

**THE CITY OF PEACHTREE CITY  
RIGHT-OF-WAY ORDINANCE**

THIS ORDINANCE, adopted by the City of Peachtree City (the "City") this the \_\_\_\_ day of \_\_\_\_\_, 2016;

**W I T N E S S E T H:**

WHEREAS, service providers seek to provide telecommunications services to customers in an area or areas of the City pursuant to Certificate of Authority issued by the Georgia Public Service Commission which permits the rendering of such service in its certificated area as a regulated telecommunications company and in the performance of its duty to serve the public, service providers request to utilize highway and public road rights-of-way for the installation of wires, cables and associated equipment, and will continue to require such use in the future installation of such aforesaid facilities, pursuant to O.C.G.A. Section 46-5-1; and

WHEREAS, service providers seek to provide cable service or video service to customers in an area or areas of the City pursuant to Certificate of Authority issued by the State of Georgia Secretary of State which permits the rendering of such service in its certificated area as a regulated cable services company in the performance of its duty to serve the public, service providers request to utilize highway and public road rights-of-way for the installation of wires, cables and associated equipment, and will continue to require such use in the future installation of such aforesaid facilities, pursuant to O.C.G.A. Section 36-76-6; and

WHEREAS, service providers seek to provide broadband services to customers in an area or areas of the City on an unregulated basis; and

WHEREAS, the City seeks to establish policies and procedures to permit access and utilization of City right-of-way for all privately, publicly or cooperatively owned systems for producing, transmitting or distributing communication, data, information, telecommunication, cable television, power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, fire and police signals, traffic control devices, and street lighting systems, including the owner, operator, provider, servicer, or any agent thereof, of any above-described utility or utility facility and housing or conduit for any of the foregoing, which directly or indirectly serve the public or any part thereof; and

WHEREAS, it is in the public interest for the City and service providers to reduce the impact on the public of multiple right of ways, and the City and service providers may provide significant economic benefits to the public by locating roadways and facilities on the same right of way subject to City ordinances and pursuant to O.C.G.A. Title 25 Chapter 9; and

WHEREAS, the City has continuing jurisdiction over public right of way and is charged with the responsibility of insuring rights of way are safe and fully adequate for public use; and

WHEREAS, the City seeks to adopt the 2009 Utility Accommodation Policy and Standards manual promulgated by the State of Georgia Department of Transportation, as amended, in this ordinance as if fully set forth herein, subject to all amendments, deletions and modifications; and

WHEREAS, the City has acquired and will continue to acquire public right of way for the construction, operation, and maintenance of roads, paths, and common areas; and

NOW, THEREFORE BE IT RESOLVED, that the City of Peachtree City hereby adopts this ordinance in the form attached hereto and authorizes the City Attorney to make changes as appropriate and so as to update and conform the provision of this ordinance to existing City code.

We hereby approve and adopt this Ordinance this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Vanessa Fleisch, Mayor

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Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_

Ordinance Number \_\_\_\_\_

**AN ORDINANCE TO AMEND ARTICLE VIII, OF THE PEACHTREE CITY LAND DEVELOPMENT ORDINANCE, AS AMENDED, TO ESTABLISH DESIGN, INSTALLATION AND MAINTENANCE GUIDELINES FOR UTILITY, CABLE SERVICE, TELECOMMUNICATIONS SERVICE, BROADBAND SERVICE AND OTHER SERVICES OCCUPYING CITY RIGHTS-OF-WAY; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR SEVERABILITY; TO ESTABLISH AN EFFECTIVE DATE; AND FOR OTHER PURPOSES**

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF PEACHTREE CITY, and it is hereby ordained by authority of the same, that

**Section 1.** Article VII, General Development Standards and Design Guidelines, Division 1, Standards for Site Design, of the Peachtree City Land Development Ordinance, as amended, be further amended to add a new Section 707.2 as follows:

**Chapter 707.2 – Scope.**

General - The provisions of this chapter shall apply to all facilities occupying the rights-of-way as provided herein. The city hereby adopts in this chapter as if fully set forth herein the 2009 Utility Accommodation Policy and Standards manual promulgated by the State of Georgia Department of Transportation, as amended, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, except permit forms and supporting documents, promulgated by the State of Georgia Department of Transportation, subject to all amendments, deletions and modifications contained in this chapter. A copy of the manual shall be maintained at the offices of the city manager or his/her designee and open for public inspection.

The 2009 Utility Accommodation Policy and Standards manual, as amended, promulgated by the State of Georgia Department of Transportation is adopted in this section in order to equate state definitions and provisions with their appropriate and equivalent Peachtree City counterparts such that a policy shall be implemented to reflect the intent and effect of the state right-of-way policy as it would logically apply to City of Peachtree City's rights-of-way and should be referenced as taking precedence if a conflict arises with this chapter.

Further, any franchise in full force and effect prior to the enactment of this ordinance shall be referenced as taking precedence if a conflict arises with this ordinance.

**Administration** - The city manager or his/her designee shall have the authority to administer the State of Georgia Department of Transportation's Utility Accommodation Policy and Standards, as amended from time to time, on city roads in the incorporated city or within the city system and in accordance with any procedures the city may establish thereunder.

**Fees** - The city shall be authorized to charge fees in accordance with the State of Georgia Department of Transportation's Utility Accommodations Policy and Standards and any other applicable laws that exist now or may be enacted in the future. Fees shall be determined by the city manager. Any fee schedule shall be posted at the offices of the city and open for public inspection.

#### **Sec. 707.2-1. - Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Broadband service* means "broadband service" as defined by Title II of the Communications Act and Section 706 of the Telecommunications Act of 1996.

*Broadband service provider* means "broadband service provider" as defined by Title II of the Communications Act, Section 706 of the Telecommunications Act of 1996, and the FCC.

*Cable service* means "cable service" as defined in O.C.G.A. section 36-76-2.

*Cable service provider* means "cable service provider" as defined in O.C.G.A. section 36-76-2.

*Cable system* means "cable system" as defined in O.C.G.A. section 36-76-2.

*City* means the city of Peachtree City, Georgia.

*City Manager* means the city manager of the city or his/her designee.

*Construct* means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install or remove signs, or 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. Construct shall not however include activities associated with the placement of service drops from the distribution facilities to the residence, dwelling unit, apartment complex or business or similar structure. Nor shall construct mean damage repairs to existing facilities.

*Construction* means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing or removing signs or 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. Construction shall not however include the placement of drops from the distribution facilities to the residence, dwelling unit, apartment complex or business or similar structure. Nor shall construction mean damage repairs to existing facilities.

*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.

*Facility or facilities* means any tangible thing, including but not limited to pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, appurtenances, appliances and future technology of any service provider in, on, along, over, or under any part of the rights-of-way within the city.

*Facilities representative(s)* means the specifically identified agent(s)/employee(s) of a service provider who are authorized to direct field activities of that service provider and serve as official notice agent(s) for facilities related information. Service provider shall be required to insure that at least one (1) of its facilities representatives is available at all times to receive notice of, and immediately direct response to, facilities related emergencies or situations.

*FCC* means the Federal Communications Commission or any successor thereto.

*Franchise* means an initial authorization, or renewal thereof, issued by the city, the Georgia Secretary of State, or the Georgia Public Service Commission, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the occupation and use of city streets to provide cable service or telecommunications service.

*Georgia Utility Facility Protection Act* as defined in O.C.G.A. Title 25 Chapter 9.

*Gross revenues* means "gross revenues" as defined in O.C.G.A. section 36-76-2.

*Person* means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the city.

*Permit* means an authorization which grants permission to conduct specific regulated activities on, in, over, under or within any public right-of-way, and which may be subject to conditions specified in a written agreement with the city or in a related provision of this Code of Ordinances.

*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 facilities.

*Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, 46-5-1, et seq., or other Service Agreement* means an authorization granted by the city to a utility which authorizes the occupation and use of city right-of-way.

*Service Provider* means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, that is a provider of cable service, telecommunications service, broadband service, or other service as set forth in this chapter.

*State cable service or video service franchise* means a franchise granted by the State of Georgia Secretary of State pursuant to O.C.G.A. section 36-76-1 et seq.

*State telecommunications franchise* means a franchise granted by the Georgia Public Service Commission pursuant to O.C.G.A. section 46-5-1 et seq.

*Streets* means the surface of, as well as the spaces above and below, any and all streets, alleyways, avenues, highways, boulevards, driveways, bridges, tunnels, parks, parkways, public grounds or waters, and other public rights-of-way within or belonging to the city.

*Telecommunications service* means the receipt and/or distribution, through any means, including, without limitation, coaxial cable, optical fiber or satellite or microwave transmission, of one or more video, audio, voice or data signals. Telecommunications services include both cable services and non-cable telecommunications services pursuant to O.C.G.A. section 46-5-1 et seq.

*Utility or Utilities* means all privately, publicly or cooperatively owned systems for producing, transmitting or distributing communication, data, information, telecommunication, cable television, power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, 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. The term "utility" may also be used to refer to the owner, operator, provider, servicer, or any agent thereof, of any above-described utility or utility facility.

*Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

*Video service* means the provision of video programming through facilities located at least in part in the public rights-of-way without regard to delivery technology, including internet protocol technology. This term shall not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. Section 707.22(d) or video programming provided as part of and via a service that enables user to access content, information, e-mail, or other services offered over the public internet.

*Video service provider* means an entity providing video service as defined in this section.

## **Sec. 707.2-2. – Registration requirements and procedures.**

- (a) This Section 707.2-2 shall not apply to a Utility currently providing services in the city that is exempted by this chapter, state or federal law, an existing valid Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement authorized by O.C.G.A. Section 36-76-4, or other Service Agreement whereby a process for permitting the construction or extension of facilities in the rights-of-way has been established with the city. or an existing State cable service or video service

franchise or a State telecommunications franchise. A Utility that is not exempted by this chapter, state or federal law, or an existing agreement who occupies, uses or has facilities in the rights-of-way at the time of passage of this chapter, including by lease, sublease or assignment, to operate facilities located in the rights-of-way, shall file a registration statement with the city within ninety (90) days of the effective date of this chapter.

- (b) A Utility which is registering with the city under this chapter for the first time shall pay a registration fee in accordance with the City's fee schedule. This registration fee shall not apply to a Utility which is operating within the City as January 1, 2016.
- (c) 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.), street 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, street address, email address if applicable, and telephone and facsimile numbers of the owner;
  - 2. The name, street address, email address if applicable and telephone and facsimile numbers of one (1) 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 authority to operate) from the State of Georgia Secretary of State, 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.
  - 5. If a registration is incomplete, the city shall notify the registrant and shall provide a reasonable period of time in which to complete the registration. If a registration is complete, the city shall so notify the Utility in writing.
  - 6. Acceptance of the registration shall not convey title in the rights-of-way. Acceptance of the registration is only the nonexclusive, limited right 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 city ordinances 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.
  - 7. Beginning one (1) year after the effective date of this chapter, 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 permit exists with the city, may be deemed to be 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 ordinance or otherwise allowed in law or in equity.

**Sec. 707.2-3. – Right-of-Way Permits.**

- (a) It shall be unlawful for any Utility to Construct or engage in Construction of facilities in, on, along, over or under the public roads of the city without a permit from the city in accordance with the terms of this ordinance.
- (b) Permits shall be obtained from the city manager (or such other person as the city manager may designate) upon application made on forms prescribed by the city. The written application shall include the following:
  - 1. The name and 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. Requirements for the plans are outlined in the Department of Transportation's Utility Manual.
  - 3. The name and address of the person or firm who is to do such work;
  - 4. The name, street address, email address if applicable and telephone and facsimile numbers of one (1) or more facilities representative(s);
  - 5. The projected dates for the work to be started and finished;
  - 6. As set forth in the State of Georgia Department of Transportation's Utility Accommodations Policy and Standards manual, as amended, no bond will be required by the city unless there are unique circumstances or when the installation of a Utility is being performed by or for an entity that is not registered with the Secretary of State as a business or contractor. A certified bond, letter of credit, or letter of escrow payable to the city shall be required as a condition of the permit. When requested in writing by the city or during the permitting process, the Utility or Utility's contractor shall furnish, for the period of time required for the complete installation of the facilities authorized by the permit, including the repair and restoration of the rights-of-way, and also during such future periods of time when operations are performed involving the repair, relocation or removal of said facilities authorized by the permit. The amount of the performance bond, letter of credit, or letter of escrow shall be limited to an engineering estimate of potential infrastructure damages, restoration, or replacement, and any appurtenances, materials, or services necessary to conduct the work as specified in the permit. The bond shall be written by a Surety Company or Bank duly qualified and licensed to do business in the State of Georgia. No work shall be commenced under the permit until the said performance bond, letter of credit, or letter of escrow has been submitted to and approved by the city;
  - 7. A copy, if requested, of the registrant's certificate of authority (or other acceptable evidence of authority to operate) from the State of Georgia Secretary of State, the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements;



8. A copy, if requested, of the Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise authorized by O.C.G.A. Section 36-76-4, or other Service Agreement, or other certificate or legal instrument that authorizes the Utility to use or occupy the right-of-way for the purpose described in the application;
9. A certificate naming the city as an additional insured in compliance with and sufficient to meet the minimum insurance requirements and coverages as established by and set forth in the State of Georgia Department of Transportation's Utility Accommodations Policy and Standards manual, as amended; and
10. A permit application fee in accordance with the City's Fee Schedule.

**Sec. 707.2-4. – Permit fees.**

No permit fee shall be assessed to a Utility authorized to provide service in the City subject to a certificate, Right-of-Way Agreement, Service Agreement, other authorization issued by the city, the State of Georgia, the FCC, or other authority which includes franchise fees or similar fees. Utilities shall be subject to permit fees set forth in the city's Fee Schedule or equal to those established by the Georgia State Department of Transportation in Georgia Administrative Code, Chapter 672-11, as currently exists and as modified from time to time by the State of Georgia.

**Sec. 707.2-5. - Issuance of permit.**

If the city manager, or his designee, determines the applicant has satisfied the following requirements, the city may issue a permit.

1. Whether issuing of the approval will be consistent with this chapter;
2. Whether applicant has submitted a complete application with all required documents in accordance with this chapter and has secured all certificates and other authorizations required by law, if applicable, in order to construct facilities in the manner proposed by the applicant; and
3. Whether the impact on safety, streets, traffic flow, and public users of the right-of-way by pedestrians and vehicular traffic and the difficulty and length of time of the Construction are acceptable.

**Sec. 707.2-6. - Emergency situations.**

- (a) Each Utility shall, as soon as reasonably practicable, notify the city manager or his/her designee 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.
- (b) In the event the city becomes aware of an emergency regarding Utility facilities, the city will contact the affected Utility or facilities representative. In the event the affected Utility elects not to address the emergency after being notified, the city may take whatever action it deems necessary in order to respond to the emergency.

**Sec. 707.2-7. - Effective period of permit.**

- (a) Each permit shall have a set commencement and expiration date based on information provided in the applicant's permit application.
- (b) The permit shall remain in place until construction is completed or until its expiration date unless the Utility is in default. The city may give written notice of default to a Utility if it is determined that a Utility has:
  - 1. Violated any provision or requirement of the issuance or acceptance of a permit application or any law of the city, state, or federal government relating to the applicable scope of work;
  - 2. Attempted to evade any provision or requirement of this chapter;
  - 3. Practiced any fraud or deceit upon the city; or
  - 4. Made a material misrepresentation or omission of fact in its permit application.

**Sec. 707.2-8. - Cancellation for cause.**

If a Utility fails to cure a default within twenty (20) 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 city manager determines there is cause or reason to terminate, the following procedure shall be followed:

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

**Sec. 707.2-9. - Expiration of permit.**

If work is not begun within twelve (12) months of the date of issuance, the permit will be deemed abandoned and shall automatically expire.

**Sec. 707.2-10. – Protection of traffic and roadway.**

Unless specifically in the permit, no Utility may occupy the city rights-of-way unless sufficient space is available so that the free flow and safety of traffic 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.

**Sec. 707.2-11. - Grading.**

If the grades or lines of any street within the city right-of-way are changed at any time by the city 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.

**Sec. 707.2-12. – Installation of poles and other wireholding structures.**

- (a) Subject to City Code Section 707, Article 7 of Appendix B and Unless otherwise provided for in existing Right-of-Way Agreements or Service Agreements, (a) no placement of any pole or wireholding structures are to be considered as having granted a Utility a vested interest in the right-of-way; and (b) no facilities shall be so located and installed as to cause interference with the rights and convenience of the traveling public.

**Sec. 707.2-13. - Georgia Utility Facility Protection Act.**

The city adopts all of the requirements and conditions provided in O.C.G.A § 25-9 (the Georgia Utility Facility Protection Act also known as the Georgia Dig Law) and other applicable state law currently in place or as amended, and 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 forty-eight (48) hours' notice by submitting a locate request to the utilities protection center, beginning the next working day after such notice is provided, excluding hours during days other than working days. Significant modifications to the route of facilities to be installed set forth in any permit issued by the city requires the issuance of a new permit by the city as set forth in this chapter. The Utility providing the city with the details of the modification in writing and work may continue under the portions of the existing permit which are not being modified while the issuance of the new or amended permit is pending. A new locate request process must be initiated through the utilities protection center as set forth in this chapter after the new permit has been issued. A new permit will not be required for changes in routes required to avoid previously unidentified obstacles, repairs, or modifications of existing facilities.

**Sec. 707.2-14. – Restoration of property.**

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. All grassed areas disturbed shall be seeded and covered with straw when work is complete.

**Sec. 707.2-15. - Replace and/or restore damage; removal of abandoned facilities.**

- (a) 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 within twenty (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.

- (b) All facilities that are abandoned following completion of work under a permit must be removed by the Utility. In the event that a Utility does not within sixty (60) days following proper notification remove its abandoned facilities, the city may perform the required work and the Utility shall pay the costs of same.

**Sec. 707.2-16. - Right to inspect; fees.**

- (a) The Utility shall make the construction site available to the city Manager, or his designee, and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.
- (b) The Utility shall pay to city a permit inspection fee as set forth in the Application Fees on the city's Fee Schedule.

**Sec. 707.2-17. - Stop work.**

At any time, including the time of inspection, the city manager may order 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 chapter or issue an order to correct work which does not conform to the permit and/or applicable standards, conditions or codes.

**Sec. 707.2-18. - Notification of completion.**

When the construction under any permit is completed, the Utility shall notify the city manager.

**Sec. 707.2-19. - Additional permits required.**

The Utility shall obtain all construction, building or other permits or approvals as according to city ordinance, 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 as outlined herein.

**Sec. 707.2-20. - Penalties.**

Every Utility convicted of a violation of any provision of this chapter shall be subject to fines established by the Department of Transportation and authorized under the laws of the State of Georgia.

**Sec. 707.2-21. - Granting authority, franchising procedures, right-of-way, agreements/service agreements and license applications.**

- (a) No service provider shall provide cable services or operate a cable system without a state franchise or a local franchise granted in accordance with O.C.G.A 36-76-3 (a)(1), as amended, and the provisions of this chapter. No person shall use or occupy the streets to provide any cable services without a state franchise, local franchise, right-of-way agreement, or license granted by the city.

- (b) No service provider shall provide telecommunications services or operate a telecommunications system without a state Certificate of Authority issued by the Georgia Public Service Commission which Certificate of Authority shall be subject to O.C.G.A. section 46-5-1 et seq in accordance with the provisions of this chapter.
- (c) In accordance with O.C.G.A 36-76-3 (a)(1), as amended, the City Council may grant one or more local cable service franchises in accordance with this chapter, provided that the City Council reserves the right to modify any provision of this chapter by amendment hereof.
- (d) The grant of any local cable service franchise shall be made by adoption of a separate ordinance by the City Council and shall be on such terms and conditions as may be specified in such separate ordinance and/or a franchise agreement between the city and the local franchisee.
- (e) Any local franchise or license granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional local franchises and licenses as it deems appropriate and or itself engage in the provision of telecommunications services.
- (f) The grant of local franchises by the city shall be subject to the provisions of applicable law, such as the provisions in the Communications Act of 1934, as amended, governing cable television franchises and renewals thereof, and O.C.G.A. section 36-76-1 et seq.
- (g) The city may enter into a nonexclusive right-of-way agreement with broadband service providers that do not provide cable service or telecommunications service.
- (h) A franchise may be granted or right-of-way agreement entered into for all or any defined portion of the city.
- (i) Applications for a *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* shall be submitted in such form and be issued on such terms and conditions as the City Council may determine, subject to applicable law.
- (j) Any *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* shall contain and/or require the following information with respect to the proposed local franchise or license and such other information as the City Council shall deem necessary or appropriate:
  - 1. The applicant's name, address, telephone number and federal employer identification number or social security number; copy of the applicant's corporate charter or partnership agreement as applicable; and any trade names (and registrations) used by the applicant.
  - 2. A detailed statement of the corporation or business entity organization of the applicant, including but not limited to the following, and to whatever extent required by the city:
    - i. The names and the residence and business addresses of all officers and directors of the applicant;

- ii. The names, residence and business addresses of all persons and entities having any share of the ownership of the applicant and the respective ownership share of each person or entity;
  - iii. The names and address of any parent or subsidiary of the applicant, namely, any other business entity owning or controlling applicant in whole or in part or owned or controlled in whole or in part by the applicant, and a statement describing the nature of any such parent or subsidiary business entity, including but not limited to telecommunications or cable systems owned or controlled by the applicant, its parent and subsidiary, and the areas served thereby;
  - iv. A detailed and complete financial statement of the applicant, certified by an independent certified public accountant, for the fiscal year immediately preceding the date of the application pursuant to this chapter, or a letter or other acceptable evidence in writing from a recognized lending institution or funding source, addressed to both the applicant and the council, setting forth the basis for a study performed by such lending institution or funding source, and a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed telecommunications or cable system in the city, or a statement from an independent certified public accountant certifying that the applicant has available sufficient free, net and uncommitted cash resources to construct and operate the proposed cable or telecommunications system in the city;
  - v. A detailed financial plan (pro forma) describing for each year of the franchise or license, projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements and a sources and uses of funds statement; and
  - vi. A statement identifying, by place and date, any other cable system or telecommunication franchise or license awarded to the applicant, its parent or subsidiary; the status of such franchise with respect to completion thereof; the total cost of completion of such franchised cable or telecommunication system; and the amount of the applicant's and its parent's or subsidiary's resources committed to the completion thereof.
- 3. A detailed description of the proposed plan of operation of the applicant which shall include, but not be limited to, the following:
  - i. A description of the cable services and any other telecommunications services proposed to be provided;
  - ii. A detailed map indicating all areas proposed to be served, and a proposed time schedule for the installation of all equipment necessary to become operational throughout the entire area to be serviced;
  - iii. A statement or schedule setting forth all proposed classifications or rates and charges to be made against subscribers and all rates and charges as to each of

such classifications, including installation charges, cable service charges and any other telecommunications service charges;

- iv. A detailed, informative and referenced statement describing the actual equipment and operational standards proposed by the applicant;
  - v. A copy of the form of any agreement, undertaking or other instrument proposed to be entered into between the applicant and any subscriber to cable or telecommunications services; and
  - vi. A detailed statement setting forth in its entirety any and all agreements and undertakings, whether formal or informal, written, oral or implied, existing or proposed to exist between the applicant and any person which materially relate or pertain to or depend upon the application and the granting of the local franchise or license.
4. Any other details, statements, supplementary information or references pertinent to the subject matter of such application which shall be required or requested by City Council, or by any other provision of law.

**Sec. 707.2-22. - Nonrefundable application fees for new local franchises, right-of-way/service agreement, or licenses.**

- (a) *Generally.* No application for a new local franchise, right-of-way agreement or license shall be considered without payment by the applicant of application fees as set forth in the city's Fee Schedule and as provided in this section. If a local franchise or license is granted, application fees will not be deemed a credit towards any other fees or sums due by the applicant. If an application is denied, the application fee will not be refunded.
- (b) *Purpose of application fees.* The application fees provided by this section will serve to cover the direct and indirect costs incurred by the city in processing the application, evaluating the applicant and granting a local franchise or license, and shall include, but not be limited to, administrative, engineering, publication, legal and consultant's expenses.
- (c) *Application fee.* The applicant will be expected to pay the reasonable costs of the city in evaluating the application. Notwithstanding any other requirement of this chapter, each applicant must furnish with its proposal a nonrefundable application fee in the form of a certified check or cashier's check made payable to the city in the amount set forth in the city's Fee Schedule.

**Sec. 707.2-23. - Responsibilities of applicants.**

It shall be the responsibility of each applicant for a local franchise or license to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the city and any federal, state or local governmental authority having jurisdiction.

**Sec. 707.2-24. - Evaluation criteria.**

- (a) In making any determination hereunder as to any application for a *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*, the City Council may, subject to applicable federal and state law, consider such factors as it deems appropriate and in the public interest, including, without limitation:
- (b) The adequacy of the proposed compensation to be paid to the city, including the value of any facilities and services offered by the applicant to the city;
- (c) The legal, financial, technical and other appropriate qualifications of the applicant;
- (d) The ability of the applicant to maintain the property of the city in good condition throughout the term of the local franchise or license;
- (e) The value and efficiency to the city and its residents of the services to be provided, including the type of services to be provided, as well as alternatives to those services and services that may be precluded by the grant of the local franchise, right-of-way agreement or license;
- (f) The willingness and ability of the applicant to meet construction and physical requirements and to abide by all purpose and policy conditions, limitations and requirements with respect to the local franchise or license; and
- (g) Any other public interest factors or considerations deemed pertinent by the city for safeguarding the interests of the city and the public.

**Sec. 707.2-25. - Procedure for consideration of and action on applications.**

- (a) The city may make such investigations and take or authorize the taking of such other steps as the City Council deems necessary or appropriate to consider and act on applications for local franchises, right-of-way agreements and licenses and determine whether a local franchise, right-of-way agreement or license should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose. In considering applications, the City Council may seek advice from other City officials or bodies, from such other advisory bodies as it may establish or determine appropriate, or from the public, and may request the preparation of one or more reports to be submitted to the City Council, which may include recommendations with respect to such applications.
- (b) If the City Council , after considering such information as it determines to be appropriate, elects to further consider one or more applications, the City Council shall set one or more public hearings for consideration of the applications, fixing and setting forth a day, hour and place certain when and where any persons having any interest therein or objections thereto may file written comments and appear before the City Council and be heard, and providing notice of such public hearing in accordance with applicable law.
- (c) The City Council may authorize negotiations between City officials and applicants to determine whether the city and such applicants are able to reach agreement on the terms of the proposed local franchise, right-of-way agreement or license.
- (d) Upon completion of the steps deemed appropriate by the City Council, the City Council may grant the local franchise, right-of-way agreement or license, and may specify the conditions under which it is granted. Alternatively, the city may reject any and all applications from whatever source and whenever



received except that the city shall not grant an exclusive local franchise, right-of-way agreement or license and may not unreasonably refuse to award an additional competitive local franchise, right-of-way agreement or license. The city also reserves the right to waive any or all requirements when it determines that the best interests of the city may be served thereby and may, if it so desires, request new or additional proposals.

**Sec. 707.2-26. - Terms and conditions of franchise or right-of-way agreement.**

The terms and conditions applicable to any *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* granted pursuant to this chapter shall be set forth in the separate ordinance granting the local franchise or license or in a separate written agreement. Such separate ordinance or written agreement, among other things, shall address the following subjects:

1. The term of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*;
2. The compensation to be paid to the city, which may include the payment of fees or the provision of facilities or services, or both;
3. The circumstances upon which the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* may be terminated or cancelled;
4. The mechanisms, such as performance bonds, security funds or letters of credit, to be put in place to ensure the performance of the franchisee's, right-of-way agreement entity's or licensee's obligations under the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*;
5. The city's right to inspect the facilities and records of the local franchisee, right-of-way agreement entity or licensee;
6. Insurance and indemnification requirements applicable to holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*;
7. The obligation of the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* to maintain complete and accurate books of account and records, and the city's inspection rights with respect thereto;
8. Provisions to ensure quality workmanship and construction methods;
9. Provisions to ensure that the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* will comply with all applicable City, state and federal laws, regulations, rules and policies, including, without limitation, those related to employment, purchasing and investigations;

10. Provisions to ensure adequate oversight and regulation of the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* by the city;
11. Provisions to restrict the assignment or other transfer of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* without the prior written consent of the city;
12. Remedies available to the city to protect the city's interest in the event of the failure of the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* to comply with terms and conditions of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*;
13. Provisions to ensure that the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement*, including the right of way registration and permitting requirements of this ordinance;
14. Provisions to ensure that the holder of the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* will protect the property of the city and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the local franchise, right-of-way agreement or license by complying with the registration and permitting requirements of this ordinance;
15. Provisions designed to minimize the extent to which the public use of the streets of the city are disrupted in connection with the construction of improvements relating to the *Right-of-Way Agreement, Franchise Agreement other than a State-wide Franchise Agreement Authorized by O.C.G.A. Section 36-76-4, or other Service Agreement* by requiring compliance with this Ordinance; and
16. Such other provisions as the city determines are necessary or appropriate in furtherance of the public interest.

**Sec. 707.2-27. - State franchises.**

Every holder of a state franchise within the city shall:

1. Notify the city manager at least ten days before providing service within the geographic boundaries of the city;
2. Maintain a point of contact that shall be available during normal business hours.
3. The city hereby requires a franchise fee as established by ordinance, of gross revenues generated within the city for any state franchise issued for its corporate boundaries. The city

hereby authorizes the city manager to provide written notice to the Georgia Secretary of State and each applicant for or holder of a state franchise within a service area that is wholly or partially located within the city limits of any change to the franchise fee rate applicable to such applicant or holder of a state franchise.

**Section 2.** All ordinances or parts thereof which conflict with the provisions of this ordinance are, to the extent of such conflict and except as hereinafter provided, hereby repealed.

**Section 3.** Should any provision of this ordinance be declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this ordinance as a whole or any provision thereof other than the provisions specifically declared to be invalid. The City Council declares that it would have passed this ordinance and each subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses or phrases may be declared invalid.