

ORDINANCE TO ESTABLISH THE VIENNA BROADBAND AUTHORITY

1. Purpose

The purpose of this Ordinance is to establish guidelines for the ownership, control and administration of a Town-owned high-speed network to deliver broadband internet service to residents of the Town of Vienna.

2. Authority

Authority for this Ordinance derives from 30-A M.R.S. § 3001 and Article VIII, Part 2, Section 1 of the Maine Constitution.

3. Definitions

Terms used in this Ordinance shall have the following meanings:

Access: Access to or use of the Broadband System in the form of broadband transport service.

Broadband System: The Town-owned broadband internet system, including all fiber, facilities, equipment and appurtenances used for its operation or maintenance.

Customer: A retail user of the Broadband System

Demarcation Point: The point of connection on an optical network terminal or network interface device at which the Town Broadband System ends and a point of interconnection is established for the customer's use.

Service: Any future or current internet service which may be transported utilizing the Broadband System.

Town: The Town of Vienna, Maine.

Transport: Broadband transport service using the Broadband System.

4. Ownership of System

The Town of Vienna shall have exclusive and complete ownership, control and management of the Broadband System, which shall include all fiber, facilities, equipment and appurtenances purchased or leased by the Town of Vienna and used to deliver high-speed internet service to residents of Vienna.

5. Vienna Broadband Authority Established

The Town of Vienna Broadband Authority is hereby established and shall be considered a department of the Town of Vienna.

6. Vienna Broadband Commission

The Vienna Broadband Authority shall be overseen and administered by the Vienna Broadband Commission.

- A. Appointment and term. The Vienna Broadband Commission shall be comprised of three (3) members, appointed by the Board of Selectmen. There shall be no prohibition against a member of the Board of Selectmen or any other Town board or committee serving as a member of the Vienna Broadband Commission. Commission members shall be appointed first for staggered terms of one, two and three years respectively. Terms thereafter shall be for three (3) years.
- B. Authority and Duties. The Vienna Broadband Commission shall have the following authority and duties:
 - a. To oversee and take all actions necessary in furtherance of grants awarded by the Maine Connectivity Authority to the Town for construction of the Broadband System.
 - b. To issue Requests for Bids / Proposals, evaluate proposals, negotiate contracts and make recommendations to the Board of Selectmen for the award and execution of contracts related to the Broadband System, including but not limited to contracts for construction management, engineering, accounting, maintenance, marketing, operation, and administration and billing for broadband Service.
 - c. To oversee the performance of all contracts entered to build, maintain, service and administer the Broadband System.
 - d. To open and maintain such bank accounts as necessary to hold and administer the financial accounting for operation of the Broadband System, to establish a system of accounting for the Vienna Broadband Authority which shall be maintained separately from general Town accounts, and to otherwise ensure compliance with the financial and auditing requirements of the grant/loan. Disbursement warrants for payments from Vienna Broadband Authority accounts shall be approved by the Chair of the Board of Selectmen and the Chair of the Vienna Broadband Authority, with payments to be disbursed by the Town Treasurer.

7. Contract Authority

The Board of Selectmen shall have the authority to enter all contracts related to construction and management of the Broadband System, including but not limited to contracts for construction

management, engineering, accounting, marketing, operation, maintenance and administration / billing for broadband service, so long as the contract will be funded in full through proceeds of the Maine Connectivity grant, other sources of revenue appropriated by town meeting specifically toward the Broadband System, revenues from Broadband System service fees and rates, or some combination thereof. Such contracts shall not require town meeting approval, regardless of length.

8. Billing

Broadband service provided by the Town shall be billed to the customer in accordance with a schedule of rates as established by the Vienna Broadband Commission either on a standalone basis or as part of a System operation and/or administration contract with a third-party provider.

9. Limitations

The Town of Vienna shall not be obligated to construct extensions or install additional facilities necessary to meet a customer's needs, except as explicitly authorized by the Vienna Broadband Commission.

10. Liability for Interruptions

The Town shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of Access from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, pandemic, strike, labor slow-down, act of God or the public enemy, or failure or inadequacy of the Broadband System. The Town disclaims any express or implied warranty of merchantability or fitness for a particular purpose and the delivery of access to any customer shall not be construed as or deemed to be the delivery of goods under the Maine Commercial Code. By acceptance of transport of Service, the customer agrees to, and shall be deemed to, waive any and all claims for damage or loss to the customer's lines, facilities or communications equipment caused by any act or omission of the Town; however, nothing herein shall be deemed to construed as a waiver of any claim for damage or liability arising out of the gross negligence or malicious act of the Town or its agents, officials or employees, subject to any limits of liability or immunities provided under the Maine Tort Claims Act, 14 M.R.S. ch. 741.

11. Rights of Way

The Town of Vienna may condition provision of service upon the customer's dedication or conveyance to the Town of Vienna a utility easement for the installation, operation and maintenance of the Broadband System, over, across and upon property owned or controlled by the customer. Such utility easement may also be used for the purpose of providing access to other customers of the Vienna Broadband Authority. Such utility easement shall permit access thereto by authorized representatives of the Town at all reasonable hours or at any time in any emergency situation. By acceptance of or submission of an application for Broadband System access, the customer shall be deemed to waive any claim for damages to the customer's property

or equipment located within such utility easement, arising from the operation or maintenance of the Broadband System. Such acceptance or application shall be deemed to constitute a waiver of any claim for damages arising from a taking or any severance damages with respect to a customer's underlying fee simple interest. The Vienna Broadband Authority is authorized to accept any and all such easements on behalf of the Town without need for town meeting authorization.

12. Shut-down for Repairs

For the purpose of making necessary repairs, upgrades or changes to the Broadband System, or to avoid damage to property or to persons, the Town may without prior notice to the customer suspend Access for such periods as may be reasonably necessary to make such repairs, upgrades or changes as may be reasonably necessary, and the Town shall not be liable for damage of any kind, direct or indirect, as a result of such suspension of Access.

13. Interference with the Broadband System

The Town may refuse to provide Access where there is a possibility that the delivery of such may seriously impair or disrupt any other customers, or which may disrupt the operation of the Broadband System. The Town may also discontinue or disconnect Access for a customer if the customer, by their use of the Broadband System, is seriously impairing any other Customer's use of the Broadband System, or is using the Broadband System for the purposes of delivering any virus, spam, spyware, denial of service attacks, or any other illegal or malicious purpose.

14. Protection of the Customer's Equipment

The customer is solely responsible for the selection, installation and maintenance of all equipment and wiring on the customer side of the Demarcation Point. The customer shall install and maintain suitable protective devices and equipment to protect life and property from harm or injury and the Town assumes no duty to warn or otherwise assist the customer in the selection or use of such protective devices.

15. Tampering with Broadband System Prohibited

Other than Town representatives working under the supervision of the Vienna Broadband Commission, no person shall connect to, adjust, tamper with or make any alteration or addition to the Broadband System, without having first obtained written permission from the Vienna Broadband Authority. It shall be a violation of this Ordinance for any person to willfully or maliciously cause damage to, interference with or obstruction of the efficient operation of the Broadband System.

16. Theft of Access or Use

It shall be unlawful for any person to make any connection to or install or construct any facility or equipment with the specific intent of obtaining Access from or making use of the Broadband System, without paying for such Access or without paying the fees and charges established by

the provisions set forth in this Ordinance, unless otherwise expressly authorized by the Vienna Broadband Commission.

17. Effect of Customer Agreements

The Town and/or any contracted operator of the Broadband System may require customers to enter a contract for broadband service. To the extent said any such contract conflicts with the provisions of this Ordinance, the contract shall control.

18. Violations and Penalties

Any violation of this Ordinance shall be deemed a civil violation, for which appropriate injunctive relief as well as penalties of \$100 to \$2,500 for each day of the violation, related legal fees and costs may be adjudged in accordance with 30-A M.R.S. § 4452.