

**TOWN OF MEAD, COLORADO
ORDINANCE NO. 1003**

**AN ORDINANCE OF THE TOWN OF MEAD, COLORADO, AMENDING
SECTIONS 11-2-30, 11-2-70, AND 11-2-120 OF THE *MEAD MUNICIPAL CODE*
REGARDING PERMITTING FOR DEPLOYMENT OF FIBER TO THE
PREMISES (FTTP) OR COMPARABLE NETWORKS WITHIN THE TOWN**

WHEREAS, the Board of Trustees of the Town of Mead (“Board of Trustees”) has the authority pursuant to C.R.S. § 31-15-401 and its general police powers to pass and enforce regulations which may be necessary or expedient for the promotion of the health, safety, and welfare of the citizens of the Town of Mead (“Town”); and

WHEREAS, fiber to the premises networks and gigabit broadband networks and their related infrastructure and facilities (together, “FTTP Networks”), are vital for education, economic development, health, the pursuit of science and technology, the conduct of government, communications for first-responders, and are essential to obtaining economic and educational equality; and

WHEREAS, the Town of Mead (“Town”) desires to encourage and facilitate the development and deployment of FTTP Networks within the boundaries of the Town to better serve the public and further the important public policy objectives set forth above; and

WHEREAS, the Town also desires to encourage competition between FTTP Network providers and ensure that companies provide FTTP Networks to the Town without excluding any resident or business; and

WHEREAS, the Town recognizes that it cannot compel companies to provide FTTP Networks without excluding any resident or business and finds that creating incentives for the installation and deployment of FTTP Networks is a Town policy that will benefit the public; and

WHEREAS, the Telecommunications Act, at Section 253 of Title 47 of the United States Code, permits local governments to require fair and reasonable compensation for use of the right of way and to manage access to the right of way on a competitively neutral and non-discriminatory basis; and

WHEREAS, the permit process established by this ordinance may be utilized by any FTTP Network provider that wishes to use the public right-of-way to construct and deploy a FTTP Network in the Town that provides service to all Town residents and businesses; and

WHEREAS, the Board of Trustees finds that the amendments to Article II of Chapter 11 of the Town’s Municipal Code set forth in this ordinance are in the best interests of the health, safety and welfare of the public.

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

Section 1. Section 11-2-30 of the MMC, titled “Restoration of excavations and obstructions,” is hereby amended as follows, with ~~strickethrough~~ text showing deletions and **bold**,

underlined text showing additions:

Sec. 11-2-30. Restoration of excavations and obstructions.

The permit holder shall restore the street, alley, sidewalk or other public place to its original condition to the extent practicable. Excavations shall be mechanically tamped or recompact to the full depth of the excavation at no less than ninety-five percent (95%) of Standard Proctor Maximum Density. Any removal, damage or disruption of asphalt or concrete pavement, curb and gutter, drainage structures or sidewalks shall be repaired in the manner prescribed by the Town Engineer. The permitholder shall warrant **and guarantee** the repair for a period of two (2) years from the date of completion.

Section 2. Section 11-2-70 of the MMC, titled "Permit fees," is hereby amended as follows, with ~~strike through~~ text showing deletions and **bold, underlined** text showing additions:

Sec. 11-2-70. Permit fees.

Before a permit shall be issued under this Code, **any applicable fees** shall be paid to the Town Clerk in ~~an amount established administratively by the Town Manager~~ **the amounts set forth in the Town's comprehensive fee schedule adopted pursuant to Section 1-8-10 of this Code and available on the Town's website and at the Town Clerk's office** and posted in the office of the Town Clerk. Such fees may be adjusted from time to time as deemed necessary **in accordance with Section 1-8-20 of this Code.**

Section 3. Section 11-2-120 of the MMC is hereby amended to add a new section titled "Permit process and fees for deployment of fiber to the premises (FTTP) and comparable networks within Town boundaries" as follows:

Sec. 11-2-120. Permit process and fees for deployment of fiber to the premises (FTTP) and comparable networks within Town boundaries.

(a) Definitions.

1. *Applicant* means a person who submits an Application under this section.
2. *Application* means a written request on forms approved by the Town for a Permit.
3. *Comparable Network*, for purposes of this Section, means broadband network infrastructure and technical capacity that facilitates the provision of broadband services comparable to the broadband services that are capable of being provided through an FTTP Network, which includes, at a minimum, symmetrical gigabit speeds.
4. *FTTP Network* means a fiber to the premises network or a gigabit broadband network and associated infrastructure and facilities.
5. *Ordinary Maintenance and Repair* means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a FTTP or

Comparable Network that does not require blocking, damaging or disturbing any portion of the Public ROW.

6. *Permit* means a written authorization issued by the Town in electronic or hard copy format to install an FTTP or Comparable Network at specified locations in the Public ROW.
7. *Provider* means an FTTP or Comparable Network provider and includes any person that owns or operates any FTTP or Comparable Network within the Public ROW.
8. *Public ROW* means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose. For the purposes of this section, Public ROW shall include public utility easements but shall not include federal highways or other areas that are not within the Town's jurisdiction, ownership, or control.

(b) Permit Required. Unless expressly authorized in this section, no person may construct, maintain, or perform any other work in the Public ROW related to a FTTP or Comparable Network without first obtaining a Permit. The Town shall not issue any Permit except in accordance with this section and unless all applicable fees have been paid.

(c) Permit Fees.

1. The fee for a Permit within the Town shall be as set forth in the Town's comprehensive fee schedule. The Permit fee is intended to compensate the Town for actual costs incurred in the Permit and review process and for costs incurred in Permit oversight and close-out requirements related to the work performed pursuant to the Permit.
2. The Applicant or Provider shall be subject to and pay any other applicable fees of the Town or other governing body related to the construction and installation of an FTTP or Comparable Network within Public ROW. Notwithstanding the foregoing, if the FTTP or Comparable Network deployment does not require more than one central office or related structure within the Town, the total amount of the Town's Permit fee and for any additional Town permits required related to the initial construction and deployment of the FTTP or Comparable Network shall not exceed the cost set forth in the Town's comprehensive fee schedule multiplied by the total Town population, as the population is estimated on the date of the Permit application. The limitation on the cost of Town permits to the Applicant or Provider in this paragraph does not apply to any other permits that may be required by other entities, such as ditch or railroad companies.

(d) Application. An Applicant may apply for a Permit to cover an area within the Town (a "grid") comprised of up to one thousand (1,000) structures. The Permit will authorize the FTTP or Comparable Network deployment in a site-specific grid area within the Town and will cover planned construction of the FTTP or Comparable Network as well as traffic control, restoration and clean up requirements in accordance with this section and any other applicable provisions of this Code or other laws or regulations. Applications must be submitted on forms

approved by the Town. The Town may require information in addition to that requested on the application forms if and as the Town deems necessary to process the application.

- (e) Location of Facilities. No FTTP or Comparable Network shall be located or maintained so as to unreasonably interfere with the use of the Public ROW by the Town, by the general public, or by other persons authorized to use or be present in or upon the Public ROW.
- (f) Construction Standards. All Permits shall be issued on the condition that the Provider and/or Applicant comply with all requirements set forth in the Town of Mead Design Standards and Construction Specifications, adopted by reference in Article XIV of Chapter 16 of this Code.
- (g) As-Builts and Maps. Within thirty (30) days following the Provider's completion of the construction and installation of any FTTP or Comparable Network, the Provider shall submit to the Town as-built drawings and maps in a form approved by the Town showing the location of the FTTP or Comparable Network within the Public ROW.
- (h) Compliance with Excavation Regulations. Except as otherwise provided in this section, Applicants and Permittees shall comply with the provisions of Article II of Chapter 11 of this Code concerning excavations and obstructions.
- (i) Removal, Relocation, and Abandonment.
 1. Within fifteen (15) days following written notice from the Town, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its FTTP or Comparable Network within the Public ROW whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate the FTTP or Comparable Network.
 2. The Town retains the right and privilege to cut or move any FTTP or Comparable Network located within the Public ROW of the Town, as the Town may determine in its sole discretion to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and provide the Provider with an opportunity to move the FTTP or Comparable Network prior to cutting or moving the FTTP or Comparable Network. In all cases the Town shall notify the Provider after cutting or moving the FTTP or Comparable Network facilities as promptly as reasonably possible.
 3. A Provider shall notify the Town of abandonment of any FTTP or Comparable Network at the time the decision to abandon is made; however, in no case shall such notification be made later than thirty (30) days prior to abandonment. Following receipt of such notice, the Town may require Provider to remove its FTTP or Comparable Network at the Provider's own expense, unless the Town determines, in its sole discretion, that the FTTP or Comparable Network may be abandoned in place. The Provider shall remain solely responsible and liable for all of its FTTP or

Comparable Network until they are removed from the Public ROW unless the Town agrees in writing to take ownership of the abandoned FTTP or Comparable Network.

4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its FTTP or Comparable Network or remove any of its abandoned FTTP or Comparable Network as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.
- (j) Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable laws or regulations and shall notify the Town in writing at least forty-eight (48) hours prior to the Ordinary Maintenance and Repair.
 - (k) Drops to Subscriber Premises. The majority of drops to subscriber premises will not require a Permit. Permit requirements for drops to subscriber premises, when and if applicable, shall be addressed in an Applicant's or Provider's Master License Agreement, Cable Franchise Agreement, or equivalent agreement(s) with the Town.
 - (l) Network Extensions. After initial construction of an Applicant's or Providers' FTTP or Comparable Network within the Town, any extensions into newly developed areas to provide connectivity to all new homes or other structures within the Town shall be governed by the regulations and requirements of this section.
 - (m) Insurance. Unless different amounts or types of insurance are required by a master license agreement or franchise agreement between a Provider and the Town, the Provider shall carry during the term of the Permit and when Provider is performing Ordinary Maintenance and Repair, at its own cost and expense, commercial general liability insurance with a minimum limit of liability of \$500,000 per occurrence and \$1,000,000 general aggregate and which provides coverage for bodily injury, death, damage to or destruction of property of others, including loss of use thereof, and including products and completed operations. The insurance coverage identified in this paragraph shall apply to and name the Town as an additional insured, and shall provide a defense and indemnification to the Town. The insurance shall indemnify and defend the Town against all loss, damage, expense and liability arising out of or in any way connected with the work performed pursuant to the Permit. Each of such insurance coverages shall contain a waiver of subrogation for the Town's benefit. The Provider shall provide ten (10) days' advance notice to the Town in the event of cancellation of any coverage or modification of any coverage such that it is no longer compliant with this paragraph.
 - (n) Administrative Policies and Forms. The Town Manager, or his or her designee, is authorized to promulgate and amend from time to time policies and forms deemed desirable to assist in the administration of the provisions of this section. No administrative policy or form shall conflict with a specific requirement of this section or the Code; however, except when insurance types and amounts are governed by a master license agreement or franchise agreement, the Town Manager may adjust the limits of liability for the insurance required by this section for Permits on a case-by-case basis, in the Town Manager's discretion, through

the administrative policies and forms authorized by this paragraph. Failure to employ or follow administrative policies or use forms promulgated by the Town Manager shall not constitute a procedural breach or defect in the administration of this section and shall not preclude or limit the Town's authority enforce its ordinances.

Section 4. Effective Date. This ordinance shall be published and become effective as provided by law.

Section 5. Remaining provisions. Except as specifically amended hereby, all other provisions of the Mead Municipal Code shall continue in full force and effect.

Section 6. Codification Amendments. The codifier of the MMC is hereby authorized to make such numerical, technical and formatting changes as may be necessary to incorporate the provisions of this ordinance within the MMC.

Section 7. Severability. If any part, section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the ordinance. The Board of Trustees hereby declares that it would have passed the ordinance including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more part, section, subsection, sentence, clause or phrase is declared invalid.

Section 8. Repealer. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such ordinance nor revive any ordinance thereby.

Section 9. Certification. The Town Clerk shall certify to the passage of this ordinance and make not less than one copy of the adopted Code available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS 25TH DAY OF JULY, 2022.

ATTEST:

TOWN OF MEAD:

By: 

Mary E. Strutt, MMC, Town Clerk



By: 

Colleen G. Whitlow, Mayor