

ORDINANCE NO. 2 (AS PART OF THE CITY'S "FIBER OPTIC INITIATIVE")

There came on for consideration at a duly constituted meeting of the City Council and Mayor of the City of Gulfport held on the _____ day of _____, 2015, the following Ordinance, which was reduced to writing and presented in advance of the meeting for reading and examination:

ORDINANCE NO. _____

AN ORDINANCE REQUIRING INSTALLATION AND CONSTRUCTION OF A FIBER OPTIC SYSTEM WITHIN THE CITY OF GULFPORT, MISSISSIPPI

WHEREAS, the City of Gulfport has enacted an Ordinance (known as the "Fiber Optic Initiative") which recognized, among other things, that expanded broadband access via a fiber optic network is a fundamental aspect of the infrastructure required to educate youth, create jobs, promote public safety, improve citizens' standards of living, and deliver essential services such as health care and wherein the benefits and positive impact associated with the creation of such a network within the City have been recognized and acknowledged and wherein the City has attempted to incentivize the provision of high-speed broadband internet service to the City's residential and commercial residents and visitors as part of an effort to bridge the digital divide of its citizens and community; and

WHEREAS, the installation of fiber optic cable within the City of Gulfport will further the goals of the City's Fiber Optic Initiative while at the same time commence the creation of a fiber optic network for the City which would largely amount to establishment of what is generally referred to or known as the "middle mile" of fiber; and

WHEREAS, the incremental installation of fiber optic cable within property owned by the City or otherwise within public rights-of-way or easements in conjunction with public improvements projects and private development in these areas will assist in expediting the realization of a fiber optic network within the City, decrease the costs associated with the construction and creation of such a system, and will allow the City to control use of these public ways through agreements on access to and use of such City-owned cable and infrastructure and in exchange of consideration to the City; and

WHEREAS, the installation of fiber optic cable within public property, easements, and rights-of-way will also provide access to meet the needs of City Departments, public safety organizations, and other publicly owned and operated facilities as well as protecting these areas by improving both the management and regulation of competing demands through the elimination of duplicate fiber optic facilities within public property, easements, and rights-of-way; protecting the economic vitality of the City by providing the broadband transport service and fiber facilities leasing required by broadband service providers; and reducing the costs associated with maintaining sidewalks, pavement and public facilities located within public

property, easements, and rights-of-way by minimizing the number of pavement cuts and dislocation of other public facilities necessitated by the construction or installation of fiber optic facilities; and

WHEREAS, requiring conduit to be installed as part of public improvements projects or developments in order to accommodate anticipated future demand for access to telecommunications services will assist the City in responsibly managing such facilities and areas by reducing or eliminating the need for excavation within public streets and rights-of-way when telecommunications service providers seek to locate underground telecommunications facilities within such streets and public property, easements, and rights-of-way in the future; reducing or eliminating the traffic disruption that occurs whenever excavation occurs within or around these areas; and reducing or eliminating the loss of pavement integrity and diminishment of the useful life of pavement that occurs whenever paved or improved streets and rights-of-way are cut and excavated within; and

WHEREAS, in furtherance of these interests, the City's Governing Authority finds that all road improvement and other capital improvements projects involving the resurfacing or overlaying, refurbishment, replacement, and/or widening of existing public streets, alleys, and roadways in the City or sidewalks or walkways as well as the creation of new improved streets, alleys, roadways, sidewalks, or walkways by the City or private developer or the installation of any new drainage or sewer pipes or infrastructure within City property, easements, or public rights-of-way shall include as part of their projects and the costs thereof the construction and installation of one 288-count fiber cable bundle that is run in underground conduit which is a minimum of four inches (4") in diameter with a minimum of four (4) innerducts within City property, easements, or public rights-of-way to which the City has access or ownership as well as installation and construction of proper appurtenances and attendant facilities thereto, which shall be located parallel to the nearest public street or roadway and meets or exceeds specifications of emerging industry standards for provision of ultra-speed broadband service, with the exact locations of such infrastructure and the specifications of which to be determined and periodically updated by the City Engineer or his or her designee in reliance of such industry standards and consideration of needs of the City's "Fiber Optic Initiative"; and

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF GULFPORT, MISSISSIPPI, AS FOLLOWS:

SECTION 1. That the matters, facts and things recited in the above and foregoing Preamble to this Ordinance be, and they are hereby adopted as the official findings of the Governing Authority of the City of Gulfport.

SECTION 2. That the Code of Ordinances of the City of Gulfport, Mississippi be and the same is hereby amended to add the following Ordinance, to read as follows:

**ORDINANCE ESTABLISHING STANDARDS FOR
INSTALLATION OF CONDUIT AND FIBER OPTIC CABLE AS PART
OF THE CITY OF GULFPORT'S "FIBER OPTIC INITIATIVE"**

SECTION 1. Intent. In addition to what is set forth in the preamble, this Ordinance is intended to provide for the construction of infrastructure sufficient for the deployment of communication lines, wires, or cables in the future and to do so by pulling the same through the conduit and appurtenances installed pursuant to this Ordinance without excavating within public property, easements, and rights-of-way or to otherwise use and oversee use of such infrastructure and facilities. This Ordinance is not intended to require telecommunications or broadband service providers to install additional ducts or conduit but is intended to require those constructing public streets and roadways or performing any public improvements projects along or under public streets, easements, rights-of-way, and/or property, including the city, private developers and all others, to provide and install such conduit and appurtenances as may be necessary to accommodate future telecommunications and broadband service needs within public streets, easements, rights-of-way, and property without further excavation or disturbance.

SECTION 2. Definitions. For purposes of this Ordinance, the following terms have the meanings ascribed herein.

Section 1.1. "Fiber optic network conduit" means a minimum four inch (4") pipe or conduit containing a minimum of four (4) innerducts used to enclose or carry fiber optic cable or other wires or lines and attendant parts and accessories buried alongside a roadway or surface mounted on bridges, overpasses, and other facilities where below ground placement is impossible or impractical, all in accordance with emerging industry standards and as determined by the City Engineer or his or her designee.

Section 1.2. "Fiber optic cable" means a minimum 288-count fiber cable bundle.

SECTION 3. Requirements. All road improvement and other capital improvements projects involving the resurfacing or overlaying, refurbishment, replacement, and/or widening of existing public streets, alleys, and roadways or sidewalks or walkways as well as the creation of new improved streets, alleys, roadways, sidewalks, or walkways by the City or any other person or entity, including private developer, or the installation of any new drainage or sewer pipes or infrastructure within City property, easements, or public rights-of-way shall include as part of their projects and the costs thereof the construction and installation of fiber optic network conduit that contains at least one fiber optic cable within City property, easements, or public rights-of-way to which the City has access or ownership as well as installation and construction of proper appurtenances and attendant facilities thereto, which shall be located parallel to

the nearest public street or roadway and meets or exceeds specifications of emerging industry standards for provision of ultra-speed broadband service, with the exact locations of such infrastructure and the specifications of which to be determined by the City Engineer or his or her designee in reliance on such industry standards and consideration of the needs, objectives, and findings of the City's "Fiber Optic Initiative."

Section 3.1. In addition to installing conduit, the party constructing the street will be required to install such vaults, manholes, handholes, and other appurtenances and facilities as is necessary or needed to accommodate installation and connection of fiber optic cable within the conduit.

Section 3.2. All construction and installation required in this Ordinance shall be accomplished according to construction standards adopted by the City Engineer. Such standards shall be adopted with due consideration given to existing and anticipated technologies and industry standards.

Section 3.3. All conduit, cable, facilities, and appurtenances installed by private parties or developers or by persons or entities other than the City pursuant to this section shall be conveyed and dedicated to the City either with or as part of the dedication and conveyance of the public street and/or right-of-way to the City or otherwise.

Section 3.4. All construction and installation costs shall be the responsibility of the party constructing the public street, roadway, or improvements project that falls within the purview of this Ordinance.

SECTION 4. Use by Broadband Service Providers. Whenever conduit and/or fiber optic cable installed or to be installed under this Ordinance is available or will become available within a newly constructed public street or right-of-way or other improvements project that falls within the scope or purview of this Ordinance upon dedication, all broadband service providers thereafter locating fiber optic cable, wire, or lines within or along such street or right-of-way shall be required to use available dark fiber (currently unused fiber optic strands) within then existing infrastructure or to locate their cable, wire, or lines within such conduit unless it can be demonstrated to the reasonable satisfaction of the City Engineer that such use or location is not technologically feasible or reasonably practicable or unless such provider falls under and is classified a "Provider" of a franchised fiber optic broadband system in accordance with the City's "Fiber Optic Initiative" Ordinance and is allowed other options under that ordinance. Fiber optic cable and strands as well as conduit capacity shall be allocated to broadband service providers on a first-come, first-served basis; provided, that the City may reserve capacity within such fiber and conduits for its own use; and provided further, that the City Engineer may reasonably adopt additional rules for fiber optic cable or strand and conduit allocation in order to

ensure that all broadband service providers have reasonable access to the City's rights-of-way and that no barriers to entry or competition result from the allocation of cable, strand, or conduit space.

SECTION 5. Fees. The City reserves the right to charge reasonable fees for the use of fiber optic cable and fiber optic network conduit and attendant accessories, facilities, and infrastructure installed pursuant to this Ordinance, to the extent consistent with and as limited by federal and state laws and regulations. Any such fees shall be established by resolution or ordinance.

SECTION 3. This Ordinance shall take effect and be in full force immediately upon its passage.

THE ABOVE AND FOREGOING ORDINANCE, after being first reduced to writing and presented to the Mayor and Council Members for reading, was introduced by Council Member _____, and seconded by Council Member _____,

and was adopted by the following roll call vote:

AYES

NAYS

ABSENT

WHEREUPON, the President declared the Motion carried and the Ordinance adopted, this the _____ day of _____, 2015.

(S E A L)

ATTEST:

ADOPTED:

CLERK OF THE COUNCIL

PRESIDENT

THE ABOVE AND FOREGOING ORDINANCE was submitted to and approved by the
Mayor, this the _____ day of _____, 2015.

Mayor