

ORDINANCE NO. 174

ON ORDINANCE AMENDING CHAPTER 22, OF THE TOWN CODE OF THE TOWN OF MEAD, BY ADDING A NEW SECTION 3 ESTABLISHING A BUSINESS AND OCCUPATION TAX ON TELEPHONE UTILITIES OPERATING WITHIN THE TOWN OF MEAD AND PROVIDING A PENALTY.

WHEREAS, the Town of Mead granted a telephone franchise to Mountain States Telephone and Telegraph Company on November 9, 1939, and

WHEREAS, the Colorado Supreme Court in Mountain States Telephone v. Colorado Springs, 572 P.2nd 834 (CO 1977) declare such gross receipt taxes to be in essence income taxes which are not permitted local governments, and

WHEREAS, the imposition of a business and occupation tax is a form of taxation permitted to be imposed by local government,

NOW, THEREFORE BE IT ORDAINED, by the Board of Trustees of the Town of Mead, Colorado:

Section 1. Chapter 12, Section 1, of the Town Code of the Town of Mead is hereby repealed in its entirety.

Section 2. Chapter 22, of the Town Code of the Town of Mead is hereby amended by the addition of a new Section 3, to read as follows:

"22-3-1. Levy of Tax. There is hereby levied on and against each telephone utility company operating within the Town of Mead, hereinafter called the "Town", a tax on the occupation and business of maintaining a telephone exchange service to the inhabitants of the Town. The amount of the tax levied hereby shall be as set forth in Section 22-3-2 herein. For each year subsequent to 1989, the Town Board of Trustees shall vote on whether the tax shall be increased. Should the Board of Trustees fail to vote on the question of whether or not the tax shall be increased, the tax shall remain at the level stated herein until subsequently amended by the Board of Trustees.

22-3-2. Amount of Business and Occupation Tax. The occupation and business tax for maintaining a telephone exchange service to the inhabitants of the Town shall be \$150 per month. Said business and occupation tax shall be in addition to any and all other fees or taxes provided for under this Code.

22-3-3. Time of Payment of Tax. The tax levied by this Chapter shall begin to accrue on the first day of June, 1989, and shall be paid in equal monthly installments on the last business day of each calendar month thereafter.

22-3-4. Filing Statement. On or before July 10 of each year, each telephone utility company subject to this Chapter shall file with the Town Clerk, in such form as the Town Clerk may require, a statement showing the total telephone accounts for which local exchange service was provided within the corporate limits of the Town on July 1. In addition to the information

contained in the annual statements, the Town may request any other relevant information necessary to a determination of the appropriateness of the amount of the levy.

22-3-5. Failure to Pay. If any telephone utility company shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten (10) percent of the amount of taxes due as a nonpayment penalty shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town attorney upon the direction of the Board of Trustees shall commence any legal action necessary to recover any amount so due and owing.

22-3-6. Penalty Clause. If any officer, agent, manager or director of a telephone utility company which is subject to the provisions of this Chapter shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 22-3-4 of this Chapter, said officer, agent, manager or director, shall, upon conviction thereof be subject to a fine of not more than three hundred dollars (\$300.00) and/or be subject to a term of imprisonment in the County jail of not to exceed ninety (90) days, provided that each day after said statement shall be delinquent during which the said officer, agent, manager or director shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense.

22-3-7. Inspection of Records. The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility companies which are subject to the provisions of this Chapter and to make copies of the entries or contents thereof.

22-3-8. Local Purpose. The tax herein provided is upon occupations and business in the performance of local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this Chapter be construed to mean that any telephone utility company is issued a franchise by the Town.

22-3-9. Indemnification. It is the expressed intent of this Chapter that all telephone utility companies subject to this business and occupation tax shall hold harmless and indemnify the Town from any and all actions at law arising from their operations within the Town."

Section 3. Validity. The provisions of this ordinance are hereby declared to be severable and if any section, provision or part thereof shall be held unconstitutional or invalid, the remainder of this ordinance shall continue in full force and effect, it being the intent of the Board of Trustees that this ordinance would have been adopted even if such unconstitutional or invalid matter had not been included herein. It is further declared that if any section, provision or part of this ordinance or the application thereof to any person or circumstances, if held invalid, the remainder of this ordinance and the application thereof to other persons or circumstances shall not be affected thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than three copies of the adopted Code available for inspection by the public during regular business hours.

PASSED AND ADOPTED BY THE BOARD OF TRUSTEES OF THE TOWN OF MEAD AND ORDERED PUBLISHED THIS 10th DAY OF APRIL, 1989; AND ORDERED TO BECOME EFFECTIVE 30 DAYS FROM THE DATE OF ADOPTION.

PUBLISHED IN FULL IN "THE LONGMONT TIMES-CALL" ON THE 17th DAY OF April, 1989.

Harvey A. Potts
MAYOR
TOWN OF MEAD

ATTEST:

Bertina Willden
Town Clerk