend or revoke the privilege or use of the access channel, equipment and facilities for violations of these Rules or to refuse the use of its equipment or facilities to any individual who interferes with the orderly conduct of its business; who appears to be under the influence of alcohol or drugs; who refuses to cooperate with or in any way abuses Village agents and/or employees; or who misused equipment, failed to return it on time, or who has in any way abused the privilege of the access channel, equipment or facilities.

SECTION 8. General.

(a) The Village will not be responsible in any way for the content or quality of access programs produced by others. The Village does, however, reserve the right to reject any program not technically compatible with standard cable casting equipment or otherwise technically unsuitable for viewing on a subscriber's set.

(b) Users shall acknowledge and agree that the access service provided is subject to many uncertainties of application under federal, state and local law and that in light of these uncertainties, and the experience gained by the Village in providing these services, these rules may be changed unilaterally by the Village at any time.

(c) Users shall further acknowledge and agree that the Village, its council, officials, officers, Cable Access Committee, agents and employees, whether jointly or severally, in their corporate or personal capacity, shall not be held liable for damages, direct, consequential, or of any kind or nature for any good faith acts or omissions taken in connection with the administration of these rules or the public, educational and governmental channels. Such acts or omissions include, but are not limited to, the following:

(1) Scheduling decisions made by the Village, and the failure to present programs at the dates and times applied for;

(2) A decision by the Village that any program provided by the user would violate these Rules, the enabling ordinance or other applicable local, state, or federal law, or;

(3) Technical causes or problems of any nature beyond the control of the Village.

(d) All applicants must make their own arrangements to deliver their proposed program materials to the Village offices and to pick up that material if and after it has been presented over the cable system. Any program material not picked up within sixty (60) days after its presentation on the cable system will be considered to have been abandoned by the owner. The Village will not be responsible for the delivery or return of any tapes, films or program materials proposed for cable presentation. The Village will not be responsible for the loss, destruction, theft or damage of such tapes, films or other materials where such loss, destruction, theft or damage is due to acts of nature or to causes beyond the Village's control.

(e) An access user acts on his or her own behalf and not as an agent of the Village and shall not make any representation to the contrary to any third party.

(f) Certain regulations contained within these Rules may not apply due to the availability of equipment, personnel and/or the restrictions in the Village's franchise agreement.