

**TOWN OF MEAD, COLORADO
ORDINANCE NO. 1027**

**AN ORDINANCE OF THE TOWN OF MEAD, COLORADO, REPEALING AND REPLACING
CHAPTER 5 OF THE *MEAD MUNICIPAL CODE* CONCERNING THE APPLICATION
PROCESS FOR FRANCHISES AND RELOCATING ARTICLE V OF CHAPTER 5
CONCERNING THE TOWN'S TELEPHONE UTILITY TAX TO A NEW ARTICLE VIII IN
CHAPTER 4 OF THE MUNICIPAL CODE**

WHEREAS, the Town of Mead ("Town") previously codified regulations and requirements for franchises in Chapter 5 of the Mead Municipal Code ("MMC"); and

WHEREAS, under federal statute, cable franchises are contracts intended to meet the cable-related needs of the community given existing conditions and cable operator capabilities; and

WHEREAS, to that end, the Town desires to revise the MMC such that the application information and evaluation criteria for cable franchise applications are codified without compromising the Town's ability to negotiate franchise agreement terms based on the circumstances existing at the time of application; and

WHEREAS, moreover, ensuring that the Town has uniform application submittal and evaluation processes for all types of franchise applications in the MMC is necessary for the Town to comprehensively evaluate whether to grant a franchise application; and

WHEREAS, the application requirements and processes for cable franchise application review in this Ordinance are intended to comply with federal rules and regulations concerning cable franchises; and

WHEREAS, in addition, the Town has complied with Article 32 of Title 31 concerning the adoption of certain franchises for public utility services and desires to amend Chapter 5 of the MMC to remove the specific franchise agreement terms from the MMC and instead have such records made available for public inspection and maintained by the Town Clerk; and

WHEREAS, the Town further desires to relocate the provisions concerning its telephone utility tax from Chapter 5 into Chapter 4 of the MMC, which is where the Town's other taxes are codified; and

WHEREAS, the Board of Trustees finds it is in the best interest of the public health, safety, and welfare to adopt the cable franchise regulations and other amendments to the MMC set forth in this Ordinance.

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

Section 1. Recitals Incorporated. The recitals contained above are incorporated herein by reference and are adopted as findings and determinations of the Board of Trustees.

Section 2. Repeal and Replace Chapter 5 of the Municipal Code. Chapter 5 of the Mead Municipal Code is hereby repealed in its entirety and replaced to read in full as follows:

CHAPTER 5 – Franchises and Communication Systems

ARTICLE I - Franchise Applications Generally.

Sec. 5-1-10. Franchise Required.

Any person or entity desiring to erect, construct, install, operate, or maintain utility infrastructure within the Town, where the granting of a franchise from the Town is authorized under state or federal law shall first obtain a franchise from the Town in accordance with this Chapter.

Sec. 5-1-20. Definitions.

The terms below shall have the following meanings for purposes of this Chapter:

- (a) *Applicant* means an Applicant for a franchise of any kind within the Town.
- (b) *Regulatory Authority* means any governmental or quasi-governmental organization or entity with jurisdiction over all or any portion of the Applicant or its operations.

Sec. 5-1-30. Application requirements.

- (a) The Town shall accept and review only those applications that include complete responses to every applicable requirement of this Chapter. Submission of an application that does not include the requisite information, as well as the application fee and deposit, shall not commence the time period, if any, for granting or denying the application. The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the Town's review of the application.
- (b) Applications shall be made to the Town Clerk's office and shall be on forms approved by the Town.
- (c) Upon request, the Town will promptly provide access to documents or information in its possession or control that are necessary for the completion of an application, provided that the Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.
- (d) All applications shall be accompanied by an affidavit signed and notarized by the Applicant in a form approved by the Town Attorney. The affidavit shall, at a minimum, include Applicant's affirmation that the statements made in the application are true and correct to the best of Applicant's knowledge and that Applicant consents to the Town confirming its qualifications as stated in the application.

Sec. 5-1-40. Confidentiality of application information.

Unless otherwise provided by law, information submitted by an Applicant as part of an application is open to public inspection and subject to the Colorado Open Records Act. It is the Applicant's responsibility to be familiar with the Colorado Open Records Act. An Applicant may specifically identify any information it considers proprietary. In the event that the Town receives a request from another party to disclose any information which the Applicant has deemed proprietary, the Town will tender to the Applicant the defense of any request to compel disclosure. By submitting information which the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the Town from any claim for disclosure, including but not limited to any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the Town for the attorney fees of the party requesting disclosure.

Sec. 5-1-50. Application and review fees.

- (a) **Application Fee.** The Town shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this Chapter.
- (b) **Review Fee.** In addition to the application fee, Applicant shall be responsible for the payment of all costs and expenses incurred by the Town in reviewing the application and negotiating a franchise agreement. Unless otherwise preempted by state or federal law, such expenses shall include without

limitation consultants' expenses, reasonable value of services performed by the Town's employees, agents or contractors, and legal fees. The Town shall establish by resolution a deposit amount that Applicant shall pay to the Town upon submission of its application. Any deposit funds remaining after all expenses have been paid will be refunded to the Applicant. All application review and franchise negotiation expenses incurred by the Town over and above the deposit amount shall be billed to the applicant and become due immediately upon billing.

Sec. 5-1-60. Application review process.

(a) Acceptance of Application.

- (1) Within ten (10) business days of receipt of an application, the Town shall review the application to ensure all requisite information is included in the application.
- (2) If the application is not complete, the Town will notify the Applicant in writing, listing the requisite information that is required to complete the application.
- (3) If the application is complete, the Town will notify the Applicant in writing that all requisite information has been received.

(b) Staff Review. Town staff shall review all completed applications based on the applicable review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant. After completing the review, staff shall provide an analysis of the application to the Board of Trustees during the approval process.

(c) Approval of Application. Following staff review and any franchise negotiations, franchises shall be approved by ordinance in accordance with state law or following a public hearing as set forth in Article II of this Chapter.

Sec. 5-1-70. Police powers.

Nothing in this Chapter or in any agreement awarding a franchise in accordance with this Chapter shall be construed as an abrogation by the Town of any of its police powers.

Sec. 5-1-80. Franchise records.

The Town Clerk shall keep on file a copy of all franchise agreements approved by the Town and a record of all franchises granted by the Town. The record shall include the name of the franchisee and any assignees. The record shall be a complete history of all such franchises and shall include a reference to all actions at law affecting the same. The franchise record shall be available for public inspection during the Town's business hours, and all franchise agreements that are approved and in effect shall be available on the Town website.

Sec. 5-1-90. Compliance with laws.

All franchise systems constructed or installed within the Town shall be of good quality and workmanship, shall be maintained in good repair and efficiency, and shall meet or exceed all Town standards. Franchisees are responsible for ensuring that all construction, installation, repair, removal, and maintenance of their systems comply with all applicable state, federal and local laws, statutes, rules, and regulations.

ARTICLE II - Cable Franchises

Sec. 5-2-10. Applicability.

In addition to the requirements of Article I of this Chapter, applicants for new cable franchises are subject to the requirements of this Article.

Sec. 5-2-20. Application information.

(a) Basic Application Information.

- (1) The Applicant's name;
- (2) The names of the Applicant's officers and directors;
- (3) The business address of the Applicant;
- (4) The name and contact information of all individuals authorized to represent the Applicant before the Town during its consideration of the franchise requested, including the Applicant's primary contact and any additional authorized contacts;
- (5) A description of the geographic area that the Applicant proposes to serve;
- (6) The public, educational, and government access channel capacity and capital support proposed by the Applicant;
- (7) The term of the agreement proposed by the Applicant;
- (8) Whether the Applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area; and
- (9) The amount of the franchise fee the Applicant offers to pay.

(b) Business Structure.

- (1) If a corporation, partnership, or limited liability company, the Applicant shall provide:
 - (A) The name and contact information for anyone who owns ten percent (10%) or more of the entity, directly or through another entity;
 - (B) A certificate of good standing indicating that the Applicant is licensed to do business in the State;
 - (C) A list of any trade names under which the entity operates;
 - (D) A copy of the entity's articles of incorporation/organization, bylaws, certificate of good standing, operating agreement, partnership agreement or other applicable organizational documents; and
 - (E) A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, the Applicant shall attach an explanatory statement and respond to subparagraphs (A) through (D) above concerning the controlling entity.
- (2) If a sole proprietorship, the Applicant shall:
 - (A) Submit details about the owner, including their name and contact information;
 - (B) Provide a copy of a valid state or federally issued ID for the owner; and

(C) State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, the Applicant shall attach an explanatory statement and respond to subparagraphs (1)(A) through (1)(D), or (2)(A) and (2)(B), above as applicable concerning the controlling entity.

(3) If any other corporate or other business structure, the Applicant shall provide:

(A) The name and contact information of all owners, officers, and directors of the Applicant, as applicable;

(B) A certificate of good standing that the Applicant is licensed to do business in the State or a valid state or federally issued identification for the owner(s); and

(C) A statement indicating whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, the Applicant shall attach an explanatory statement and respond to (1)(A) through (1)(D), or (2)(A) and (2)(B), above as applicable concerning the controlling entity.

(c) Experience.

(1) Current franchises. An Applicant shall list all cable systems within fifty (50) miles of the Town in which it or any affiliate owns more than fifty percent (50%) of the system or has a management role in a cable system. For each system, the Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, start and end date of franchise and percent of penetration of homes passed as of most recently available date (indicate date).

(2) Potential franchises. An Applicant shall list communities within fifty (50) miles of the Town where it or any affiliate currently has a formal or informal request pending for an initial franchise or the approval of a transfer of ownership. The Applicant shall include the name of communities, date of application and date of expected action.

(d) Management Structure. Every application for a cable franchise shall include a management or organizational chart, showing the management structure of the Applicant. A similar chart shall also be provided showing the relationship of the Applicant to all general partners, parent corporations, subsidiaries, affiliates and all other subsidiaries of parent corporations, including a brief description of each entity's relationship to the Applicant.

Sec. 5-2-30. Application fee waiver.

Upon request of the Applicant, the Town Manager is authorized to reduce or waive an application fee upon the Town Manager's finding of a public benefit. In evaluating such a request and determining whether a public benefit exists, the Town Manager will consider the following factors:

(a) The size of the proposed franchise area;

(b) The number of potential subscribers in the proposed franchise area;

(c) The financial hardship to the Applicant; and

(d) Other information relevant to the cost of processing the application, the Applicant's ability to pay the fee and/or the degree to which a reduction or waiver of the application fee will result in a benefit to the public.

Sec. 5-2-40. Previous violations.

(a) Franchise violations. An Applicant shall state whether it or any affiliate has been found in violation by a Regulatory Authority or franchising authority of any franchise ordinance or agreement,

contract, or regulation governing a cable system within the last ten (10) years. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

- (b) Other violations. An Applicant shall state whether it has been found in violation by a Regulatory Authority of any type (e.g., utility) of franchise, ordinance, agreement, permit, contract or regulation related to the provision of communications or utility services or the construction, maintenance or operation of any facilities used to provide such services within the last ten (10) years. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

Sec. 5-2-50. Financial information.

- (a) Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements, for the last three (3) fiscal years for the Applicant.
- (b) Applicants that are new (start-up) entities shall provide pro forma projections for the next five (5) fiscal years, if available, but at a minimum the next three (3) fiscal years from the date of the application.

Sec. 5-2-60. Planned services and operations.

- (a) The application shall describe the Applicant's planned initial and proposed cable services geographic area, including a map of all areas proposed to be served and proposed dates for offering service to each area. The application shall additionally state whether the Applicant proposes to provide cable services to the entire franchise area and, if so, a proposed timetable for meeting that goal.
- (b) If the Applicant has or asserts existing authority to access the public right-of-way in any of the initial or proposed service areas listed in subsection (a) above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority.
- (c) The Applicant shall describe with particularity its planned residential and nonresidential cable services.
- (d) The Applicant shall describe with particularity its planned system technical design and any other information necessary to demonstrate that the Applicant's technology will be displayed so as to be able to successfully offer state of the art cable services in the proposed locations, such as upstream and downstream capacity and speed, provision for analog or digital services or packages, distribution of fiber, and planned count of households per residential node.
- (e) The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy. Applicant shall also describe the current status of the Applicant's existing or proposed arrangements with area utilities, including pole attachments, vault or conduit sharing agreements, as applicable.
- (f) The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property, and convenience and safety of other persons is not adversely affected by installation or construction of the Applicant's facilities and that property owners are justly compensated for any damages caused by the installation, construction, operation, or removal of the facilities.
- (g) The Applicant shall describe its plan to comply with federal subscriber privacy protections and any applicable local cable customer service standards in effect at the time of application.

Sec. 5-2-70. Application review.

- (a) Additional Information. Should additional information be required, any time period for granting or denying the application set forth in federal law will be tolled until such information is received by the Town.
- (b) Franchise Negotiations. The Town shall attempt to negotiate a cable franchise agreement with the Applicant and schedule the application and any proposed franchise for public hearing in accordance with this Article and within the time periods set forth in federal law referenced in paragraph (a) of this section.

Sec. 5-2-80. Public hearing.

The Town Board of Trustees shall hold a public hearing before approving cable franchise agreements and during the franchise renewal process when required by 47 U.S.C. § 546(c)(2).

Sec. 5-2-80. Review criteria.

- (a) With respect to new cable franchise applications, the Town may grant one or more franchises within its jurisdiction; except that it shall not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise, consistent with 47 U.S.C. § 541(a)(1). Any Applicant whose application for a second franchise has been denied by a final decision of the Town may appeal such final decision pursuant to the provisions of 47 U.S.C. § 555.
- (b) With respect to applications for cable franchise renewals under 47 U.S.C. § 542(a) through (g), the Town may deny an application for renewal, if, after following all of the procedural requirements of federal law, it finds any of the following:
 - (i) That the Applicant has not substantially complied with the material terms of the existing franchise and with applicable law;
 - (ii) That the quality of the Applicant's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has not been reasonable in light of community needs;
 - (iii) That the Applicant does not have the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the Applicant's proposal;
 - (iv) That the Applicant's proposal is not reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.
- (c) With respect to applications for cable franchise renewals under any alternate renewal process as authorized by 47 U.S.C. § 542(h), the Town may grant or deny such proposal at any time. The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with 47 U.S.C. § 542(a) through (g).

Section 3. New Article VIII of Chapter 4 of the Municipal Code. The Board hereby relocates Article V of Chapter 5 to a new Article VIII in Chapter 4 of the MMC to read in full as follows:

ARTICLE VIII - Telephone Utility Tax

Sec. 4-8-10. Levy of tax.

There is hereby levied on and against each telephone utility company operating within 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 4-8-20 herein. The Board of Trustees shall vote annually 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.

Sec. 4-8-20. 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 one hundred fifty dollars (\$150.00) per month. Said business and occupation tax shall be in addition to any and all other fees or taxes provided for under this Code.

Sec. 4-8-30. Time of payment of tax.

The tax levied by this Article 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.

Sec. 4-8-40. Filing statement.

On or before July 10 of each year, each telephone utility company subject to this Article 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.

Sec. 4-8-50. 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 percent (10%) 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.

Sec. 4-8-60. Penalty clause.

If any officer, agent, manager or director of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 4-8-40 above, said officer, agent, manager or director, shall, upon conviction thereof, be punished in accordance with Section 1-4-20 of this Code.

Sec. 4-8-70. 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 Article and to make copies of the entries or contents thereof.

Sec. 4-8-80. Local purpose.

The tax herein provided is upon occupations and businesses 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 Article be construed to mean that any telephone utility company is issued a franchise by the Town.

Sec. 4-8-90. Indemnification.

It is the express intent of this Article 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 4. Creation of Franchise Record. The Board of Trustees directs Town staff to create, maintain, and update as necessary the franchise record described in Section 2 of this Ordinance, make such record available for public inspection during the Town's business hours, and make all franchise agreements that are approved and in effect available on the Town's website on or before the effective date of this Ordinance.

Section 5. Updated Franchise Application Fee and Review Fee Deposit. The Board of Trustees hereby sets the franchise application fee at five thousand dollars (\$5,000.00) and the review fee deposit at five thousand dollars (\$5,000.00) for all franchise applications, which updated fees shall be effective on the effective date of this Ordinance. Town staff is directed to update the Town's comprehensive fee schedule accordingly. All future updates or amendments to the franchise application and review fees shall be set by resolution as provided in Section 2 of this Ordinance.

Section 6. Effective Date. This Ordinance shall be published and become effective as provided by law.

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 27TH DAY OF MARCH 2023.

ATTEST:

By: Mary E. Strutt
Mary E. Strutt, MMC, Town Clerk

The seal is circular with a double-line border. The outer ring contains the text "TOWN OF MEAD" at the top and "WELD COUNTY, COLORADO" at the bottom, separated by small stars. In the center of the seal, the word "SEAL" is printed in a large, bold, serif font. Below "SEAL" is a small decorative flourish.

TOWN OF MEAD:

By: Colleen G. Whitlow
Colleen G. Whitlow, Mayor