

DATE: August 27, 2019
TO: Mayor & City Council
FROM: Planning Director *VA*
SUBJECT: Updated Right of Way and 5G Regulations



SUGGESTED ACTION

Adopt municipal code amendments incorporating provisions regulating utility encroachments on city owned right-of-way as well as specific regulations for small wireless facilities.

DISCUSSION

- New legislation will go into effect on October 1st which will impact the city's regulation of small wireless facilities.
- Staff has prepared two draft ordinances in response to the new law which were adapted from the Georgia Municipal Association's model ordinances:
 - (i) an amendment which incorporates aesthetic regulations for utility encroachments and
 - (ii) an amendment which creates a new article dealing specifically with small wireless facilities

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 relocation 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; and

WHEREAS, 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 public 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 public rights of way and its uses in the City; and

WHEREAS, the City desires to ensure use of the public 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.

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:

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

ARTICLE VII. – 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; all requests to locate facilities in the public rights of way and ongoing use of the public rights of way for such facilities as provided herein. Placement or modification of facilities in the public right of way shall comply with this Article at the time of registration is accepted and as amended from time to time. 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. *Antenna* means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
 2. *City* means the City of Sugar Hill, Georgia;
 3. *City Manager* means the City Manager 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. *Collocate or Collocation* means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure;
 6. *Consolidated application* means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities;

7. *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;
8. *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;
9. *Decorative pole* means an authority pole that is specially designed and placed for aesthetic purposes;
10. *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;
11. *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;
12. *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;
13. *FCC* means the Federal Communications Commission or any successor thereto;
14. *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;
15. *Pole* means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure;
16. *Replace, replacement or replacing* means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7)

as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility;

17. *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;
18. *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;
19. *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;
20. *Small wireless facility* means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna;
21. *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;

22. *Support structure* means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole;
23. *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;
24. *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;
25. *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;
26. *Wireless Infrastructure Provider* means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider;
27. *Wireless Provider* means a wireless infrastructure provider or a wireless services provider;
28. *Wireless Services* means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile;
29. *Wireless Services Provider* means a person that provides wireless services.

30. *Wireline Backhaul Facility* means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

Sec. 74-163. – Utility Registration.

- (a) Administration. The City Manager 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 Manager 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 Manager.

- (c) Registration Procedure. The Registration information provided to the City shall be on a form approved by the City Manager 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 Manager 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 Manager 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 Manager in accordance with the terms of this Section.
- (b) Notification Procedure. Written notification of construction shall be made to the Office of the City Manager on a form approved by the City Manager 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 Manager 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 Manager;

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 Manager 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. – 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 shall be visually and architecturally integrated with their surroundings 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. 74-171. – Undergrounding.

Except as provided in Section 74-171 (a) and Section 74-171 (b), facilities shall be installed underground in the Town Center Overlay District and Central Business District so long as placement underground will not materially impact the provision of service. Any individual requesting to locate facilities above ground in the Town Center Overlay District and Central Business District has the burden to demonstrate by clear and convincing evidence that undergrounding will effectively prohibit the provision of the service in question.

- (a) Light poles and small wireless facilities collocated thereon may be located above ground in areas of the City where facilities are primarily located underground.
- (b) The City may: (i) allow collocated small wireless facilities placed aboveground

prior to the effective date of this ordinance and subject to any applicable pole attachment agreement to remain above ground; or (ii) allow the wireless provider to replace the pole associated with previously collocated small wireless facilities at the same location or propose an alternate location within 50 feet of the prior location, which the wireless provider shall use unless such alternate location imposes technical limits or significant additional costs.

Sec. 74-172. – Camouflaging.

Facilities must be designed using camouflaging techniques that make them as unobtrusive as possible if:

- (a) 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 74-170 (a); or
- (b) Existing facilities in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the City.

Sec. 74-173. – Installation and Modification Standards.

Installation of new facilities in, on, along, over, or under the public rights of way or modification of existing facilities in, on, along, over, or under the public rights of way shall:

- (a) Minimize risks to public safety;
- (b) Ensure that placement of facilities on existing structures is within the tolerance of those structures;
- (c) Ensure that installations and modifications are subject to periodic review to minimize the intrusion on the right of way;
- (d) Ensure that the City bears no risk or liability as a result of the installations or modifications; and
- (e) Ensure that use of the public rights of way does not inconvenience the public, interfere with the primary uses of the public 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.

Sec. 74-174. – 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.

Sec. 74-175. – Contact information.

Every facility placed in the public 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.

Sec. 74-176. – Other Provisions.

- (a) Severability. If any section, subsection, sentence, clause, phrase, or portion of this Article 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 Article, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Georgia and the City Charter, and under the provisions of the City'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 Manager as specified in this Article.
- (e) Section Headings. Section 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.

IT IS SO ORDAINED, this ____ day of _____, 2019.

Those voting in favor:

Those voting in opposition

Mayor Pro Tem, Susie Walker

Mayor Pro Tem, Susie Walker

Council Member Brandon Hembree

Council Member Brandon Hembree

Council Member Marc Cohen

Council Member Marc Cohen

Council Member Curtis Northrup

Council Member Curtis Northrup

Council Member Taylor Anderson

Council Member Taylor Anderson

ATTEST:

City Clerk

Submitted to Mayor: ____ / ____ / ____

Approved by Mayor, this _____ day of _____ 2019.

Steve Edwards, Mayor

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 “WIRELESS FACILITIES AND ANTENNAS”

WHEREAS, O.C.G.A. § 32-4-92(a)(10) authorizes the City of Sugar Hill, Georgia (the “City”) to 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 in, on, along, over, or under the public roads of the City. Further, 47 U.S.C. § 253(c) provides that the City has authority to manage its public rights of way. Finally, the Georgia Streamlining Wireless Facilities and Antennas Act., O.C.G.A. Title 36, Chapter 66C (the “SWFAA”), addresses the placement of small wireless facilities in the public rights of way of the City; and

WHEREAS, the City desires to establish reasonable nondiscriminatory regulations for the installation construction, maintenance, renewal, removal and relocation 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; and

WHEREAS, 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 public 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 public rights of way and its uses in the City; and

WHEREAS, the City desires to (i) implement the SWFAA and (ii) ensure use of the public 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.

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:

The Code of the City of Sugar Hill, Georgia is hereby amended by adding a new Article VIII to Chapter 74, entitled “Wireless Facilities and Antennas”, as follows:

ARTICLE VIII. – WIRELESS FACILITIES AND ANTENNAS

Sec. 74-180. – 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; all requests to locate facilities in the public rights of way and ongoing use of the public rights of way for such facilities as provided herein. Placement or modification of facilities in the public right of way shall comply with this Article at the time of registration is accepted and as amended from time to time. 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.

Unless defined below, terms used in this Ordinance shall have the meanings given them in O.C.G.A. § 36-66C-2. In the event that any federal or state law containing definitions used in this ordinance is amended, the definition in the referenced section, as amended, shall control.

[Alternative Text for 0]² As used in this Ordinance, the following terms have the following meanings:

“Antenna” means: (i) communications equipment that transmits, receives, or transmits and receives electromagnetic radio frequency signals used in the provision of wireless services or other wireless communications; or (ii) Communications equipment similar to equipment described in part (i) used for the transmission, reception, or transmission and reception of surface waves. Such term

² These definitions mirror the SWFAA. Incorporating them directly into the Aesthetics standards means Cities and Counties will need to amend their codes / ordinances if the legislature changes SWFAA definitions. If Cities / Counties adopt the alternative text, remember to monitor the SWFAA and incorporate changes into your codes / ordinances.

shall not include television broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

“Applicable Codes” means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the State of Georgia or the City or are otherwise applicable in the City.

“Applicant” means any person that submits an application.

“Application” means a written request submitted by an applicant to the City for a permit to: (i) collocate a small wireless facility in a right of way; or (ii) install, modify, or replace a pole or decorative pole in a right of way on which a small wireless facility is or will be located.

“Authority Pole” means a pole owned, managed, or operated by or on behalf of the City. Such term shall not include poles, support structures, electric transmission structures, or equipment of any type owned by an electric supplier.

“Collocate” or “Collocation” means to install, mount, modify, or replace a small wireless facility on or adjacent to a pole, decorative pole, or support structure.

“Communications Facility” means the set of equipment and network components, including wires and cables and associated equipment and network components, used by a communications service provider to provide communications services.

“Communications Service Provider” means a provider of communications services.

“Communications Services” means cable service as defined in 47 U.S.C. § 522(6); telecommunications service as defined in 47 U.S.C. § 153(53); information service as defined in 47 U.S.C. Section 153(24), as each such term existed on January 1, 2019; or wireless services.

“Consolidated Application” means an application for the collocation of multiple small wireless facilities on existing poles or support structures or for the installation, modification, or replacement of multiple poles and the collocation of associated small wireless facilities.

“Decorative Pole” means an authority pole that is specially designed and placed for aesthetic purposes.

“Electric Supplier” means any electric light and power company subject to regulation by the Georgia Public Service Commission, any electric membership corporation furnishing retail service in this state, and any municipality which furnishes such service within this state.

“Eligible Facilities Request” means an eligible facilities request as set forth in 47 C.F.R. § 1.40001(b)(3), as it existed on January 1, 2019.

“FCC” means the Federal Communications Commission of the United States.

“Fee” means a one-time, nonrecurring charge based on time and expense.

“Historic District” means: (i) any district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the secretary of the interior of the United States in accordance with Section VI.D.1.a.i-v of the Nationwide Programmatic Agreement codified by 47 C.F.R. Part 1; (ii) any area designated as a historic district under Article 2 of Chapter 10 of Title 44, the Georgia Historic Preservation Act; or (iii) any area designated as a historic district or property by law prior to April 26, 2019.

“Law” means and includes any and all federal, state, or local laws, statutes, common laws, codes, rules, regulations, orders, or ordinances.

“Micro Wireless Facility” means a small wireless facility not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height that has an exterior antenna, if any, no longer than 11 inches.

“Permit” means a written authorization, in electronic or hard copy format, required to be issued by the City to initiate, continue, or complete the collocation of a small wireless facility or the installation, modification, or replacement of a pole or decorative pole upon which a small wireless facility is collocated.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including an authority.

“Pole” means a vertical pole such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal, or other material that is lawfully located or to be located within a right of way, including without limitation a replacement pole and an authority pole. Such term shall not include a support structure, decorative pole, or electric transmission structure.

“Rate” means a recurring charge.

“Reconditioning Work” means the activities associated with substantially painting, reconditioning, improving, or repairing authority poles.

“Replace,” “Replacement” or “Replacing” means to replace a pole or decorative pole with a new pole or a new decorative pole, similar in design, size, and scale to the existing pole or decorative pole consistent with 47 C.F.R. § 1.40001(b)(7) as it existed on January 1, 2019, in order to address limitations of, or change requirements applicable to, the existing pole to structurally support the collocation of a small wireless facility.

“Replacement Work” means the activities associated with replacing an authority pole.

“Right of Way” means, generally, property or any interest therein, whether or not in the form of a strip, which is acquired for or devoted to a public road; provided, however, that such term shall apply only to property or an interest therein that is under the ownership or control of the City and shall not include property or any interest therein acquired for or devoted to an interstate highway or the public rights, structures, sidewalks, facilities, and appurtenances of buildings for public equipment and personnel used for or engaged in administration, construction, or maintenance of public roads or research pertaining thereto or scenic easements and easements of light, air, view and access.

“Small Wireless Facility” means radio transceivers; surface wave couplers; antennas; coaxial, fiber optic, or other cabling; power supply; backup batteries; and comparable and associated equipment, regardless of technological configuration, at a fixed location or fixed locations that enable communication or surface wave communication between user equipment and a communications network and that meet both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume, measured based upon the exterior dimensions of height by width by depth of any enclosure that may be used. The following types of associated ancillary equipment are not included in the calculation of the volume of all other wireless equipment associated with any such facility: electric meters; concealment elements; telecommunications demarcation boxes; grounding equipment; power transfer switches; cut-off switches; and vertical cable runs for connection of power and other services. Such term shall not include a pole, decorative pole, or support structure on, under, or within which the equipment is located or collocated or to which the equipment is attached and shall not include any wireline backhaul facilities or coaxial, fiber optic, or other cabling that is between small wireless facilities, poles, decorative poles, or support structures or that is not otherwise immediately adjacent to or directly associated with a particular antenna.

“State” means the State of Georgia.

“Support Structure” means a building, billboard, water tank, or any other structure to which a small wireless facility is or may be attached. Such term shall not include a decorative pole, electric transmission structure, or pole.

“ Wireless Infrastructure Provider” means any person, including a person authorized to provide telecommunications services in this state, that builds, installs, or operates small wireless facilities, poles, decorative poles, or support structures on which small wireless facilities are or are intended to be used for collocation but that is not a wireless services provider.

“Wireless Provider” means a wireless infrastructure provider or a wireless services provider.

“Wireless Services” means any services provided to the public using licensed or unlicensed spectrum, including the use of Wi-Fi, whether at a fixed location or mobile.

“Wireless Services Provider” means a person that provides wireless services.

“Wireline Backhaul Facility” means an aboveground or underground wireline facility used to transport communications data from a telecommunications demarcation box associated with small wireless facility to a network.

Sec. 74-181. – Permits.

(a) A permit is required to collocate a small wireless facility³ in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way. A permit is not required to perform the activities described in O.C.G.A. § 36-66C-6(e) or (f).

(b) Any person seeking to collocate a small wireless facility in the public right of way or to install, modify, or replace a pole or a decorative pole in the public right of way shall submit an application to Planning and Development Department for a permit. Applications are available from the Planning and Development Department. Any material change to information contained in an application shall be submitted in writing to the Planning and Development Department within 30 days after the events necessitating the change.

(c) Each application for a permit to collocate a small wireless facility on an existing pole shall include a \$100 fee per small wireless facility.

(d) Each application for a permit to replace an existing pole with an associated small wireless facility shall include a \$250 fee per small wireless facility.

(e) Each application for a permit to install a new pole with an associated small wireless facility shall include a \$1,000 fee per pole.

(f) The Planning and Development Department shall review applications for permits according to the timelines and using the procedures identified in O.C.G.A. §§ 36-66C-7 and 36-66C-13.

(g) Applications for permits shall be approved except as follows:

1. In order to receive a permit to install a pole or replace a decorative pole, the applicant must have determined after diligent investigation that it cannot meet the service objectives of the permit by collocating on an existing pole or support

³ **NOTE** Under SWFAA, collocation can be on or adjacent to: (i) a pole or decorative pole or (ii) a support structure. By definition, poles and decorative poles are in the right of way. Support structures may be located outside of the right of way. Permitting of support structures is not part of this process. See O.C.G.A. § 36-66C-6(l).

structure on which: (i) the applicant has the right to collocate subject to reasonable terms and conditions; and (ii) such collocation would not impose technical limitations or significant additional costs. The applicant shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and shall provide a written summary of the basis for such determination.

2. The Planning and Development Department may deny an application for a permit upon any of the conditions identified in O.C.G.A. § 36-66C-7(j).
3. For applications for new poles in the public right of way in areas zoned for residential use, the Planning and Development Department may propose an alternate location in the public right of way within 100 feet of the location set forth in the application, and the wireless provider shall use the Planning and Development Department proposed alternate location unless the location imposes technical limits or significant additional costs. The wireless provider shall certify that it has made such a determination in good faith, based on the assessment of a licensed engineer, and it shall provide a written summary of the basis for such determination.

(h) A permit issued under this 0 shall authorize such person to occupy the public rights of way to: (i) collocate a small wireless facility on or adjacent to a pole or a support structure that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(3) or on or adjacent to a decorative pole in compliance with O.C.G.A. § 36-66C-12; and (ii) install, modify, or replace a pole or decorative pole for collocation of a small wireless facility that does not exceed the limitations set forth in O.C.G.A. § 36-66C-7(h)(1) and (h)(2).

(i) Upon the issuance of a permit under this ordinance and on each anniversary of such issuance, every person issued a permit shall submit to the City the maximum annual payments permitted under O.C.G.A. § 36-66C-5(a)(4) and (a)(5); provided, however, that if such person removes its small wireless facilities from the public rights of way pursuant to O.C.G.A. § 36-66C-5(e), then such person shall be responsible for the pro rata portion of the annual payment based on the number of days of occupation since the last annual payment. Upon making such pro rata payment and removal of the small wireless facilities, the person's annual payment obligations under this section shall cease as of the date of the actual removal.⁵ The maximum annual payments shall automatically increase on January 1 of each year beginning January 1, 2021, as provided under O.C.G.A. § 36-66C-5(b).

⁵ Note, if FCC Order regarding fees is overturned or modified, SWFAA provides fees are capped at what is "fair and reasonable." This provision may need to be revised if the FCC Order is overturned.

(j) Any person issued a permit shall pay the fees identified in O.C.G.A. § 36-66C-5(a)(6) and (a)(7), as applicable.

(k) The City may revoke a permit issued pursuant to this 0 if the wireless provider or its equipment placed in the public right of way under that permit subsequently is not in compliance with any provision of this Ordinance or the Georgia Streamlining Wireless Facilities and Antennas Act. Upon revocation, the City may proceed according to Section 1.1(l).

(l) If a wireless provider occupies the public rights of way without obtaining a permit required by this 0 or without complying with the SWFAA, then the City may, at the sole discretion of the City, restore the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the unpermitted collocation or installation and to charge the responsible wireless provider the reasonable, documented cost of the City in doing so, plus a penalty not to exceed \$1,000.00.⁶ The City may suspend the ability of the wireless provider to receive any new permits from the City under this 0 until the wireless provider has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City may not suspend such ability of any applicant that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.

(m) All accepted applications for permits shall be publicly available subject to the limitations identified in O.C.G.A. § 36-66C-6(c).

(n) An applicant may file a consolidated application related to multiple small wireless facilities, poles or decorative poles so long as such consolidated application meets the requirements of O.C.G.A. § 36-66C-13.

(o) Activities authorized under a permit shall be completed within the timelines provided in O.C.G.A. § 36-66C-7(k)(2).

(p) Issuance of a permit authorizes the applicant to: (i) undertake the collocation, installation, modification or replacement approved by the permit and (ii) operate and maintain the small wireless facilities and any associated pole covered by the permit for a period of _____⁷ years.

(q) Permits shall be renewed following the expiration of the term identified in Section 1.1(p) upon the terms and conditions identified in O.C.G.A. § 36-66C-7(k)(2)(B).

(r) If an application for a permit seeks to collocate small wireless facilities on authority poles in the public rights of way, then the City shall, within 60-days of receipt of the completed application: (i) provide a good faith estimate for any make-ready work necessary to enable the authority pole to support the

⁶ Penalty authorized under O.C.G.A. § 36-66C-6(b).

⁷ Note, must be at least 10 years under O.C.G.A. § 36-66C-7(k)(2)(B).

proposed facility; or (ii) notify the wireless provider that the wireless provider will be required to perform the make-ready work. Any make-ready work performed by the City shall be completed pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(n).

Sec. 74-182. – Relocation; Reconditioning; Replacement; Abandonment.

- (a) A person may remove its small wireless facilities from the public rights of according to the procedures of O.C.G.A. § 36-66C-5(e).
- (b) In the event of a removal under (a), the right of way shall be, to the extent practicable in the reasonable judgment of the City, restored to its condition prior to the removal. If a person fails to return the right of way, to the extent practicable in the reasonable judgment of the City, to its condition prior to the removal within 90 days of the removal, the City may, at the sole discretion of the City, restore the right of way to such condition and charge the person the City's reasonable, documented cost of removal and restoration, plus a penalty not to exceed \$500.00.⁸ The City may suspend the ability of the person to receive any new permits under 0 until the person has paid the amount assessed for such restoration costs and the penalty assessed, if any; provided, however, that the City will not suspend such ability of any person that has deposited the amount in controversy in escrow pending an adjudication of the merits of the dispute by a court of competent jurisdiction.
- (c) If, in the reasonable exercise of police powers, the City determines: (i) a pole or support structure unreasonably interferes with the widening, repair, reconstruction, or relocation of a public road or highway, or (ii) relocation of poles, support structures, or small wireless facilities is required as a result of a public project, the wireless provider shall relocate such poles, support structures, or small wireless facilities pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(l). If the wireless provider fails to relocate a pole, support structure or small wireless facility or fails to provide a written good faith estimate of the time needed to relocate the pole, support structure or small wireless within the time period prescribed in O.C.G.A. § 36-66C-7(l), the City make take the actions authorized by O.C.G.A. § 36-66C-7(o), in addition to any other powers under applicable law.
- (d) The City shall recondition and replace authority poles consistent with the provisions of O.C.G.A. § 36-66C-7(m). Wireless providers shall accommodate and cooperate with reconditioning and replacement consistent with the provisions of O.C.G.A. § 36-66C-7(m).
- (e) A wireless provider must notify the City of its decision to abandon any small wireless facility, support structure or pole pursuant to and in accordance with the provisions of O.C.G.A. § 36-66C-7(p)(1). The wireless provider shall perform all acts and duties identified in O.C.G.A. § 36-66C-

⁸ Penalty authorized under O.C.G.A. § 36-66C-5(e).

7(p) regarding abandonment. The City may take all actions and exercise all powers authorized under O.C.G.A. § 36-66C-7(p) upon abandonment, in addition to any other powers under applicable law.

Sec. 74-183. – Standards.

Small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities may be placed in the public right of way as a permitted use: (i) upon a receipt of a permit under 0; (ii) subject to applicable codes; and (iii) so long as such small wireless facilities and new, modified, or replacement poles to be used for collocation of small wireless facilities comply with the appropriate provisions of O.C.G.A. § 36-66C-7(h).

- (a) **OPTION**⁹ New, modified, or replacement poles installed in the right of way in a historic district and in an area zoned primarily for residential use shall not exceed 50 feet above ground level.
- (b) **OPTION**¹⁰ Each new, modified, or replacement pole installed in the right of way that is not in a historic district or in an area zoned primarily for residential use shall not exceed the greater of:
 - (i) Fifty feet above ground level; or
 - (ii) Ten feet greater in height above ground level than the tallest existing pole in the same public right of way in place as of January 1, 2019, and located within 500 feet of the new proposed pole;
- (c) **OPTION**¹¹ New small wireless facilities in the public right of way and collocated on an existing pole or support structure shall not exceed more than ten feet above the existing pole or support structure.
- (d) **OPTION**¹² New small wireless facilities in the public right of way collocated on a new or replacement pole under (a) or (b) may not extend above the top of such poles.
- (e) **OPTION**¹³ A decorative pole should only be located where an existing pole can be removed and replaced, or at a new location where the City has identified that a streetlight is necessary.

⁹ Note, these track O.C.G.A. § 36-66C-7(h)(1)-(3) and can be included in the City or County wants these standards directly in its [Code / Ordinance]. Also, O.C.G.A. § 36-66C-7(h) only relates to permitted use and administrative approval. It is not clear whether there can be an absolute prohibition against larger equipment.

¹⁰ Note, these track O.C.G.A. § 36-66C-7(h)(1)-(3) and can be included in the City or County wants these standards directly in its [Code / Ordinance]. Also, O.C.G.A. § 36-66C-7(h) only relates to permitted use and administrative approval. It is not clear whether there can be an absolute prohibition against larger equipment.

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¹³ Note, this needs to be considered carefully as it relates to O.C.G.A. § 36-66B-6(3).

- (f) **OPTION** Unless it is determined that another design is less intrusive, or placement is required under applicable law, small wireless facilities shall be concealed as follows:
- (i) Antennas located at the top of poles and support structures shall be incorporated into the pole or support structure, or placed within shrouds of a size such that the antenna appears to be part of the pole or support structure;
 - (ii) Antennas placed elsewhere on a pole or support structure shall be integrated into the pole or support structure, or be designed and placed to minimize visual impacts.
 - (iii) Radio units or equipment cabinets holding radio units and mounted on a pole shall be placed as high as possible, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the pole on which they are placed.
 - (iv) Wiring and cabling shall be neat and concealed within or flush to the pole or support structure, ensuring concealment of these components to the greatest extent possible.
- (g) Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility within a historic district, and may place or replace a pole within a historic district, only upon satisfaction of the following: (i) issuance of a permit under 0 and (ii) compliance with applicable codes.
- (h) Notwithstanding any provision of this Ordinance to the contrary, an applicant may collocate a small wireless facility on a decorative pole, or may replace a decorative pole with a new decorative pole, in the event the existing decorative pole will not structurally support the attachment, only upon satisfaction of the following: (i) issuance of a permit under 0 and (ii) compliance with applicable codes.

IT IS SO ORDAINED, this ____ day of _____, 2019.

Those voting in favor:

Mayor Pro Tem, Susie Walker

Council Member Brandon Hembree

Council Member Marc Cohen

Council Member Curtis Northrup

Council Member Taylor Anderson

Those voting in opposition

Mayor Pro Tem, Susie Walker

Council Member Brandon Hembree

Council Member Marc Cohen

Council Member Curtis Northrup

Council Member Taylor Anderson

ATTEST:

City Clerk

Submitted to Mayor: ____/____/____

Approved by Mayor, this _____ day of _____ 2019.

Steve Edwards, Mayor