

ORDINANCE NUMBER

An Ordinance to Create an Article VI in the Official Code of the City of Canton Georgia, Chapter 50, "Streets, Sidewalks and Other Public Places", in Order to Administer and Regulate the Public Right-of-Way in the Public Interest, and to Provide for the Issuance and Regulation of Right-of-Way Permits

WHEREAS, pursuant to a Section of the Charter of the City of Canton ("City"), the City is empowered to regulate roadside areas, including rights-of-way;

WHEREAS, pursuant to O.C.G.A. 36-76-1 et seq. known as the "Consumer Choice for Television Act" of 2007 the City retains regulatory powers over certain activity of cable and video providers with respect to public rights-of-way within or belonging to the City; and

WHEREAS, pursuant to O.C.G.A. 46-5-1 et seq. telephone companies shall comply with all applicable local laws and regulations, including municipal ordinances and regulations, regarding the placement and maintenance of facilities in the public rights of way that are reasonable, nondiscriminatory, and applicable to all users of the public rights of way within or belonging to the City; and

WHEREAS, the City desires to establish reasonable nondiscriminatory regulations for the installation construction, maintenance, renewal, removal and relocations of Utility Facilities that are not more restrictive than equivalent regulations promulgated by the Georgia Department of Transportation with respect to Utilities on the state highway system under authority of O.C.G.A. 32-4-70.

NOW, THEREFORE, BE IT ORDAINED AND ESTABLISHED by the Mayor and Council of the City of Canton, Georgia as follows:

SECTION 1

The Code of Ordinances of the City of Canton is hereby amended by adding Article VI to Chapter 50, "Streets, Sidewalks and Other Public Places", as follows:

DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS

Section 50-176. - Intent and Purpose. The City of Canton (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 to promote the public health, safety, welfare, economic development of the City and to protect public work infrastructure. Therefore, the City, under the authority of the Laws and Constitution of the State of Georgia, including but not limited to Article 9, Section 1, paragraphs 2 and 3 of the Georgia Constitution, O.C.G.A. 36-1-20 and O.C.G.A. 32-4-42(6), has adopted this ordinance for the purpose of regulating public and private entities which use the City Rights of Way.

Section 50-177 Scope. The provisions of this Chapter shall apply to all Utilities and Facilities occupying the Rights of Way as provided herein.

Section 50-178 Definitions. For the purposes of this Chapter, 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 Chapter. Defined terms remain defined terms whether or not capitalized.

1. City means the City of Canton, Georgia;
2. Codified Ordinances means the Codified Ordinances of the City of Canton, Georgia;
3. 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;
4. 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;
5. Director means the Public Works Director of the City of Canton, 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, towers, traffic 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 (1) 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 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;
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 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, service agreement, franchise agreement, or operating agreement issued by the City or state pursuant to Law 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;

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 public places of the City 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 fifty percent (50%) at one time of the ownership or controlling interest in the Facilities, or of more than fifty percent (50%) 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 twelve (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 twelve (12) months, or that it has a potential purchaser or user of the Facilities who will be actively using the Facilities within the next twelve (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 communication, data, information, telecommunication, cable television, video services, 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, Utility, service, contractor or subcontractor, or any agent thereof, of any above-described utility or utility facility.

UTILITY REGISTRATION

Section 50-179 Registration Required. Each Utility who occupies, uses or has Facilities in the Rights of Way at the time of passage of this Ordinance, 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 Department within ninety (90) days of the effective date of this Ordinance.

Section 50-180 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.), 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 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.

Section 50-181 Incomplete Registration. If a Registration is incomplete, the Director shall notify the Registrant and shall provide a reasonable period of time in which to complete the Registration. If a Registration is complete, the Director shall so notify the Utility in writing.

Section 50-182 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.

Section 50-183 Facilities in Place without Registration. Beginning one 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 Service Agreement 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.

CONSTRUCTION PERMITS

Section 50-184 Permit Required. It shall be unlawful for any Utility to excavate or to construct, install, maintain, renew, remove or relocate Facilities in, on, along, over or under the public roads of the City without a Utility permit from the Department of Public Works in accordance with the terms of this Chapter.

Section 50-185 Permit Procedure. Utility 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 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 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. An indemnity bond or other acceptable security in an amount to be set by the City to pay any damages to any part of the City road 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 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 application.

Section 50-186 Permit Fees. Fees shall be determined by the Director, subject to the approval by resolution of the City Council. A fee schedule shall be available at the offices of the Director and the City Clerk and open for public inspection.

Section 50-187 Issuance of Permit. If the Director determines the Applicant has satisfied the following requirements, the Director may issue a permit.

1. Whether issuing of the approval will be consistent with this Chapter; and
2. Whether Applicant has submitted a complete Application 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. The impact on safety, visual quality of the streets, traffic flow, and other users of the right of way and the difficulty and length of time of the Project, construction or maintenance.

Section 50-188 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, the City may attempt 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.

Section 50-189 Effective Period of Permit.

1. Each permit shall have a set commencement and expiration date based on information provided in the applicant's permit application.

2. The Permit shall remain in place Construction is completed or until its 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.

Section 50-190 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 Director decides 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.

Section 50-191 Expiration of Permit. If work is not begun within six (6) months of the date of issuance, the permit will automatically expire.

REQUIRED MINIMUM STANDARDS

Section 50-192 Utility Accommodation Manual Adopted. The 2009 Utility Accommodation Policy and Standards manual, including all references contained therein to codes, rules, regulations, schedules, forms 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 the article as if fully set forth herein, subject to the amendments and modification contained in this Chapter. A copy of the manual shall be maintained at the offices of the Director or his designee and open for public inspection. Any conflicts between the provisions of this ordinance and the manual shall be resolved in favor of the manual. References to

State personnel, agencies, and fees shall be interpreted, where required, as meaning the City of Canton municipal equivalents.

Section 50-193 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 Department 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.

Section 50-194 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 relocated 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.

Section 50-195 Installation of Poles and Other Wireholding Structures and Relocation. Unless otherwise provided in a valid service agreement, no placement of any pole or wireholding structure of the Utility is to be considered a vested interest in the Right of Way, and such poles or structures are to be removed, relocated underground, or modified by the Utility at its own expense whenever the City determines that the public convenience would be enhanced thereby. The Facilities shall be so located and installed as to cause minimum interference with the rights and convenience of property owners.

Section 50-196 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.

RESTORATION OF PROPERTY

Section 50-197 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.

Section 50-198 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 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.

INSPECTION

Section 50-199 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.

Section 50-200 At any time, including the time of inspection, the Director 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.

Section 50-201 When the Construction under any Permit is completed, the Utility shall notify the Department.

OTHER APPROVALS, PERMITS AND AGREEMENTS

Section 50-202 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 in Article II, Section 7 (B).

PENALTIES

Section 50-203 Every Utility convicted of a violation of any provision of this chapter shall be punished by a fine not exceeding one thousand dollars (\$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 nuisances, injunctive relief and revocation of licenses or permits.

OTHER PROVISIONS

Section 50-204 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 50-205 Reservation of Regulatory and Police Powers. The City by issuing a written approval of Registration under this Chapter, 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's Codified Ordinances to regulate the use of the Rights of Way. The 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.

Section 50-206 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.

Section 50-207 Appeal of Administrative Decisions. All appeals provided for by this chapter and any notification to the City required by this Chapter shall be in writing and sent via certified mail to the Director as specified in this Chapter.

Section 50-208 Chapter Headings. Chapter headings are for convenience only and shall not be used to interpret any portion of this Chapter.

SECTION 2

Except as provided otherwise herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3

This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

SECTION 4

This ordinance shall become effective immediately upon its adoption by the Mayor and Council of the City of Canton.

SO ORDAINED this ____ day of _____, 201__.

ATTEST:

City Clerk, Susan C. Stanton

Gene Hobgood, Mayor

Approved as to form:

City Attorney, Robert M. Dyer

Approved by Canton City Council