

AN ORDINANCE

AMENDING THE CODE OF GRIFFIN, GEORGIA, AT CHAPTER 78, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, BY DELETING PRESENT ARTICLE IV – UTILITY ACCOMMODATION POLICY AND ISSUANCE OF RIGHT-OF-WAY PERMITS, IN ITS ENTIRETY AND ENACTING IN LIEU THEREOF A NEW COMPREHENSIVE REGULATORY SCHEME TO PROTECT THE PUBLIC RIGHTS-OF-WAY UNDER THE CONTROL AND MANAGEMENT OF THE CITY; TO SPECIFICALLY PROVIDE FOR OCCUPANCY BY SMALL CELLS AND WIRELESS TELECOMMUNICATIONS FACILITIES; TO PROVIDE AN EFFECTIVE DATE; TO PROVIDE FOR SEVERABILITY; TO RESTATE AND REAFFIRM THE CODE OF GRIFFIN, GEORGIA, AS MODIFIED HEREBY; TO REPEAL ALL CODE PROVISIONS, ORDINANCES, OR PARTS THEREOF, IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF GRIFFIN, GEORGIA, AND IT IS ESTABLISHED AS FOLLOWS:

Section 1. The Code of Griffin, Georgia is hereby amended at Chapter 78, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, by deleting present Article IV, UTILITY ACCOMMODATION POLICY AND ISSUANCE OF RIGHT-OF-WAY PERMITS, in its entirety and enacting in lieu thereof the following:

ARTICLE IV. - UTILITY ACCOMMODATION POLICY AND ISSUANCE OF RIGHT-OF-WAY PERMITS

Sec. 78-80. - Declaration of findings, purpose, scope, definitions.

- (a) *Intent and purpose.* The City of Griffin (the "city") is vitally concerned with the use, construction within, and occupancy of all rights-of-way in the city as such rights-of-way are a valuable and limited resource which must be utilized primarily for a viable transportation network of streets, roads and highways, sidewalks, and alternative modes of travel; secondarily to promote the public health, safety, welfare, and economic development of the city; and third to protect its public works infrastructure. Therefore, the city, under the authority of the Laws and Constitution of the State of Georgia, including but not limited to Article IX, Section I, paragraphs II and III of the Georgia Constitution, O.C.G.A. § 36-34-1, O.C.G.A. § 36-35-3 and O.C.G.A. § 32-4-92, has adopted this article for the purpose of regulating public and private utilities which use or occupy the city rights-of-way.
- (b) *Scope.* The provisions of this chapter shall apply to all utilities and facilities occupying the City's rights-of-way, other than rights-of-way on the State Highway System, as provided herein. Telecommunication facilities located outside the public rights-of-way are governed by Article III of Chapter 86, TELECOMMUNICATION ANTENNAS AND TOWER STANDARDS. Aerial installation of telecom facilities on City-owned utility poles and structures within the rights-of-way requires a separate Pole Attachment Agreement with the City to occupy the communications space on city-owned utility poles, which must be executed prior to seeking a permit under this Article.

(c) *Definitions.* For the purposes of this article, the following terms, phrases, words, and their derivations have the meanings set forth herein. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this article. Defined terms remain defined terms whether or not capitalized.

- (1) *City* means the City of Griffin, Georgia.
- (2) *Codified ordinances* means the Code of Griffin, Georgia.
- (3) *Construct* means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install or remove facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right-of-way.
- (4) *Construction* means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing or removing facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construction shall also include the act of opening, boring and/or cutting into the surface of any part of the right-of-way.
- (5) *Director* means the Public Works Director of the City of Griffin, Georgia, or his or her designee.
- (6) *Emergency* means a condition that poses a clear and immediate danger to life, health, or safety of a person, or of significant damage or loss of real or personal property.
- (7) *Facility* or *facilities* means any tangible thing, including but not limited to pipes, mains, conduits, cables, wires, poles, signs, towers, traffic control devices and other signals, and other equipment, appurtenances, appliances and future technology of any utility in, on, along, over, or under any part of the rights-of-way within the city.
- (8) *Facilities representative(s)* means the specifically identified agent(s)/employee(s) of a utility who are authorized to direct field activities of that utility and serve as official notice agent(s) for facilities related information. Utility shall be required to make sure at least one of its facilities representatives available at all times to receive notice of, and immediately direct response to, facilities related emergencies or situations.
- (9) *FCC* means the Federal Communications Commission or any successor thereto.
- (10) *Permit* means a written authorization which grants permission to conduct specific activities on, in, over, under or within any public right-of-way, and which may be subject to conditions specified in the written authorization issued pursuant to this article, in a separate written agreement with the city (such as a Pole Attachment Agreement), in a right-of-way design and specifications manual, or in a related provision of this Code.
- (11) *Right(s)-of-way* means the surface and space in, on, above, within, over, below, under or through any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, or any other place, area, or real property owned by or under the legal or equitable control of the city, now or hereafter, that consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing streets, roads, highways and related facilities.
- (12) *Service(s)* means the offering of any service by a utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public,

- or alternatively, the provision of any service by a utility between two or more points for a proprietary purpose to a class of users other than the general public.
- (13) *Service agreement* means a valid license agreement, franchise agreement, or operating agreement issued by the city and accepted by a utility or entered into by and between the city and a utility, which allows such utility to operate or provide service within the geographic limits of the city as specified therein.
 - (14) *Street* or *streets* means the surface of, as well as the spaces above and below, any and all the streets, alleys, avenues, roads, bridges, tunnels and transportation corridors within the corporate limits of the city, as the same now exist or may be hereafter extended or altered, and any location thereon, thereover or thereunder, and any portion thereof.
 - (15) *Transfer* means the disposal by the utility, directly or indirectly, by gift, assignment, sale, merger, consolidation, or otherwise, of more than 50 percent at one time of the ownership or controlling interest in the facilities, or of more than 50 percent cumulatively over the term of a written approval of registration of such interests to a corporation, partnership, limited partnership, trust, or association, or person or group of persons acting in concert.
 - (16) *Unused facilities* means facilities located in the rights-of-way which have remained unused for 12 months and for which the utility is unable to provide the city with a plan detailing the procedure by which the utility intends to begin actively using such facilities within the next 12 months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next 12 months, or, that the availability of such facilities is required by the utility to adequately and efficiently operate its facilities.
 - (17) *Utility* or *utilities* means all privately, publicly, or cooperatively owned systems for producing, transmitting, or distributing power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, stormwater, fire and police signals, traffic control devices, and street lighting systems, and housing or conduit for any of the foregoing, which directly or indirectly serve the public or any part thereof, or serve a governmental purpose. The term "utility" may also be used to refer to systems of communications, data, information, telecommunications, cable television and video services.

Sec. 78-81. - Utility registration.

- (a) *Registration required.* Each utility who owns, occupies, uses or has facilities in the rights-of-way at the time of passage of this Article, including by lease, sublease or assignment, to operate facilities located in the rights-of-way, unless specifically exempted by state or federal law or this Code, shall file a registration statement with the City within 45 days of the effective date of this Article.
- (b) *Registration procedure.* The registration information provided to the city shall be on a form approved by the city and include, but not be limited to:
 - (1) The name, legal status (i.e. partnership, corporation, etc.), mailing address, email address, and telephone and facsimile numbers of the utility filing the registration statement (the "registrant"). If the registrant is not the owner of the facility in the right-of-way, the registration shall include the name, mailing address, email address , and telephone and facsimile numbers of the owner;

- (2) The name, mailing address, email address and telephone and facsimile numbers of one or more facilities representative(s). Current information regarding how to contact the facilities representative(s) in an emergency shall be provided at the time of filing a registration and shall be updated as necessary to assure accurate contact information is available to the city at all times;
 - (3) A copy, if requested, of the utility's certificate of authority (or other acceptable evidence of legal authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements.
 - (4) A copy, if requested, of the service agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the registration.
- (c) *Incomplete registration.* If a registration is incomplete, the director shall promptly notify the registrant and shall provide a reasonable period of time in which to complete the registration. When a registration is complete, the director shall accept it and so notify the utility in writing.
- (d) *Acceptance of the registration shall not convey title in the rights-of-way.* Acceptance of the registration is only the nonexclusive, revocable license to occupy rights-of-way in the city for the limited purposes stated in the acceptance. Acceptance of the registration does not excuse a utility from obtaining permits required by Federal or state law, codes or regulations, nor from obtaining appropriate access or pole attachment agreements before using the facilities of others, including the city. Acceptance of the registration does not excuse a utility from notifying the city of construction as required herein.
- (e) *Facilities in place without registration.* Beginning three months after the effective date of this Article, any facilities or part of a facility found in a right-of-way for which registration is required but has not been obtained unless specifically exempted by law, and for which no valid service agreement exists with the city, shall be deemed a nuisance and an unauthorized use of the rights-of-way. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities, evicting the utility from the right-of-way; prosecuting the violator; and/or any other remedy provided by city codes or otherwise allowed in law or in equity.

Sec. 78-82. - Construction permits.

- (a) *Permit required.* It shall be unlawful for any utility to excavate or to construct, install, locate, maintain, renew, remove or relocate facilities in, on, along, over or under the rights-of-way of the city without a construction permit from the department of public works in accordance with the terms of this Article.
- (b) *Permit procedure.* Construction permits shall be obtained from the director (or such other person as the city manager may designate) upon application made on forms prescribed by the department of public works. The written application shall include the following:
 - (1) The name and mailing address of the utility;
 - (2) The nature, extent, and location of any work proposed to be done, along with satisfactory plans as attachments showing in detail the location of the proposed facility or operations as described in the permit application. The plans shall show the size or capacity of facilities to be installed; their relationship to street features such as right-of-way lines, pavement edge,

structures, etc., horizontal and vertical clearance to critical elements of the roadway and any other information necessary to evaluate the impact on the street and its operation;

- (3) The name and mailing address, email address and telephone number of the person or firm who is to do such work;
 - (4) The name, mailing address, email address and telephone, cellphone and facsimile numbers of one or more facilities representative(s);
 - (5) The projected dates for the work to be started and finished;
 - (6) An indemnity bond or other acceptable security in the amount of One Million (\$1,000,000.00), payable to the city to pay any damages to any part of the city street system or other city property or to any city employee or member of the public caused by activity or work of the utility performed under authority of the permit issued;
 - (7) A copy, if requested, of the registrant's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements; and
 - (8) A copy, if requested, of the pole attachment agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the application.
- (c) *Permit fees.* Fees shall be paid at the time of filing the application, subject to the most recent fee schedule approved by the Commission, as from time to time amended. The fee schedule shall be available at the offices of the director and the city manager and open for public inspection, without charge.
- (d) *Issuance of permit.* All permit applications shall be reviewed and processed in a reasonably timely manner. Where any law or regulation imposes a time limitation for permit review and issuance, else the permit is “deemed granted” (such limitation often referred to by the FCC as a “shotclock”), every reasonable effort shall be made by the City to process the application and issue written approval, with or without reasonable conditions, or denial of the permit within such time limitations.

If the director determines the applicant has satisfied the following requirements, the director shall issue a permit.

- (1) Whether issuing of the approval will be consistent with this article;
- (2) Whether applicant has submitted a complete application, including payment of the requisite fee, and has secured all certificates and other authorizations required by law, as applicable, in order to construct facilities in the manner proposed by the applicant; and
- (3) The impact on safety, visual quality of the streets, aesthetic standards, traffic flow, and other users of the right-of-way and the difficulty and length of time of the project, construction or maintenance.

Written notification of application approval/permit issuance shall be given to the applicant, either by email at the email address given in the application, or by certified U.S. mail, return receipt requested. If a decision is made to deny the permit, facts supporting the reason(s) for denial shall be stated in the notice.

- (e) *Emergency situations.*

- (1) Each utility shall, as soon as reasonably practicable, notify the director of any event regarding its facilities which it considers to be an emergency. The utility may proceed to take whatever actions are necessary in order to respond to the emergency. A utility who engages in an emergency excavation shall take all reasonable precautions to avoid or minimize damage to any existing facilities.
- (2) In the event that the city becomes aware of an emergency regarding utility facilities other than by notification to the director, the city shall use its best efforts to contact the affected utility or facilities representative. The city may take whatever action it deems necessary in order to respond to the emergency, including cut or move any of the wires, cables, amplifiers, appliances, or other parts of the facilities. The city shall not incur any liability to the utility, for such emergency actions, and the cost of such shall be paid by each utility affected by the emergency.

(f) *Effective period of permit.*

- (1) Each permit shall have a set date on or after which work may commence and shall expire six months from date of commencement, unless based on information provided in the applicant's permit application, a longer construction period is anticipated.
- (2) The permit shall remain in place until construction is completed or until its stated expiration date, unless the utility is in default. The director may give written notice of default to a utility if it is determined that a utility has:
 - a. Violated any provision or requirement of the issuance or acceptance of a permit application or any law of the city, state, or federal government;
 - b. Attempted to evade any provision or requirement of this chapter;
 - c. Practiced any fraud or deceit upon the city; or
 - d. Made a material misrepresentation or omission of fact in its permit application.

(g) *Cancellation for cause.* If a utility fails to cure a default within 10 working days after such notice is provided to the utility by the city, then such default shall be a material breach and city may exercise any remedies or rights it has at law or in equity to terminate the permit. If the director decides there is cause or reason to terminate, the following procedure shall be followed:

- (1) City shall serve the utility with a written notice of the reason or cause for proposed termination and shall allow a utility a minimum of 15 calendar days to cure its breach.
- (2) If utility fails to cure within 15 calendar days, the city may declare the permit terminated.

(h) *Expiration of permit.* If work is not begun within six months of the date of issuance, the permit will automatically expire.

Sec. 78-83. - Required minimum standards.

- (a) *Utility accommodation manual adopted.* The 2016 Utility Accommodation Policy and Standards Manual, including all references contained therein to codes, rules, regulations, schedules, and appendix items, except Appendix B (Permit Forms and supporting Documents), promulgated by the State of Georgia Department of Transportation, as may be amended from time to time, is hereby adopted by reference and incorporated in this article as if fully set forth herein, subject to the amendments and modification contained herein. A copy of the manual shall be maintained in the offices of the director or his designee and open for public inspection and copying. Copies of the manual are also available on the Georgia Department of Transportation's website. Any

conflicts between the provisions of this article and the manual shall be resolved in favor of this Article. References to state personnel, agencies, and fees shall be interpreted, where required, as meaning the City of Griffin municipal equivalents.

- (b) *Protection of traffic and roadway.* Unless specifically in the permit, no utility may occupy city rights-of-way unless sufficient space is available so that the free flow and safety of traffic, pedestrian use, and other capacity considerations are not unduly impaired and the installation does not prevent the city from reasonably maintaining the streets, structures, traffic control devices and other appurtenant facilities, and further provided that maintenance and operations of the facilities do not jeopardize the traffic, street structure, other users of the right-of-way or the right-of-way itself.
- (c) *Grading.* If the grades or lines of any street within the city right-of-way are changed at any time by the city or by federal or state highway authorities during the term of the permit and this change involves an area in which the utility's facilities are located, then the utility shall, at its own cost and expense and upon the request of the city upon reasonable notice, protect or promptly alter or relocate the facilities, or any part thereof, so as to conform with such new grades or lines. In the event the utility refuses or neglects to so protect, alter, or relocate all or part of the facilities, the city shall have the right to break through, remove, alter, or relocate all or any part of the facilities without any liability to the utility and the utility shall pay to the city the costs incurred in connection with such breaking through, removal, alteration, or relocation.
- (d) *Installation of new poles and other wireholding structures.* A provider of wireline or wireless communication services seeking to install Aerial Facilities shall collocate its facilities on existing poles and structures whenever feasible. Unless otherwise provided in a valid pole attachment agreement, no placement of communications facilities is to be considered a vested interest in the right-of-way. No new poles may be set by an applicant in the right-of-way if adequate capacity exists on an existing pole or structure owned by another utility or entity, and any poles or structures permitted are to be removed, relocated, or modified by the utility at its own expense whenever the city determines that the public convenience would be enhanced thereby. No new pole or structure shall exceed a height of 55', unless the city consents thereto in writing. The facilities shall be so located and installed as to cause minimum interference with the rights and convenience of all right-of-way users and adjacent property owners. All installations shall conform to the National Electric Safety Code (NESC), and other applicable federal and state laws, codes and regulations. No aerial facility may sag lower than 18' at mid-span under fully loaded conditions.
- (e) *Aesthetic considerations.* Where feasible, all aerial installations, poles and other support structures, shall match the character of the area within a 500' radius in order to blend into the surrounding environment and be visually unobtrusive. Each antenna must fit within an imaginary enclosure of not more than 6 cubic feet, may not exceed a height of 3' above the top of the pole or structure, and may not protrude from the outer circumference of the pole or structure by more than 2 feet. The cumulative size of all communications installations on a single pole or structure shall not be more than 30 cubic feet in volume, or protrude from the outer circumference of the pole or structure by more than 2 feet. Ground-based enclosures, separate from a pole, may not be higher than 3' above grade, not wider than 3' and not deeper than 3'. Pole-mounted enclosures may not be taller than 5'. To the extent possible, all installations shall be of a style and color to match the color of the pole. No signage shall be

affixed to a wireless installation other than a small tag identifying its owner, with emergency contact information.

- (f) *Historic District.* Within the Commercial Historic District of the City, the boundaries of which are shown on the Official Zoning Map, no wireless communications installation shall be attached to any decorative lamppost, traffic control signal mast arm, or structure other than a utility pole, unless the Applicant demonstrates to the City's satisfaction that its proposed installation cannot provide reasonably comparable service using an existing utility pole. To the extent feasible, the wireless service provider shall conform to design and aesthetic standards for the Commercial Historic District and consider camouflaging its installation in order to minimize the impact on the aesthetics of the Historic District.
- (g) *Utilities protection.* As provided in O.C.G.A § 25-9-6 (the Georgia Utility Facility Protection Act) and other applicable state law currently in place or as amended, no utility shall commence, perform, or engage in blasting or in excavating with mechanized excavating facilities unless and until the utility planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the utility protection center, beginning the next working day after such notice is provided, excluding hours during days other than working days.

Sec. 78-84. - Restoration of property.

- (a) Each utility shall be responsible for the cost of repairing any facilities in the rights-of-way and adjoining property or other facilities which it or its facilities damage.
- (b) A utility shall be liable, at its own cost and expense, to replace, restore or repair, any street, facilities or property or structure thereon, thereunder, thereover or adjacent thereto that may become disturbed or damaged as a result of the construction or installation, operation, upgrade, repair or removal of facilities to a condition as good as or better than its condition before the work performed by the utility that caused such disturbance or damage. If the utility does not commence such replacement or repair after 20 working days following written notice from the city, the city or the owner of the affected structure or property may make such replacement or repair and the utility shall pay the reasonable and actual cost of the same.

Sec. 78-85. - Inspection.

- (a) The utility shall make the construction site available to the director and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.
- (b) At any time, including the time of inspection, the director may order, in writing, the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any law, or which violates the terms and conditions of the permit and/or this article, or may issue an order, in writing, to correct work which does not conform to the permit and/or applicable standards, conditions or codes.
- (c) When the construction under any permit is completed, the utility shall notify the department.

Sec. 78-86. - Other approvals, permits and agreements.

Additional permits required. The utility shall obtain all construction, building or other permits or approvals as according to city codes, state or federal law. In addition, a permittee shall comply with all requirements of laws, shall complete work in a way as to not cause any unnecessary or unauthorized obstructions of sidewalks, streets, waterways or railways, and is responsible for all work done in the rights-of-way regardless of who performs the work. No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency.

Sec. 78-87. - Penalties.

- (a) Every utility convicted of a violation of any provision of this article shall be punished by a fine not exceeding \$1,000.00 per violation. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, and revocation of licenses or permits.
- (b) Citations returnable to the Municipal Court of Griffin, Georgia shall be deemed valid when served personally upon the utility's designated facilities representative, or by certified mail, return receipt requested, or statutory overnight delivery at the address provided.

Sec. 78-88. - Other provisions.

- (a) *Reservation of regulatory and police powers.* The city by issuing a written approval of registration or permit under this Article, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the Constitution and Laws of the United States, State of Georgia and the City Charter, and under the provisions of the City Code to regulate the use of the rights-of-way. A utility by applying for and being issued a written permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A utility is deemed to acknowledge that its interests are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws enacted by the city pursuant to such powers. In particular, all utilities shall comply with city zoning and other land use requirements pertaining to the placement and specifications of facilities.
- (b) *Compliance.* No person shall be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of city to enforce compliance.
- (c) *Appeal of administrative decisions.* An aggrieved applicant for a construction permit under this Article shall have the right, within 30 days of receipt of written notice of denial of the permit, to appeal the decision to the City Manager, whose decision shall be final. Any appeal provided for by this article and any notification to the city required by this article shall be in writing and sent via certified mail to the City Manager at P.O. Box T, Griffin, GA 30224.

Secs. 78-89—78-99. - Reserved.

First Reading: January 8, 2019

Second Reading: January 22, 2019