

Chapter 32.

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

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CHAPTER 32. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

ARTICLE I. IN GENERAL

Sec. 32-1. Naming of New Streets.

(a) The name of any street which shall hereafter be opened or developed within the city shall first be approved by the city council.

(b) No street name shall be approved which shall duplicate or bear too close a similarity to the name of some other existing street; except where a new street or portion thereof shall be a continuation or an extension of an existing street; in this case the new street shall bear the same name as the existing street which is continued or extended.

(Code 1968, §17-1)

Sec. 32-2. Washing or Repairing Vehicles on Streets.

It shall be unlawful for any person to wash, clean or repair any vehicle on the streets of the city.

(Code 1968, §20-8)

Cross reference – Traffic and Vehicles, ch. 36.

Sec. 32-3. Parades and Assemblies; Permit Required.

In order for plans and procedures to be developed to aid in the control of traffic on the public streets, sidewalks, and alleys of the city, every parade or public assembly, including street dances and every other type of public or private assembly upon the streets, sidewalks, alleys and public ways of the city, must obtain a special written permit at least three days prior to the parade or public assembly. The written permit shall be issued by the chief of police and approved by the city manager. Any person holding or participating in a parade or other public assembly upon the streets, sidewalks, alleys or other public ways of the city without a written permit to hold such parade or public assembly shall be guilty of violating the provisions of this chapter and shall be punished in accordance with Section 1-9.

(Code 1968, §20-1)

State law reference – Municipal authority to regulate or prohibit processions or assemblages on the highway, O.C.G.A. §40-6-371(a)(3).

Sec. 32-4. Building Numbering.

(a) *Duty to Affix or Inscribe.* It shall be the duty of the owner, agent or occupant of any dwelling house or other building to affix or inscribe the proper numbers so as to be conspicuously placed immediately above, on, or at the side of the appropriate door so that the number is clearly visible from the street. Numbers must not be less than three inches in height. All numbers affixed or inscribed under the provisions of this section must be made of durable,

clearly visible material and must contrast with the building or dwelling house, yard marker of mailbox to which they are affixed.

(b) *Buildings with no numbers or incorrect numbers; notice to correct.* Whenever any dwelling house or building shall be without numbers or shall have incorrect numbers affixed or inscribed thereon, it shall be the duty of the city manager or his/her designee to serve on the owner, agent or occupant a written or printed notice notifying the owner, agent or occupant to affix or inscribe, within 21 days from the date of service of such notice, on the dwelling house or building owned by him or for which he may be the agent in any capacity or the occupant, the proper numbers as designated in the notice.

(c) *Application for assignment or correct number.* The owners, agents or occupants of dwelling houses or buildings which are without numbers, or which are incorrectly numbered, may apply to the city manager or his/her designee for assignment of the correct number.

(d) *Failure to comply after notification.* Where the owner, agent or occupant of any such dwelling, house or building shall neglect or refuse to affix or inscribe the proper numbers to the dwelling house or building after being duly notified as provided in this article, such owner, agent, or occupant shall be fined \$50.00 per offense and the numbers ordered affixed or inscribed in so as to comply with this section. Pursuant to the provisions of O.C.G.A. S36-34-2(3), city employees designated in writing by the city manager shall be authorized to serve a summons to appear in municipal court upon any person who violates the provisions of this section.

(Code 1968, SS17-2, 17-3; Ord. No. 2134, §1, 8-1-05)

Cross reference – Buildings and Building Regulations, ch. 8

Sec. 32-5. Playing games on/in Business Section.

All persons are prohibited from playing marbles, baseball, football, or spinning tops, or playing other games on the sidewalks or streets in the business section of the city.

(Code 1968, §17-4)

Sec. 32-6. Use of Roller Skates, Skateboards, Roller Blades.

(a) It shall be unlawful for any person to skate by means of roller skates, skateboards or roller blades in such a manner as to endanger or interfere with pedestrian traffic.

(b) There shall be no skating by roller skates, skateboards, or roller blades at any time in the downtown business area of the city, such area defined as follows: Beginning at the southwestern corner of Church Street where Church Street intersects with Oliver Street and running north to the right-of-way of Seaboard Coastline Railroad; thence running along the right-of-way of Seaboard Coastline Railroad in an easterly direction to the point where the northeastern most corner of Thomas Street intersects with the property of Seaboard Coastline; thence running along the eastern side of Thomas Street in a southerly direction to the intersection of Thomas Street and the southeastern corner of Church Street; thence running along the southeastern part of Church Street to the beginning corner. Skating, skateboarding and roller blading shall also be prohibited on the city's public tennis courts.

(Code 1968, §17-5)

State law reference –Municipal authority to regulate persons upon skates, coasters, etc. O.C.G.A. §40-6-371(a)(18)

Sec. 32-7. Dirt, Sand and Gravel not to be Spilled.

Any person hauling dirt, sand or gravel or causing dirt, sand or gravel to be hauled over the paved streets or sidewalks of the city shall have the same in wagons, carts, or other vehicles with the bodies thereto closely constructed and without cracks therein and in such a manner as to prevent the spilling of the dirt, sand, or gravel being hauled. (Code 1968, §17-7)

Sec. 32-8. Obstructing with Merchandise Restricted.

It shall be unlawful for any person to obstruct any street or sidewalk within the city by placing thereon any wares, goods, merchandise, or other articles for the purpose of vending, showing, advertising, or selling the same, or to obstruct the streets or sidewalks by any other means without the permission of the city manager.

(Code 1968, §17-8)

Cross reference – Businesses, ch. 10.

Sec. 32-9. Excavations; Procedure Required.

No person shall be permitted to excavate or break up any street, lane, alley or sidewalk of the city for the purpose of laying gas pipes, water pipes, sewer or drain pipes, or for the purpose of planting trees or for any purpose whatsoever without first having obtained the permission of the city and having agreed in writing to light, fence and watch such openings or excavations and obstructions caused by them, in such a manner as the chief of police shall direct, and to repair the street, lane, alley, or sidewalks, as the case may be, or to pay to the city such expense as may be incurred by it and such damage as may be sustained from a failure to watch the opening and obstruction, or from not having the same property lighted, fenced or watched. After having obtained the permission of the city, it shall be unlawful to fail or refuse to comply with the orders and instructions of the chief of police regarding fencing, lighting, and watching the openings or to fail to repair any damage done to any property of the city.

(Code 1968, §17-9)

Sec. 32-10. Permission to Erect Wires.

No person shall erect any wires along the streets or sidewalks of the city for any purpose whatsoever without the consent of the city.

(Code 1968, §17-11)

Sec. 32-11. Sight Obstruction at Intersections – Correction by City; Assessment.

In case a violation of section 32-12 by the placement or location of trees, hedges, or shrubbery, upon the failure of the owner or occupant to comply with Section 32-12, the street department shall, upon direction of the city manager, take such steps as are necessary to cause a trimming or removal of trees, hedges and shrubbery so as to comply with the provisions of Section 32-12, and the city clerk, upon the direction and approval of the city council, shall extend the cost of such work as a special assessment against the lots, property or parcels of ground upon which the trees, hedges, or shrubbery were cleared or trimmed.

(Code 1968, §17-13)

Sec. 32-12. Same – Hedges and Bush Obstructions of Visibility in Residential Areas Restricted.

For the purpose of ensuring reasonable visibility at street intersections in the residential zones of the city, trees shall be trimmed to a height of eight feet above the curb level. Shrubs and hedges shall be trimmed below a height of two feet above the curb level for a distance of 25 feet back from the lot lines of each lot located at the intersections of two streets or for a distance

of 25 feet back from the property line located at the intersection of any street and alley. No planting of trees or shrubbery, construction of walls or fences, or placing of signs or other obstructions which will materially obstruct the view of drivers of vehicles approaching the street intersection shall be permitted in any residential zone in the city.
(Code 1968, §17-14)

Sec. 32-13. Restriction on use of Public Rights-of-Way.

(a) It is hereby found and declared to be the policy of the city that the public welfare requires expeditious and convenient access to the city's utility lines located upon the public street rights-of-way.

(b) It is prohibited for any person to plant, grow or construct any trees, shrubs, flowers, plants, or permanent improvements, except grass, in or upon any public right-of-way of the city, without first obtaining a permit authorizing such from the city manager.
(Code 1968, §17-15)

Sec. 32-14. Controlling Growth of Vegetation and Trees.

(a) It shall be unlawful for the owner or occupant of any property within the city to permit vegetation growing on their property to extend onto any street or sidewalk bordering or touching the property. All vegetation on private property including, but not limited to, grass, vines, shrubbery and hedges shall be cut back to the edges of all streets and sidewalks within the city. In addition, all trees on private property shall be trimmed to a height of twelve feet above the curb level wherever they overhang a street or sidewalk within the city.

(b) Each such owner or occupant who is in violation of this section shall be given 30 days notice to correct the violation before any action is taken.

(c) Upon failure of the owner or occupant to comply with this section, the street department shall, upon the direction of the city manager, take such steps as are necessary to cause a trimming or removal of trees or vegetation so as to comply with the provisions of this section, and the city clerk, upon the direction and approval of the city council, shall extend the cost of such work as a special assessment against the lots, property or parcels of ground upon which the trees or vegetation were cleared or trimmed.
(Code 1968, §17-16; Ord. No. 1062, §1, 5-1-95)

Secs. 32-15 – 32-35. Reserved.

ARTICLE II. DRIVEWAY CONSTRUCTION

Sec. 32-36. Definitions.

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

Corner. means the point of intersection of the lines of two street curb faces extended into the street intersection.

Curb Return. means that portion of a curb next to a driveway approach which includes the radius of curvatures, or the ramp type lug which connects the driveway approach to the street curb.

Driveway. means a place on private property for the operation of automobiles or other vehicles.

Driveway Approach. means an area, construction, or facility between the roadway of a public street and private property intended to provide access for vehicles from the roadway of a public street to private property. For clarification, a driveway approach must provide access to something definite on private property such as a parking area, a driveway, or a door at least eight feet wide, intended and used for the entrance of vehicles.

Outside Sidewalk Line. means a line parallel to the property line lying along the edge of the sidewalk nearest the street, roadway or curb, or where no sidewalk exists, a line in the street right-of-way parallel to, and four feet from the line of the private property.

Parcel of Land. means a lot or a tract under one ownership.

(Code 1968, §17-25)

Cross Reference – Definitions generally, §1-2

Sec. 32-37. General Restrictions.

(a) It shall be unlawful for any person to cut, break out, or remove any curb along a street or alley except as authorized by this Code.

(b) It shall be unlawful for any person to construct, alter, or extend or permit or cause to be constructed, altered, or extended any driveway approach which does not serve as an access to private property or which can be used only as a parking space or area between the curb and private property.

(c) All permits granted for the use of public property under the terms of this article shall be revocable at the will of the city council.

(Code 1968, §17-26)

Sec. 32-38. Permits Required; Application; Fees and Charges.

(a) It shall be the duty and responsibility of the property owner or his agent to secure a permit for the construction, alteration or extension of any driveway approach or driveway on or across street property.

(b) It shall be the duty and responsibility of the property owner or his agent to make application for the installation of pipe in a street ditch to provide a driveway approach to private property.

(c) It shall be the duty and responsibility of the property owner or his agent to make application for the curbing to be removed to provide for a driveway approach, or make application for a licensed contractor to remove curbing, provided the owner or contractor or both shall be responsible for any damages that might arise from such removal by the contractor.

(d) It shall be the duty and responsibility of the property owner or his agent to make application for cutting of sidewalks for installation and repair of water lines, sewer lines,

electrical lines, etc. Where any such line is installed or repaired or any other construction is done necessitating the cutting and removal of sidewalks, the property owner or its agent shall ensure that the cuts shall be made at the joint lines of sidewalk and the sidewalk restored and finished to original design. Cutting of narrow strips across sidewalks for repair and installation work is prohibited.

(e) The following fees shall be applicable and payable when a permit is issued for the work to be performed under this article where the city is requested to furnish any materials, equipment or labor. It shall be the policy of the city to participate only in the removal of the curbing and installation of drainage pipe on city property.

- (1) When property owners or agent request that city forces remove curbing and/or sidewalk or replace curbing and/or sidewalk, a fee per linear foot of curbing or sidewalk removed or replaced, as established from time to time by the mayor and council, shall be paid.
- (2) When property owner or agent requests that the city furnish and install a side drainage pipe, a fee per linear foot of pipe installed shall be paid.
- (3) The fee for issuance of permits required under this article shall be the same as for a regular building permit.

(f) It shall be the duty and responsibility of the property owner or his agent to make application for the curbing and/or sidewalk to be replaced when an existing driveway is no longer considered adequate, is modified, or has been abandoned, or make application for a licensed contractor to replace curbing and/or sidewalk, provided the owner or contractor or both shall be responsible for any damages that might arise from such replacement by the contractor.

(Code 1968, §§ 17-27, 17-28; Ord. No. 1090, §1, 7-8-96; Ord. No. 2103, §1, 5-6-02)

Sec. 32-39. Street Construction.

The property owner or agent may have such construction on street property as may be required for driveway approach performed by a licensed contractor qualified to do such work in the city, provided such work is done in accordance with this Code.

(Code 1968, §17-29)

Sec. 32-40. Approach Widths.

No driveway approach shall exceed the following widths measured along the outside sidewalk line:

(1) *Commercial Driveways.* Fifty feet maximum width as measured along the outside sidewalk line with a flare on the roadway side equal to the width of the strip between the sidewalk and curb or pavement edge, with a maximum flare of 15 feet in any case.

(2) *Residential Driveways.* Fourteen feet maximum widths as measured along the outside sidewalk line with a maximum flare on each side of three feet.

(Code 1968, §17-30)

Sec. 32-41. Proximity to Corner and Property Lines.

No portion of a driveway approach, except the curb return, shall be constructed within 20 feet of a street corner, and in no case shall a curb return be closer than three feet of a property line extended.

(Code 1968, § 17-31)

Sec. 32-42. Specifications; minimum requirements for approaches.

The following minimum requirements shall be observed in the construction of driveway approaches:

- (1) The entire driveway approach shall be of Portland cement concrete.
- (2) The minimum thickness for the driveway shall be six inches for normal traffic, and extra thickness or reinforced with steel reinforcing as required for heavy traffic.
- (3) The sidewalk section of all driveway approaches shall be clearly marked and an expansion joint shall be placed between the driveway approach and the curbing and between the driveway approach and the driveway at the property line.
- (4) The sidewalk shall be so constructed that it will rise at a slope of minimum of one-quarter inch per foot and a maximum of five-eighths inch per foot above the top of the normal curb section.
- (5) If the distance from the face of the curbing to the back side of the sidewalk section is ten feet or more, the ramp section of the driveway approach must meet the front edge of the sidewalk section. If the distance is from five to ten feet, the ramp section may extend into the sidewalk section for one-half the width of the sidewalk. If the distance is less than five feet, the ramp section may extend through the sidewalk section. In no case shall the ramp section at the property line be lower than the back sidewalk section.

(Code 1968, §17-32)

Sec. 32-43. Approach Not to Interfere with Facilities.

No driveway approach shall interfere with municipal facilities such as utility poles, traffic signal standards, signs, catch basins, hydrants, fire alarm supports, underground pipes and ducts, sidewalks, curbs or curbs and gutters, or other necessary street structures, and the public works director is authorized to order and effect the removal or reconstruction of any driveway approach which now conflicts with street structures or which will conflict with street structures in the future. The cost of removing, reconstructing or relocating such driveway approaches shall be at the expense of the abutting property owners.

(Code 1968, §17-33)

Sec. 32-44. Submission of Plans.

Plans showing the requested location and proposed profile of any driveway approach, as related to the existing conditions, shall be filed with the application for permission to construct. Any plans submitted to the Fire and Building Inspector for approval, which include or involve unusual driveway approaches or problems, shall be referred to the public works director for his approval before a building permit is issued.

(Code 1968, §17-34)

Sec. 32-45. Correction of Existing Driveways; Permits.

Where it appears that corrective measures are desirable for existing driveway approaches to accommodate modern vehicles or conditions, a permit may be granted for such alterations as stated in the balance of this section; the installation of a concrete pad or plant mix asphalt in the gutter to elevate the rear of the vehicle as it passed from the street to private property, or vice versa. This type of correction may be used in the gutter at the summit of a grade, in gutters with a grade of one percent or more, provided the correction does not interfere with the resurfacing of the street, interfere with the traveling public, have a tendency to cause the gutter water to flow out into the traffic lanes, create standing of pools of water if the grade is not sufficient, or interferes with gutter drainage in the sag of a vertical curve.

(Code 1968, §17-35)

Sec. 32-46. Granting of Variances by Public Works Director.

The public works director is hereby authorized to grant in writing, a copy to be filed with the building inspector, variances from the strict application of the provisions of this article, provided he first determines that the following conditions are present:

- (1) The exception or variance desired arises from peculiar physical conditions not ordinarily existing in similar districts in the city, or due to the nature of the business or operation on the abutting property.
- (2) The exception or variance desired is not against the public interest, particularly safety, convenience and general welfare.
- (3) The granting of the exception or variance will not adversely affect the rights of adjacent property owners or tenants.
- (4) The strict application of the terms of this article will work undue hardships on the property owner or tenant.

(Code 1968, §17-36)

Sec. 32-47. Apron Construction.

The property owner or his representative shall construct an apron in a driveway if so ordered by the city in order to abate a nuisance. A nuisance includes debris trapped on the streets, such as mud, gravel, etc.

(Ord. No. 2103, §1, 5-6-02)

Editor's Note – Ord. No. 2103, §1, adopted May 6, 2002, set out provisions pertaining to apron construction as related to driveway construction. To maintain the numeric sequencing of this Code, said provisions have been included as §32-47 at the discretion of the editor to read as herein set out. See the Code Comparative Table.

Secs. 32-48 – 32-99. Reserved

ARTICLE III. STREET CONSTRUCTION

Sec. 32-100. Extension of McKinley Street.

(a) The Mayor and Council to renovate dilapidating housing and improve negative statistical data such as low income hereby designate the area most recently described as “Blackwell Park” as an area in need of urban redevelopment. This area is described as Tax Map E25-157 and E25-158 and more fully described as:

Point of beginning where Parcel 156 and 155 of Elbert County Tax Map E-25 intersects with the north side of Prince Street; thence in a northeasterly direction along the rear lot lines of Lots 155, 154, 153, and 152 of Elbert County Tax Map E-25 for a distance of one hundred fifty feet (150’); thence in a northwesterly direction for a distance of 87.65 feet to Locklin Street right-of-way; thence in a northeasterly direction along Locklin Street right-of-way for a distance of one hundred ninety feet (190’); thence in a southeasterly direction for a distance of ninety-eight feet (98’); thence in a northeasterly direction for a distance of fifty feet (50’); thence in a southeasterly direction for a distance of one hundred seventeen feet (117’) to the right-of-way of Willow Street; thence along the right-of-way in a southwesterly direction for a distance of three hundred forty-six feet (346’) to Prince Street right-of-way; thence along the northern right-of-way of Prince Street in a northwesterly direction for a distance of five hundred forty feet (540’) to the point of beginning.

(b) In order to promote the city’s policies for urban redevelopment allowing all citizens the opportunity for economic prosperity and a positive quality of life, the mayor and council authorize the mayor and/or city manager to execute the necessary documents to extend McKinley Street and take ownership of thirty feet (30’) of rights-of-way beginning at the rights-of-way for Prince Street and going north for approximately 320 feet within the property designated as “Blackwell Park” more fully described in paragraph (a).

(c) For the purposes of urban development in this specific instance, Article III “Subdivisions”, sections 22-260(g)(4) and 22-261 of Chapter 22 “Land Use” is hereby suspended and the city of Elberton will construct the approximately 320 feet extension of McKinley Street from its general funds.
(Ord. No. 2109, S1, 1-6-03)

ARTICLE IV. Use of the City’s Rights-of-way by Public and Private Utilities (Ord. No. 2225, 3-7-2025)

DIVISION 1 **Purpose, Definitions, Authority and Scope.**

Sec. 32-200 Purpose.

This ordinance prescribes the minimum requirements for the accommodation of public and private Utilities within the City’s Rights-of-Way.

Sec 32-201 Definitions.

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

- a. **“Broadband Services”** means a wired or wireless terrestrial service that consists of the capability to transmit at a rate of not less than 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction to end users and in combination with such service provides:
 - i. Access to the internet; or
 - ii. Computer processing, information storage, or protocol conversion.
- b. **“City”** means the City of Elberton, Georgia.
- c. **“City Manager”** means the City Manager of the City of Elberton, Georgia, or his or her designee.
- d. **“Codified Ordinances”** means all applicable ordinances of the City of Elberton, Georgia.
- e. **“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.
- f. **“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.
- g. **“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.
- h. **“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.
- i. **“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 is available at all times to receive notice of, and immediately direct response to, Facilities’ related Emergencies or situations.
- j. **“FCC”** means the Federal Communications Commission or any successor thereto.
- k. **“Permit”** means an authorization which grants permission to conduct specific regulated activities on, in, over, under or within any 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 Ordinance.

- l. **“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. The term “rights-of-way” shall not include buildings, parks, bridges, rivers, tunnels, viaducts, conduits or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law. The term “rights-of-way” shall not include private easements or public property, except as set forth in this definition or to the extent the use or occupation of public property is specifically granted in a written approval of registration.
- m. **“Service(s)”** means the offering of any service by a Utility for a fee or rate 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.
- n. **“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.
- o. **“Street or Streets”** means the surface of, as well as the spaces above and below, any and all the streets, alleys, avenues, roads, bridges, and tunnels of the City within the geographic 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.
- p. **“Utility or Utilities”** means all privately, publicly, or cooperatively owned systems for producing, transmitting, or distributing communication, broadband services, 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.

Sec. 32-202 Authority.

Pursuant to O.C.G.A. §32-4-92(a)(10) the City may grant permits and establish reasonable regulations for the installation, Construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any Utility in, on, along, over, or under any part of its municipal street system and of a county road system lying within its municipal limits. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public Rights of Way.

Sec. 32-203 Scope.

The provisions of this ordinance shall apply to all Utilities and Facilities occupying the Rights of Way as provided herein.

DIVISION 2.

Construction Permits Required.

Sec. 32-204 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 Streets of the City without a Utility Permit in accordance with the terms of this Ordinance.

Sec. 32-205 Permit Procedure.

Utility Permits shall be obtained from the City Clerk or such other person as the Mayor may designate. The written application shall include the following:

- a. The name and physical address of the Utility;
- b. 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;
- c. The name and physical address of the person or firm who is to do such work;
- d. The name, street address, email address, if applicable, and telephone and facsimile numbers of one (1) or more Facilities Representative(s).
- e. The projected dates for the work to be started and finished;
- f. 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 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;
- g. 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
- h. 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.

Sec. 32-206 Permit Fees.

Fees shall be determined by the City, subject to the approval by resolution of the City Council.

Sec. 32-207 Issuance of Permit.

If the City Manager determines the applicant has satisfied the following requirements, the City Manager (or his designee) may issue a Permit:

- a. Whether issuing of the approval will be consistent with this Ordinance; and
- b. 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
- c. 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.

Sec. 32-208 Emergency Situations.

- a. Each Utility shall, as soon as reasonably practicable, notify the City 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 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.

Sec. 32-209 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 Manager may give written notice of default to a Utility if it is determined that a Utility has:
 - (i) Violated any provision or requirement of the issuance or acceptance of a Permit application or any law of the City, state, or federal government;
 - (ii) Attempted to evade any provision or requirement of this Ordinance;
 - (iii) Practiced any fraud or deceit upon the City; or

- (iv) Made a material misrepresentation or omission of fact in its Permit application.

Sec. 32-210 Cancellation for Cause.

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

- a. 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.
- b. If the Utility fails to cure within fifteen (15) calendar days, the City may declare the Permit terminated.

Sec. 32-211 Expiration of Permit.

If work has not commenced within six (6) months of the date of issuance, the Permit will automatically expire.

Sec. 32-212 Insurance and Bonding Requirements

1. Any person seeking to obtain a right of way license shall provide proof of insurance or self-insurance to the City Manager (or his designee) of the City. Such insurance shall cover all work done by such person upon, under, along, and over the public roads and highways and rights of way located within the municipality and shall be maintained during all periods such work is being done.
2. If deemed necessary, the City may require any person seeking to obtain a right of way license to provide a surety bond before issuance of the license. Such bond shall cover all work done by such person upon, under, along, and over the public roads and highways and rights of way located within the municipality and shall be maintained during all periods such work is being done.
3. In situations where the city requires the person to provide a surety bond, the person shall deposit with the City Manager a surety bond in an amount to be set by the City to be sufficient to ensure satisfactory completion of the work from a surety company authorized to do business in Georgia and fulfillment of the warranty provided for herein and in a form approved by the city attorney. Said bond shall guarantee completion to the satisfaction of the city of all excavation and street restoration work required by this chapter and by the conditions of the license within the time limits set on the license. Said bond shall further guarantee that all excavation and street restoration work shall be free from settling and defects in workmanship or materials for a period of two years after the date said work is completed and accepted by the City. The bond shall be conditioned to protect and save harmless the City and the City Council from all claims and damages for cleaning or repairing any damage by the person and will be used to reimburse the City for any cost incurred to clean or repair city roads or rights of way, to re-ditch or repair existing ditch structure or for other damage caused as a result of the actions of the person after the issuance of the right of way license.

4. In instances where the City has required a surety bond under paragraph (a) of this section in an amount greater than the amount determined by the City the person may opt to secure their right of way license by providing an irrevocable bank letter of credit attesting to solvency to the City in the amount to be set by the City.
5. Such bond or irrevocable letter of credit shall protect the City against any damage caused by such person or firm, tendering the surety bond or letter of credit, or any agent, employee or contractor or said person or firm and will be used to reimburse the City for any cost incurred to clean or repair city roads or rights of way, to re-ditch or repair existing ditch structure or for other damage caused as a result of the actions of the person after the issuance of the right of way license. The person responsible for operations under the right of way license will be given notice of the damage and allowed 72 hours to restore the road and right of way to a safe and operable condition as determined by the City Manager. All repairs, material used and final releasing condition shall be approved and accepted by the City Manager.
7. The bond or letter of credit may be released by the municipal governing authority of the City upon notification of completion by the person or firm obtaining the right of way license and only upon final inspection of the sites and all affected right of ways and city roads. The bond or letter of credit may be retained against future or continuing operations by the person in the City.
8. A surety bond shall be issued by a surety acceptable to the City, and shall contain the following endorsement:
"This bond may not be canceled or allowed to lapse until thirty (30) days after receipt by the City, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
9. The municipal governing authority may require verification of continuing coverage as needed.

DIVISION 3.

Required Minimum Standards.

Sec. 32-213. Utility Accommodation Policy and Standards Manual.

The Georgia Department of Transportation ("GDOT") 2016 Utility Accommodation Policy and Standards Manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, promulgated by GDOT, as may be amended from time to time is hereby adopted by reference and incorporated in this Ordinance as if fully set forth herein, subject to the amendments and modification contained in this Ordinance. A copy of the manual shall be maintained at the offices of the City Clerk or his or her 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 municipal equivalents.

Sec. 32-214. Protection of Traffic and Roadway.

Unless specifically in the Permit, no Utility may occupy the 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 or otherwise cause issues related to life, health, or safety of a person, or of significant damage or loss of real or personal property .

Sec. 32-215. Grading.

If the grades or lines of any Street within the 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.

Sec. 32-216. 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.

Sec. 32-217. Notice of Intent to Excavate or Demolish.

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 One Call Center, beginning the next working day after such notice is provided, excluding hours during days other than working days.

DIVISION 4.

Restoration of Property.

Sec. 32-218. 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 twenty (20) calendar 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.

DIVISION 5.

Inspection.

Sec. 32-219. Inspection.

- 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. At any time, including the time of inspection, the City Manager (or his designee) 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 Ordinance or issue an order 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 City Manager (or his designee).

DIVISION 6.

Other Approvals, Permits and Agreements.

Sec. 32-220. 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 applicable 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 Section 2 (e).

DIVISION 7.

Penalties

Sec. 32-2221. Penalties

- a. Every Utility convicted of a violation of any provision of this Ordinance 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. This shall include the right to stop work which is in violation of this Ordinance, or other applicable provisions of the City's Code and state law.

- b. A Utility constructing within the Rights of Way without permission or a Permit is considered criminal trespassing. This covers not only buildings but also land, vehicles, and watercraft. Generally, unauthorized entry is considered criminal trespass, which is charged as a misdemeanor, punishable in accordance with applicable law.

DIVISION 8.

Aesthetic Standards.

Sec. 32-222. Aesthetic Standards.

- a. The City finds it is in the best interest of the City and its residents and businesses to establish aesthetic requirements and other specifications and reasonable conditions regarding placement of facilities in the Rights of Way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the City and to reasonably manage and protect the Rights of Way and its uses in the City. All standards in this section are based upon the written determinations of the City so long as such determinations are in compliance with federal and state laws, rules, and regulations.
- b. The objective of this section is to ensure use of the Rights of Way: (i) is consistent with the design, appearance and other features of nearby land uses; (ii) protects the integrity of historic, cultural and scenic resources; and (iii) does not harm residents' quality of life.
- c. This section applies to all requests to locate Facilities in the Rights of Way and ongoing use of the Rights of Way for such Facilities.
- d. Placement or modification of Facilities in the Right of Way shall comply with this section at the time the Permit for installation or modification is approved and as amended from time to time. Permittees are required to comply with City Code and applicable law and regulations.

Sec. 32-223. Facilities Standards.

- a. Facilities must be compatible in size, mass, and color to similar Facilities in the same zoning area, with a goal of minimizing the physical and visual impact on the area.
- b. Facilities in the residential/historical/architecturally significant areas¹ shall be visually and architecturally integrated with the residential/ historical/ architecturally significant areas² and shall not interfere with prominent vistas or significant public view corridors.
- c. Facilities must be located in alignment with existing trees and/or facilities.
- d. Facilities must maintain the integrity and character of the neighborhoods and corridors in which the facilities are located.

Sec. 32-224. Undergrounding. Facilities shall be installed underground so long as placement underground will not materially impact the provision of service. Any individual requesting to locate Facilities above ground has the burden to demonstrate by clear and convincing evidence that undergrounding will effectively prohibit the provision of the service in question.

- a. **Historic District.** Facilities installed in the historic district of the City shall conform to the provisions of the Historic Preservation Commission.
- b. **Camouflaging.** Facilities must be designed using camouflaging techniques that make them as unobtrusive as possible if:
 - i. It is not possible or desirable to match the design and color of Facilities with the similar facilities in the same zoning area, as required under Section 8 (a) 1; or
 - ii. Existing facilities in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the City.
- c. **Concealment.** Facilities shall incorporate specific concealment elements to minimize visual impacts.
- d. **Installation and Modification Standards.** Installation of new Facilities in, on, along, over, or under the Rights of Way or modification of existing facilities in, on, along, over, or under the Rights of Way shall:
 - i. Minimize risks to public safety;
 - ii. Ensure that placement of facilities on existing structures is within the tolerance of those structures;
 - iii. Ensure that installations and modifications are subject to periodic review to minimize the intrusion on the Right of Way;
 - iv. Ensure that the City bears no risk or liability as a result of the installations or modifications; and
 - v. Ensure that use of the Rights of Way does not inconvenience the public, interfere with the primary uses of the Rights of Way, or hinder the ability of the City or other government entities to improve, modify, relocate, abandon, or vacate the Right of Way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of Facilities in the Right of Way.
- e. **Plans for Use.** No Facilities shall be placed in, on, along, over, or under the public Rights of Way unless: (i) there are immediate plans to use the proposed Facility; or (ii) there is a contract with another party that has immediate plans to use the proposed Facility.
- f. **Contact Information.** Every Facility placed in the Rights of Way shall at all times display signage that accurately identifies the Facility owner and provides the Facility owner's unique site number, and also provides a local or toll-free telephone number to contact the Facility owner's operations center.

DIVISION 9.

Fiber Installations Fee and Broadband Service Compensation.

Sec. 32-225. Permits for fiber installations.

In accordance with O.C.G.A. § 46-5-1(b)(19)(B) there will be a one hundred dollars (\$100) Permit fee for any new Permit issued for fiber installations.

Sec. 32-226. Compensation for Broadband Services.

In accordance with O.C.G.A. § 46-5-1(b)(19)(A), any telephone companies that provide Broadband Services to any location within the geographic limits of the City, payment at the rate of five cents (5¢) per linear foot annually shall be considered due compensation, and for telephone companies that do not provide any Broadband Services to any location within the geographic limits of the City, payment at the rate of nineteen cents (19¢) per linear foot annually shall be considered the payment of due compensation.

DIVISION 10.

Other Provisions.

Sec. 32-227. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance 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.

Sec. 32-228. Reservation of Regulatory and Police Powers.

The City by issuing a Permit under this Ordinance, 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, or the City Charter, or under the provisions of the any 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. All Utilities shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities.

Sec. 32-229. Compliance.

No person shall be relieved of its obligation to comply with any of the provisions of this Ordinance by reason of any failure of City to enforce compliance.

Sec. 32-230. Appeal of Administrative Decisions.

All appeals provided for by this Ordinance and any notification to the City required by this Ordinance shall be in writing and sent via certified mail to the City Clerk as specified in this Ordinance.

Sec. 32-231. Ordinance Headings.

Ordinance headings are for convenience only and shall not be used to interpret any portion of this Ordinance

Sec. 32-232. Repealer.

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

Sec. 32-233. Effective Date.

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