

Governor's Task Force on Broadband
June 15, 2016
Minnesota Senate Office Building-Room 2308
95 University Avenue West
St. Paul, MN 55155
10:00 a.m. – 3:00 p.m.

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|--------------------------|--|
| 10:00 a.m. -- 10:15 a.m. | Introductions, Approval of Minutes, Public Comments |
| 10:15 a.m. – 10:30 a.m. | Update from the Office of Broadband Development (OBD) |
| 10:30 a.m.—11:00 a.m. | Dig Once--County <ul style="list-style-type: none">• Matt Smith, Dakota County Manager• David Asp, Network Collaboration Engineer, Dakota County |
| 11:00 a.m. – 11:15 a.m. | Dig Once—Municipal <ul style="list-style-type: none">• Craig Johnson, Intergovernmental Relations Representative, League of Minnesota Cities |
| 11:15 a.m. – 12:00 p.m. | Dig Once/Broadband Perspective--State <ul style="list-style-type: none">• Minnesota Public Facilities Authority<ul style="list-style-type: none">○ Jeff Freeman, Executive Director• Minnesota Department of Transportation<ul style="list-style-type: none">○ Dave Seykora, Associate Legal Counsel, MNDOT○ Jim Zigman, Utilities Engineer, MNDOT |
| 12:00 p.m. – 12:30 p.m. | LUNCH |
| 12:30 p.m. – 12:45 p.m. | Overview of Other State and Local Initiatives <ul style="list-style-type: none">• Don Niles, Subcommittee Chair |
| 12:45 p.m. – 1:00 p.m. | Federal Dig Once Efforts <ul style="list-style-type: none">• Chuck Ackman, Sen. Klobuchar's Office |
| 1:00 p.m. – 1:15 p.m. | Dig Once Provider Perspective <ul style="list-style-type: none">• Informal response/feedback gathered by provider members of Task Force |
| 1:15 p.m. – 1:45 p.m. | Office of Broadband Development Funding |
| 1:45 p.m. – 2:15 p.m. | Task Force Discussion of Dig Once and OBD Funding |
| 2:15 p.m. – 2:45 p.m. | Subcommittee Updates |
| 2:45 p.m. – 3:00 p.m. | Wrap Up, Plans for July Meeting, Adjourn |

OVERVIEW OF OFFICE OF BROADBAND DEVELOPMENT OPERATIONS

GOVERNOR'S BROADBAND TASK FORCE - JUNE 15TH

FUNDING SOURCES AND USES:

1. General funding base for OBD Operations and Administration (\$250,000)
 - 2 FTE staff
 - Office space, utilities, computers, advertising, printing, supplies
 - Task force expenses – meals and travel
 - Outreach – outstate meetings, conferences
 - Staff research and development – participation in two national meetings annually
2. Department of Commerce supplies 1 FTE as analyst and general support to the program
3. Up to 3% of grant appropriation available for grant administration, mapping, data acquisition, and analysis
 - Amount varies depending upon annual appropriation
 - 2 FTE staff to run and manage grant program for grant period plus two years close-out activities for each grant round.
 - Grant program outreach and technical assistance activities (conference participation, regional and local meetings, production of planning materials)
 - 2 site visits for each grant, one during grant period and one close-out audit
 - Broadband mapping and data program

(These funds are not available to support general operations, adoption and use, or other broadband activities not associated with grant; and unencumbered funds not used for administrative purposes are made available as grants in future funding rounds)

OFFICE ACTIVITIES AND RESPONSIBILITIES

BROADBAND ACCESS

B2B Grant administration – Jane Leonard – Program Manager, David Thao – Back office administration

Community Anchor Institutions – K-12 – Diane Wells - Project Coordinator, Ryan Yetzer – data & analysis

Deployment Facilitation (Permitting/ROW, Dig Once, etc) - TBD

MEASURING BROADBAND

Mapping Program – Diane Wells – Program Manager, Ryan Yetzer – Data and analysis

Adoption and Use Survey – TBD

ADOPTION AND USE

TBD

BROADBAND TASK FORCE

Administrative and Logistical Support – (Meetings, Reports, Communications, etc.) Diane Wells – Lead

RESOURCE CENTER/INFORMATION CLEARINGHOUSE

Coordination of OBD Information Resources – Diane Wells – Lead

OUTREACH AND ENGAGEMENT

Coordination of outreach and engagement – Danna MacKenzie – Lead

POLICY

State policy development and consultation – Danna MacKenzie – Lead

Federal policy analysis – Diane Wells - Lead

PLANNING

State broadband planning – Danna MacKenzie – Lead

Local planning advancement and support – Ryan Yetzer - Lead

Charges/KPI	Source
All state residents and businesses have access to high-speed broadband that provides minimum download speeds of 25 megabits per second (Mbps) and minimum upload speeds of 3 Mbps by 2022; and 100 Mbps download and 20 Mbps upload by 2026.	Statute 237.012
The top five states of the United States for broadband speed universally accessible to residents and businesses	Statute 237.012
The top five states for broadband access	Statute 237.012
Rank among top 15 when compared to countries globally for broadband adoption	Statute 237.012
Encourage, foster, develop, and improve broadband within the state	Statute 116J.39
Drive job creation, promote innovation, and expand markets for Minnesota businesses	Statute 116J.39
Serve the ongoing and growing needs of Minnesota's education systems, health care system, public safety system, industries and businesses, governmental operations, and citizens	Statute 116J.39
Improve accessibility for underserved communities and populations	Statute 116J.39
Serve as the central broadband planning body for the state of Minnesota	Statute 116J.39
Coordinate with state, regional, local, and private entities to develop, to the maximum extent practicable, a uniform statewide broadband access and usage policy	Statute 116J.39
Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access, and to make recommendations for increased usage, particularly in rural and other underserved areas	Statute 116J.39
Coordinate efforts, in consultation and cooperation with the commissioner of commerce, local units of government, and private entities, to meet the state's broadband goals in section	Statute 116J.39
Develop, coordinate, and implement the state's broadband infrastructure development program under section 116J.391	Statute 116J.39
Provide consultation services to local units of government or other project sponsors in connection with the planning, acquisition, improvement, construction, or development of any broadband deployment project	Statute 116J.39
Encourage public-private partnerships to increase deployment and adoption of broadband services and applications, including recommending funding options and possible incentives to encourage investment in broadband expansion	Statute 116J.39
Monitor the broadband development efforts of other states and nations in areas such as business, education, public safety, and health	Statute 116J.39
Consult with the commissioner of Commerce to monitor broadband-related activities at the federal level, including regulatory and policy changes and the potential impact on broadband deployment and sustainability in the state	Statute 116J.39
Serve as an information clearinghouse for federal programs providing financial assistance to institutions located in rural areas seeking to obtain access to high-speed broadband service, and use this information as an outreach tool to make institutions located in rural areas that are unserved or underserved with respect to broadband service aware of the existence of federal	Statute 116J.39
Provide logistical and administrative support for the Governor's Broadband Task Force	Statute 116J.39
Provide an annual report	Statute 116J.39

Coordinate an ongoing collaborative effort of stakeholders to evaluate and address security, vulnerability, and redundancy issues in order to ensure the reliability of broadband networks	Statute 116J.39
Perform an analysis of current availability and use of broadband, including average broadband speeds, within the state	Statute 116J.39
Analysis of actual speeds and unmet need for schools, libraries, hospitals, and public safety	Statute 116J.39
Analysis of incumbent broadband infrastructure within the state and its ability to spur economic development	Statute 116J.39
Analysis of the degree to which new, additional, or improved broadband infrastructure would spur economic development in the state	Statute 116J.39
Encourage and coordinate "dig once" efforts for the planning, relocation, installation, or improvement of broadband conduit within the right-of-way in conjunction with any current or planned construction, including, but not limited to, trunk highways and bridges	Statute 116J.391
Develop a strategy to facilitate the timely and efficient deployment of broadband conduit or other broadband facilities on state-owned lands and buildings	Statute 116J.391
The office shall encourage and assist local units of government to adopt and implement policies similar to those under paragraphs (a) and (b) for construction or other improvements to county state-aid highways, municipal state-aid roads, and any other rights-of-way under the local unit of government's jurisdiction, and to other lands or buildings owned by the local unit of	Statute 116J.391
Administer the Border-to-Border Broadband Development Grant Program	Statute 116J.395
Contract for the collection of broadband deployment data from providers and the creation of maps showing the availability of broadband service. Household and business broadband use	Statute 116J.396

Governor's Task Force on Broadband

June 15, 2016

Dig Once – State and Local Initiatives

Don W. Niles (dniles@nilolaw.com)

Background and opportunity: Examples from morning; Wadena

State statutes: Minnesota (Minn. Stat. § 116J.391); Arizona (A.R.S. §§ 28-7381, 28-7382); Illinois (605 ILCS 5/9-131).

Nationally some municipalities are practicing “dig once” or have a “dig once” ordinance.

Common issues addressed in ordinances, statutes, and policy recommendations:

1. Information gathering:
 - a. Mapping of existing infrastructure
 - b. Identifying all possible governmental funding sources for infrastructure projects
 - c. Developing and electronic list of broadband providers and interested parties (including wireless and fixed wireless)
2. Planning and coordination:
 - a. Notice requirements for infrastructure projects
 - b. Joint planning and deployment requirements
 - c. Specifications and minimum standards, especially empty conduit
3. Ownership, operation and use: private; public-private; public
4. Access, co-location and leasing of conduit and fiber – leasing of conduit by municipalities and counties and reserving space for themselves proving cost-effective; also Google fiber.
5. Moratorium on trenching (i.e., San Francisco, Hong Kong)
6. New construction minimum standards

Recommended Resources:

“Broadband Opportunity Council Report and Recommendations” (Aug. 20, 2015) (found at https://www.whitehouse.gov/sites/default/files/broadband_opportunity_council_report_final.pdf)

“Collected Broadband Regulations and Policies in Action,” Broadband & E-Commerce Education Center (May 2014) (found at <http://broadband.uwex.edu/wp-content/uploads/2014/05/003.019.2015-Collected-Broadband-Regulations-6-11-14.pdf>)

“Draft Regional Broadband Strategic Plan,” Northeast Colorado Association of Local Governments (Jan 8, 2016) (found at https://www.google.com/?gws_rd=ssl#q=Northeast+Colorado+broadband+plan)

Possible Policy Recommendations for Joint Agency Action to Promote “Dig Once” Policies:

1. Confirm identification of all state agencies who are directly involved in or provide funding for projects that present dig once opportunities.
2. Take action to promote and communicate dig once policies, including development and dissemination of best practices and model policies to state agencies and other stakeholders.
3. Review agency regulations and programs to assess if there are changes that would facilitate and/or promote dig once policies for state agencies and county and local governments.
4. Develop, publish and disseminate best practices documents and models to stakeholders (including model ordinances); and explore opportunities to provide technical assistance and expertise to interested state, county, local and tribal governments and to recipients of state funding of construction of highways, streets and right of ways.
5. Review existing notification systems for state supported construction projects and identify opportunities to promote increased levels of information and visibility to county, local and tribal governments, utilities and broadband and communications service providers to facilitate practical project-level coordination between project sponsors and broadband providers.
6. Agencies with construction oversight, construction funding, and land stewardship responsibilities ensure that they lead by example in implementing “Dig Once” policies which encourage broadband competition and deployment, including planning, joint use, construction and notification.
7. Review and implement best practices, coordination and information exchange with federal agencies that may present or fund dig once opportunities such as DOT, DOI, EPA, GSA, USDA, DOC and HUD.

Source: Modified/adapted version of recommendations to U.S. Government contained in “Broadband Opportunity Council Report and Recommendations, at 19-20 (Aug. 20, 2015).

116J.391 COORDINATION OF BROADBAND INFRASTRUCTURE DEVELOPMENT.

Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have the meanings given them.

(b) "Broadband" or "broadband service" has the meaning given in section 116J.39, subdivision 1, paragraph (b).

(c) "Broadband conduit" means a conduit, pipe, innerduct, or microduct for fiber optic or other cables that support broadband and wireless facilities for broadband service.

(d) "Local unit of government" has the meaning given in section 116G.03, subdivision 3.

(e) "Office" means the Office of Broadband Development established in section 116J.39.

Subd. 2. **Broadband infrastructure development.** (a) The office shall, in collaboration with the Department of Transportation and private entities, encourage and coordinate "dig once" efforts for the planning, relocation, installation, or improvement of broadband conduit within the right-of-way in conjunction with any current or planned construction, including, but not limited to, trunk highways and bridges. To the extent necessary, the office shall, in collaboration with the Department of Transportation, evaluate engineering and design standards, procedures and criteria for contracts or lease agreements with private entities, and pricing requirements, and provide for allocation of risk, costs, and any revenue generated.

(b) The office shall, in collaboration with other state departments and agencies as the office deems necessary, develop a strategy to facilitate the timely and efficient deployment of broadband conduit or other broadband facilities on state-owned lands and buildings.

(c) To the extent practicable, the office shall encourage and assist local units of government to adopt and implement policies similar to those under paragraphs (a) and (b) for construction or other improvements to county state-aid highways, municipal state-aid roads, and any other rights-of-way under the local unit of government's jurisdiction, and to other lands or buildings owned by the local unit of government.

(d) Special consideration must be paid to projects under this subdivision that will likely improve access to broadband by rural or underserved communities.

Subd. 3. **Reporting.** As part of its annual report under section 116J.39, subdivision 5, the office shall report on activities taken under this section, including, but not limited to, the number of current and planned projects using the "dig once" approach, any gains in broadband speed or access associated with the project, and any costs or cost savings to the state, private entity, or end user of broadband services.

Subd. 4. **No right of action.** Nothing in this section shall be construed to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the state of Minnesota; its departments, agencies, or entities; its officers, employees, or agents; or any other person.

History: 2013 c 85 art 3 s 14

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28-7381. Definitions

In this article, unless the context otherwise requires:

1. "Broadband conduit" means a conduit, innerduct or microduct for fiber optic cables that support broadband and wireless facilities for broadband service.
2. "Broadband service":
 - (a) Means providing access and transport to the Internet, computer processing, information storage or protocol conversion at a rate of at least one megabit per second in either the upstream or downstream direction, as established by the federal communications commission.
 - (b) Does not include information content or service applications provided over the access service or any intrastate service that was subject to a tariff as of January 1, 2012.
3. "Cost-based rate" means a lease rate that is only comprised of direct and actual associated indirect costs of obtaining and maintaining the associated right-of-way and broadband conduit and must be equitably allocated among users of the associated right-of-way, broadband conduit and innerduct or microduct.
4. "Covered rural highway construction project" means a project to construct a new rural highway or to construct or relocate an additional lane or shoulder for an existing rural highway that is commenced after the effective date of this section and that receives funding from state or federal monies.
5. "Provider" means an entity that provides for the sale or resale of wholesale or retail broadband services in this state and that is recognized as an eligible telecommunications carrier by the Arizona corporation commission or that meets federal communications commission and industry carrier class service guidelines or is a political subdivision that has statutory authority to provide communications services.
6. "Rural highway" means that portion of any highway in this state that is either of the following:
 - (a) Outside of the municipal boundary of any city or town having a population of ten thousand persons or more.
 - (b) Outside of federal metropolitan and micropolitan statistical areas.

ARS TITLE PAGE	NEXT DOCUMENT	PREVIOUS DOCUMENT
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28-7382. Broadband conduit installation; rural highway construction projects

A. The director may install broadband conduit in accordance with this article as part of a covered rural highway construction project if funding is received by the department to cover the cost.

B. In carrying out this article, the director may lease the broadband conduit to providers at a cost-based rate and coordinate with providers regarding planning and relocating of broadband conduit and any related provider facilities within the right-of-way at the provider's expense if future highway improvements make the relocations necessary. The director may limit provider access to any broadband facilities within the right-of-way for initial installation and infrequent access for maintenance purposes and may take other actions necessary to maintain highway safety.

C. The director may install broadband conduit without regard to the timing of a related existing road construction project, based on a request and receipt of funding from state entities charged with responsibility for broadband infrastructure and policy.



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(605 ILCS 5/9-131)

Sec. 9-131. Installation of fiber-optic network conduit.

(a) For purposes of this Section:

"Fiber-optic network conduit" means a pipe or duct used to enclose fiber-optic cable facilities buried alongside the roadway or surface mounted on bridges, overpasses, and other facilities where below ground placement is impossible or impractical.

(b) In order to ensure affordable high-speed, world-class core information and communication networks are available throughout Illinois, the Illinois Department of Transportation and the Department of Central Management Services shall collaborate to install fiber-optic network conduit where it does not already exist in every new State-funded construction project that opens, bores, or trenches alongside a State-owned infrastructure, including, but not limited to, roadways and bridges. The Department of Central Management Services or the Department of Transportation may permit a third party to manage the fiber and conduit leasing. The Department of Central Management Services and the Department of Transportation shall take reasonable steps to ensure market-based, non-discriminatory pricing. Public bidding notices for such projects must describe the need for fiber-optic conduit or cable. The Department of Transportation shall report annually to the Governor and the General Assembly on

the progress and any associated costs incurred by this Section. This Section does not prohibit the State from purchasing or installing fiber-optic cable within the fiber-optic network conduit.
(Source: P.A. 96-37, eff. 7-13-09.)

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MODEL OPEN TRENCH/DIG ONCE ORDINANCE²¹

WHEREAS, obstructions and excavations in City/Town/County rights of way disrupt and interfere with public use of the Rights of Way; and

WHEREAS, obstructions and Excavations in City/Town/County Rights of Way result in loss of parking and loss of business to merchants and others whose places of business are in the vicinity of such obstructions and Excavations; and

WHEREAS, it is desirable to adopt policies and regulations which will enable the City/Town/County of _____ to gain greater control over the disruption and interference with the public use of public streets and Rights of Way, in order to provide for the health, safety and well-being of the City's/Town's/County's residents and users of City/Town/County Rights of Way; and

WHEREAS, significant public funds have been invested to acquire, build, maintain and repair the streets within the City/Town/County, and Excavations in the Rights of Way reduce the useful life of the pavement infrastructure; and

WHEREAS, significant public funds have been invested to place and maintain Landscaping within Rights of Way in the City/Town/County and Excavations in the Rights of Way cause damage to, and increase the costs of maintaining that Landscaping; and

WHEREAS, at the present time, the City's/Town's/County's Department of Public Works does not have [or desires to update, as appropriate] a detailed map or database indicating the location, nature, or extent of the system underground utility, communications and similar Facilities; and

WHEREAS, the various public and commercial utilities, broadband and communications providers and similar entities which install, maintain, and operate Facilities under the City's/Town's/County's Rights of Way are constrained, from time to time, to make excavation cuts which degrade the surfaces of these Rights of Way, thereby reducing their useful life; and

WHEREAS, demand for access to broadband services is growing, and in order to fill such demand, more broadband network infrastructure is being installed in Rightsof Way; and

²¹ This Model Open Trench/Dig Once Ordinance is intended as a starting point to address issues that local governments might include in their own rights of way codes. It may be considered as a separate ordinance or for inclusion in a more comprehensive ordinance government rights of way management, permitting and construction. All provisions relate in some way to coordinating and attempting to minimize excavations, but all may not be appropriate in every jurisdiction. The provisions of this Model may also, where authorized, be modified and adopted as local policies or regulations.

WHEREAS, in other jurisdictions, the demand for access and the number of entities seeking to install Facilities has sometimes resulted in multiple, serial Excavations within the Rights of Way, which can and has resulted in traffic disruption, a weakening of pavement integrity, and a shortening of the useful life of paved surfaces; and

WHEREAS, while Colorado state statutes, particularly, C.R.S. 38-5.5-109, contains some procedures for addressing joint trenching in connection with broadband provider operations in the Rights of Way, at the present there is no comprehensive mechanism nor legal requirement that all public and commercial entities coordinate Excavation in the Rights of Way, and construct Facilities in newly developed areas to minimize future Excavations; and

WHEREAS, the [City/Town/County] of _____ intends to responsibly manage its Rights of Way by anticipating such demand and planning accordingly.

NOW, THEREFORE, be it enacted by the City/Town/County of _____ as follows:

I. PURPOSE AND OBJECTIVES

A. Purpose: to provide principles and procedures for the coordination of construction Excavation within any public Rights of Way, and to protect the integrity of the Rights of Way and road system.

B. Objectives. Public and private uses of Rights of Way for location of Facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City/Town/County must insure that the primary purpose of the Rights of Way, namely the safe and efficient passage of pedestrian and vehicular traffic, is maintained to the greatest extent possible. In addition, the value of other public and private installations, Facilities and properties should be protected, competing uses must be reconciled, and the public safety preserved. The use of the Rights of Way corridors for location of Facilities is secondary to these public objectives. This ordinance is intended to assist in striking a balance between the public need for efficient, safe transportation routes and the use of Rights of Way for location of Facilities by public and private entities. It thus has several objectives:

1. To insure that the public health, safety and welfare is maintained and that public inconvenience is minimized.
2. To facilitate work within the Rights of Way through the standardization of regulations.
3. To conserve and fairly apportion the limited physical capacity of the public Rights of Way held in public trust by the City/Town/County.

4. To promote cooperation among the Applicants and Permittees (as defined herein) and the City/Town/County in the occupation of the public Rights of Way, and work therein, in order to (i) eliminate duplication that is wasteful, unnecessary or unsightly, (ii) lower the Permittee's and the City's/Town's/County's costs of providing services to the public, and (iii) minimize Rights of Way Excavations.

II. DEFINITIONS

For the purpose of this Chapter the following words shall have the following meanings:

- A. "Applicant" means an owner or duly authorized agent of such owner, who has submitted an application for a Permit to Excavate in the Rights of Way.
- B. "City"/"Town"/"County" means the City/Town/County of _____, Colorado.
- C. "Conduit" means a single enclosed raceway for cables, fiber optics or other wires, or a pipe or canal used to convey fluids or gases.
- D. "Department" means the Department of Public Works.
- E. "Developer" means the person, partnership, corporation, or other legal entity who is improving property within the City/Town/County and who is legally responsible to the City/Town/County for the construction of improvements within a subdivision or as a condition of a building permit or other land use or development authorization.
- F. "Director" means the Director of Public Works of the City/Town/County or his/her authorized representative.
- G. "Emergency" means any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas conduit systems, damaged, plugged, or leaking sewer or storm drain conduit systems, damaged electrical and communications facilities, and advanced notice of needed repairs is impracticable under the circumstances.
- H. "Excavate" or "Excavation" means any Work in the surface or subsurface of the Rights of Way, including, but not limited to opening the Rights of Way; installing, servicing, repairing or modifying any Facility(ies) in or under the surface or subsurface of the Rights of Way, and restoring the surface and subsurface of the Rights of Way.
- I. "Facilities" means, including, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber optic lines, antennae, poles, ducts, fixtures and appurtenances and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing broadband, utility and other services.

J. "Landscaping" means materials, including without limitation, grass, ground cover, shrubs, vines, hedges, or trees and non living natural materials commonly used in landscape development, as well as attendant irrigation systems.

K. "Major Work" means any reasonably foreseeable Excavation that will affect the Rights of Way for more than five (5) consecutive calendar days.

L. "Owner" means any Person, including the City, who owns any Facilities that are or are proposed to be installed or maintained in the Rights of Way.

M. "Permit" means any authorization for use of the Rights of Way granted in accordance with the terms of this ordinance, and other applicable laws and policies of the City/Town/County.

N. "Permittee" means the holder of a valid Permit issued pursuant to this Chapter and other applicable provisions of applicable law for Excavation in the Rights of Way.

O. "Person" means any person, firm, partnership, special, metropolitan, or general district, association, corporation, company, or organization of any kind.

P. "Rights of Way" means any public street, road, way, place, alley, sidewalk or easement, that is owned, held or otherwise dedicated to the City/Town/County for public use.

Q. "Work" means any labor performed on, or any use or storage of equipment or materials, including but not limited to, construction of streets and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, street lights, and traffic signal devices. It shall also mean construction, maintenance, and repair of all underground structures such as pipes, conduit, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar Facilities located below surface, and installation of overhead poles used for any purpose.

III. POLICE POWERS

A Permittee's rights hereunder are subject to the police powers of the City/Town/County, which include the power to adopt and enforce ordinances, including amendments to this ordinance, and regulations necessary to the safety, health, and welfare of the public. A Permittee shall comply with all applicable ordinances and regulations enacted, or hereafter enacted, by the City/Town/County or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The City/Town/County reserves the right to exercise its police powers, notwithstanding anything in this ordinance or any Permit to the contrary. Any conflict between the provisions of the ordinance or a Permit and any other present or future lawful exercise of the City's/Town's/County's police powers shall be resolved in favor of the latter.

IV. JOINT PLANNING AND CONSTRUCTION; COORDINATION OF PLANNED EXCAVATIONS

A. Excavations in City/Town/County Rights of Way disrupt and interfere with the public use of those Rights of Ways and can damage the pavement and Landscaping. The purpose of this section is to reduce this disruption, interference and damage by promoting better coordination among Applicants and Permittees making excavations in City/Town/County Rights of Way and between these Persons and the City/Town/County. Better coordination will assist in minimizing the number of Excavations being made wherever feasible, and will ensure the Excavations in City/Town/County Rights of Way are, to the maximum extent possible, performed before, rather than after, the resurfacing of the Rights of Way by the City/Town/County.

B. Any Permittee owning, operating or installing facilities in City/Town/County Rights of Way, providing water, sewer, gas, electric, broadband, communication, video or other utility or utility-like services, shall meet annually with the Director, at the Director's request to discuss Permittee's excavation master plan. At such meeting, to the extent not already in possession of the City/Town/County, Permittee shall submit documentation, in a form required by the Director, showing a location of the Permittee's existing Facilities in the City/Town/County Rights of Way. Permittee shall discuss with the Director, its excavation master plan, and identify planned Major Work in the City/Town/County. The Director may make his own record on a map, drawing or other documentation, of each Permittee's planned Major Work in the City/Town/County; provided, however, that no such document prepared by the Director shall identify a particular entity, or the planned Major Work of that particular entity. An excavation master plan shall be submitted in both hard copy and digital format. As used in this subsection, the requirement to identify planned Major Work refers to any Major Work planned to occur more in the ensuing three (3) years after the date that the Permittee's master plan or update is discussed. Between the annual meetings to discuss planned Major Work, a Permittee shall use its best efforts to inform the Director of any substantial changes in the planned Major Work discussed at the annual meeting.

C. The Director shall review the major excavation plan and identify conflicts and opportunities for coordination of Excavations. The Director shall notify affected Owners and Permittees of such conflicts and opportunities to the extent necessary to maximize coordination of Excavation. Each Applicant for a Permit shall coordinate, to the extent practicable, with each potentially affected Owner and Permittee to minimize disruption in the Rights of Way.

D. The City/Town/County may disclose information contained in a Permittee's master excavation plan to any public or private entity planning on conducting Excavation activities in the Rights of Way only on a need-to-know basis in order to facilitate coordination

among excavators and to avoid unnecessary Excavation in the Rights of Way. To the maximum extent permissible under the Colorado Open Records Act, as amended, the City/Town/County shall not otherwise disclose to the public any information contained in a master excavation plan submitted by a Permittee that is proprietary, trade secret or is otherwise protected from disclosure; provided, however that the City/Town/County shall have no duty to decline to disclose any information that the Permittee has not identified on its face as proprietary, trade secret or otherwise protected from disclosure. The City/Town/County shall notify a Permittee of any request for inspection of public records that calls for disclosure of any master excavation plan on which any information has been identified as proprietary, trade secret or otherwise protected from disclosure. The City/Town/County shall consult with its legal counsel regarding any such request and shall inform the affected Permittee either that the City/Town/County will refuse to disclose the protected information or, if there is no proper basis for such refusal, that the City/Town/County intends to disclose the requested information unless ordered otherwise by a court.

E. The Director shall prepare a Repaving Plan showing the Rights of Way resurfacing planned by the City/Town/County. For purposes of this section, the Repaving Plan shall include a Landscaping or other Rights of Way improvement plan. The Repaving Plan shall be revised and updated on an annual basis. The Director shall make the City's/Town's/County's Repaving Plan available for public inspection. In addition, after determining the City's/Town's/County's Rights of Way resurfacing Work that is proposed for each year, the Director shall send a notice of the proposed Work to all Permittees that have had an annual meeting with the Director, and those broadband providers that are identified on the list maintained by the Colorado Department of Transportation pursuant to C.R.S. 39-5.5-109 (1)(b).

F. Prior to applying for a Permit, any Person planning to Excavate in the City's/Town's/County's Rights of Way shall review the City's/Town's/County's Repaving Plan on file with the Director and shall coordinate, to the extent practicable, with the utility and street Work shown on such plans to minimize damage to, and avoid undue disruption and interference with the public use of the Rights of Way.

G. In performing location of Facilities in the Rights of Way in preparation for construction under a Permit, Permittee shall compile all information obtained regarding its or any other Facilities in the Rights of Way related to a particular Permit, and shall make that information available to the City/Town/County in a written and verified format acceptable to the Director. If the Permittee fails to provide the locate information requested by the City/Town/County, the City/Town/County may obtain this information and charge the Permittee the actual costs for obtaining the information.

V. JOINT EXCAVATION

A. Public Entity Excavators. Whenever two or more public entity excavators propose Major Work in the same block within a three-year period, such Work shall be performed by one public entity excavator. The participants to the excavation shall pay their pro rata share of the Work, or as otherwise agreed to by the affected public entities. For purposes of this subsection, the public entity excavators shall be treated as a single Permit Applicant and shall submit one application.

B. Private Entity Excavators. Whenever two or more private entity excavators propose Major Work in the same block within a three-year period, such Work shall be performed by one private entity excavator. For purposes of this subsection, the private entity excavators shall be treated as a single Permit applicant and shall submit one application.

C. Public Entity Excavator and Private Entity Excavator. Whenever a public entity excavator(s) and a private entity excavator(s) propose Major Work in the same block within a three-year period, the Department shall condition Permits for such Work in a manner that maximizes coordination and minimizes the total period of construction.

D. Excavations Not Identified on Major Excavation Plans. When an Applicant seeks a Permit for an Excavation, and such Excavation has not been identified on a major excavation plan so as to allow the City/Town/County to coordinate joint Excavation as set forth in subsections A through C of this section, an Applicant may, in the discretion of the Director, be required to circulate a description of its proposed Excavation to the Permittees and other parties described in Section IV.E above, to determine whether any Persons have requirements for installing Facilities along the proposed route.

1. The Persons notified should be provided with the Applicant's proposed route plan, the target commencement date and the estimated completion date.
2. Within ten (10) working days after the notification required by this subsection, any interested Person must notify the Applicant of their requirements so that the Applicant may incorporate these requirements, where reasonable, in its Permit application. The Applicant should summarize the responses it receives from other Persons in its Application.
3. If the Applicant believes that it is not reasonably feasible to entertain the requests made by another Person(s) for conditions of joint Excavation, it should notify City/Town/County and the other Person(s) within ten (10) working days from the date of receiving the requirements from the other Person(s) and provide reasons why it is considered not reasonable to do so. The parties are expected to endeavor to resolve any technical or commercial concerns among themselves, and the Applicant shall report the results of these efforts together with its application for a Permit.

E. Waiver of Joint Excavation Requirements. Permit Applicants may seek a waiver of the joint Excavation requirements with respect to a particular Excavation.

1. Except in cases of Emergencies, within thirty (30) calendar days of receipt of a written request for a waiver, the Director, in his or her discretion, may grant a waiver to the joint Excavation requirements for good cause. In making his or her decision on the request for waiver, the Director shall consider the impact of the proposed Excavation on the neighborhood, the applicant's need to provide services to a property or area, facilitating the deployment of new technology and improved services, and the public health, safety, welfare, and convenience. The Director shall indicate in written, electronic, or facsimile communication the basis for granting any waiver pursuant to this subsection.

2. The Director may waive the requirements for joint Excavation in cases where Emergency conditions exist.

3. The Director may place additional conditions on any Permit(s) subject to a waiver, including, without limitation, the charging of additional fees. The Director's decision regarding waivers of the joint Excavation requirements shall be final.

VI. CONSTRUCTION OF NEW STREETS

A. Intent. The intent of this section is to provide for the construction of infrastructure sufficient to allow broadband communications entities desiring to deploy Facilities in the future to do so by pulling the same through the conduit and appurtenances installed pursuant to this section and without Excavating within the Rights of Way. This section is not intended to require Owners of broadband Facilities to install additional ducts or conduit in existing Rights of Way; rather, it is intended to require those constructing public streets, including the City/Town/County and Developers, to provide and install such conduit and appurtenances as may be necessary to accommodate future broadband needs within the Rights of Way without further Excavation.

B. Requirements—Adoption of Standards. Whenever any new public street is constructed, whether by the City/Town/County as a public works project or by a Developer or other private party in conjunction with development, the following shall be required:

1. In all new local streets serving or abutting residential development, a minimum of two 2" conduit with pull box every 1000' feet or less (and at every 90 degree turn) shall be installed by the party constructing the street.

2. In all new collector or arterial streets serving or abutting residential development, and in all new streets serving or abutting nonresidential development, a minimum of four 2" conduit with pull box every 1000' feet or less (and at every 90 degree turn) shall be installed by the party constructing the street; provided however that at the discretion of the Director, the number and size of the conduit and spacing of pull box may be modified to address the reasonably known plans and/or demand for broadband capacity in these locations.

3. In addition to installing conduit, the party constructing the street will be required to install such vaults and other appurtenances as may be necessary to accommodate installation and connection of broadband Facilities within the conduit.

4. All construction and installation shall be accomplished according to construction standards adopted by the City/Town/County. The construction standards shall be adopted with due consideration given to existing and anticipated technologies and consistent with industry standards.

5. All Facilities installed by Developers or other private parties pursuant to this section shall be conveyed and dedicated to the City/Town/County with the dedication and conveyance of the public street and/or Rights of Way.

6. All installation costs shall be the responsibility of the party constructing the public street.

C. Use by Broadband Service Providers and Network Owners. Whenever conduit installed or to be installed under this section is available or will become available within a newly constructed public streets or Rights of Way upon dedication, all broadband service providers or network owners thereafter locating Facilities within such street or Rights of Way shall be required to locate their communications lines within such conduit unless it can be demonstrated to the reasonable satisfaction of the City/Town/County that such location is not technologically feasible or reasonably practicable. Conduit capacity shall be allocated to broadband service providers or network owners on a first-come, first-served basis; provided, that the City/Town/County may reserve capacity within such conduits for its own use; and provided further, that the Director may adopt additional rules for conduit allocation in order to ensure that all broadband service providers and network owners have reasonable access to the Rights of Way and that no barriers to entry or competition result from the allocation of conduit space.

D. Fees. The City/Town/County reserves the right to charge reasonable fees for the use of conduit installed pursuant to this section, to the extent consistent with and as limited by federal and state laws. Any such fees shall be established by resolution or ordinance.

This Ordinance shall take effect immediately upon [insert language appropriate for individual jurisdictions ...]

INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED PUBLISHED, as provided by law, by the City Council/Town Board of Trustees/Board of County Commissioners of the City/Town/County of _____, at its regular meeting held on the __ day of _____, 201__.

Name and Title

ATTEST:

City/Town/County Clerk

READ, ADOPTED ON SECOND READING AND APPROVED this __ day of _____, 201__.

Name and Title

ATTEST:

City/Town/County Clerk