

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, 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, 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 antenna, 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, wireless 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 Utility Accommodation Policy and Standards Manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, 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~~ordinance. 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 installations or modifications; and 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 Article 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 Article 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 Article.

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