



DATE: August 29, 2016  
TO: City Council  
FROM: Planning Director *KA*  
SUBJECT: ~~Zoning Policy Update | Food Trucks~~ *Municipal Code*  
*Amendment - Utility Row Encroachment Ordinance*

## STAFF RECOMMENDATION

**Adopt the Utility Right-of-Way Encroachment Ordinance upon coordination with City Attorney.**

## ISSUE

The City desires to establish reasonable nondiscriminatory regulations for the installation construction, maintenance, renewal, removal and relocations of utility facilities.

## DISCUSSION

- Planning staff adapted the City of Lawrenceville's ordinance for our use.
- As presented it provides for procedures of registration, notification, conditions of street occupancy, restoration of property, discontinuance of unused facilities, termination of registration and unauthorized use public rights of way.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO CREATE A NEW ARTICLE OF CHAPTER 74 OF THE CODE OF THE CITY OF SUGAR HILL, GEORGIA TO BE KNOWN AND DESIGNATED AS “UTILITY RIGHT-OF-WAY ENCROACHMENT”, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF RIGHT-OF-WAY PERMITS AND FOR OTHER PURPOSES**

**WHEREAS**, pursuant to O.C.G.A. § 36-76-1 *et seq.* known as the “Consumer Choice for Television Act” of 2007, the City of Sugar Hill, Georgia (hereinafter referred to as 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 the authority of O.C.G.A. § 32-6-174;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City of Sugar Hill, Georgia, and it is hereby ordained by authority of same, as follows:

**SECTION 1.** The Code of the City of Sugar Hill, Georgia is hereby amended at Part II, Chapter 12, Business and Business Regulation, Article II, Business Regulations, Division 19, Telecommunication Companies by repealing Sections 12-646 through 12-648 in their entirety and designating said Code Sections as “RESERVED”.

**SECTION 2.** The Code of the City of Sugar Hill, Georgia is hereby amended by adding a new Article V to Chapter 74, entitled “Utility Right-of-Way Encroachment”, as follows:

**ARTICLE V. – UTILITY RIGHT-OF-WAY ENCROACHMENT**

**Sec. 74-162. – Declaration of Findings and Purpose, Scope, Definitions.**

- (a) Intent and Purpose. The City of Sugar Hill (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 IX, Section II, Paragraphs 2 and 3 of the Georgia Constitution, O.C.G.A. § 36-34-2 and O.C.G.A. § 36-35-3, has adopted this ordinance for the purpose of regulating public and private entities which use the City

Rights-of-Way.

(b) Scope. The provisions of this Chapter shall apply to all Utilities and Facilities occupying the Rights-of-Way as provided herein. Where a franchise agreement, pole attachment agreement, or other agreement for the use of the City's Rights-of-Way has been entered into with the City, the provisions of such agreement shall control if any such provisions are in conflict with this Ordinance.

(c) 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 Sugar Hill, Georgia;
2. *City Clerk* means the City Clerk of the City of Sugar Hill, Georgia, or his or her designee;
3. *City Engineer* means the City Engineer of the City of Sugar Hill, Georgia, or his or her designee;
4. *Codified Ordinances* means the codified ordinances of the City of Sugar Hill, Georgia;
5. *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;
6. *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;
7. *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;
8. *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;
9. *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 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;

10. *FCC* means the Federal Communications Commission or any successor thereto;
11. *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;
12. *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;
13. *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;
14. *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;
15. *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;
16. *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;
17. *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;

18. *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.

**Sec. 74-163. – Utility Registration.**

- (a) Administration. The City Clerk or his or her designee shall be the City official responsible for the administration of this Section.
- (b) Registration Required.
1. 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 City Clerk within ninety (90) days of the effective date of this Ordinance.
  2. Following the effective date of this Ordinance from which this Section is derived, each Utility who seeks to have Facilities located in the Rights-of-Way under the control of the City, unless specifically exempted by state or federal law or this Code, shall file a Registration Statement with the City Clerk.
- (c) Registration Procedure. The Registration information provided to the City shall be on a form approved by the City Clerk 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 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 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. All required information pursuant to O.C.G.A. § 46-5-1(b) for those Utilities which are considered a “telephone company” under O.C.G.A. § 46-5-1 and seeking to install lines and similar facilities with the City’s Rights-of-Way.
- (d) Incomplete Registration. If a Registration is incomplete, the City Clerk 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 Clerk shall so notify the Utility in writing.
- (e) 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.
- (f) 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.

**Sec. 74-164. – Construction Notification.**

- (a) Notification 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 first providing written notification to the Office of the City Engineer in accordance with the terms of this Section.
- (b) Notification Procedure. Written notification of construction shall be made to the Office of the City Engineer on a form approved by the City Engineer and 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. The estimated cost of the project;
7. 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;

(c) Emergency Situations. 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.

(d) Locate Requests Required. 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 excavating with mechanized equipment 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 or by calling 8-1-1, beginning the next business day after such notice is provided, excluding hours during days other than business days.

#### **Sec. 74-165. – Conditions of Street Occupancy.**

The failure to comply with any of the terms and conditions set forth in this Section may result in the revocation of registration and removal of Facilities from the Rights-of-Way.

(a) 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 City Engineer 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 Sugar Hill municipal equivalents

- (b) Protection of Traffic and Roadway. 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.
- (c) Grading. If the grades or lines of any street within the City Right-of-Way are changed at any time by the City 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 City and the Utility shall pay to the City the costs incurred in connection with such breaking through, removal, alteration, or relocation.
- (d) 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. 74-166. – Restoration of Property.**

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.

**Sec. 74-167. – Discontinuance of Operations, Abandoned and Unused Facilities.**

- (a) A Utility who has discontinued or is discontinuing operation of any Facilities in the City shall:



1. Provide information satisfactory to the City that the Utility's obligations for its Facilities in the Rights-of-Way under this Article and any other provision in the codified ordinances or other laws have been lawfully assumed by another Utility;
2. Submit a written proposal to re-use its Facilities;
3. Submit a written proposal for abandonment of Facilities which must be approved by the City Engineer;
4. Remove its entire Facilities within a reasonable amount of time and in a manner acceptable to the City; or
5. Submit to the City, in good faith and within a reasonable amount of time, a proposal for transferring ownership of its Facilities to the City. If a Utility proceeds to transfer ownership to the City, the City may, at its option do one (1) or more of the following:
  - a. Purchase the Facilities;
  - b. Accept donation of some or all Facilities; or
  - c. Require the Utility to post a bond in an amount sufficient to reimburse the City for its reasonably anticipated costs to be incurred in removing the Facilities.

(b) Facilities of a Utility who fails to comply with the above provision shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. 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 at law or in equity.

**Sec. 74-168. – Termination of Registration.**

- (a) The Registration Statement shall remain in place for one (1) year and renew each subsequent year automatically unless the Utility is in default. The City shall 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 registration application or any law of the City, state, or federal government;
  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 of fact in its application for registration.

(b) 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 the City may exercise any remedies or rights it has at law or in equity to terminate the approval of registration. If the City Engineer decides there is cause or reason to terminate, the following procedure shall be followed:

1. The City shall serve the Utility with a written notice of the reason or cause for proposed termination and shall allow the 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 registration terminated.

**Sec. 74-169. – Unauthorized Use of Public Rights-of-Way.**

- (a) No Utility shall use the Rights-of-Way to operate any facilities that have not been authorized by the City in accordance with the terms of this Article.
- (b) No Utility shall place or have placed in any facilities in, on, above, within, over, below, under, or through the Rights-of-Way, unless allowed under this Article.
- (c) Each and every unauthorized use shall be deemed to be a violation of this Article and a distinct and separate offense. Each and every day any violation of this Article continues shall constitute a distinct and separate offense.
- (d) No Utility shall fail to comply with the provisions of this Article. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of this Article continues shall constitute a distinct and separate offense.
- (e) 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.

**Sec. 74-170. – Other Provisions.**

- (a) 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.
- (b) 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.

- (c) 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.
- (d) Appeal of Administrative Decisions. All appeals provided for by this Article and any notification to the City required by this Chapter shall be in writing and sent via certified mail to the City Engineer or City Clerk as specified in this Chapter.
- (e) Chapter Headings. Chapter headings are for convenience only and shall not be used to interpret any portion of this Chapter

**SECTION 3.** Except as provided otherwise herein, all ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**SECTION 4.** This ordinance shall be codified in a manner consistent with the laws of the State of Georgia.

**SECTION 5.** This ordinance shall become effective immediately upon its adoption by the Mayor and Council of the City of Sugar Hill, Georgia.

SO ORDAINED, this \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Steve Edwards, Mayor

Attest:

\_\_\_\_\_  
Jane Whittington, City Clerk