Chapter 16

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE I. IN GENERAL.

Section 16.1 Street Superintendent.

The office of street superintendent is hereby created. He shall have supervision of working the streets. He shall be an ex officio police officer of the city. He shall have care of and be responsible for all tools, material and other property used in keeping up the streets and bridges. He shall keep an account of all labor worked by him and shall be under the immediate supervision of the city clerk, and shall perform all other duties imposed upon him by the council. He is required to make a full monthly report to the council.

Section 16.2 Streets, Alleys and Ditches Declared Public Property.

All existing streets, alleys and ditches claimed and worked by the city are declared to be the property of the city and are public.

Section 16.3 No Liability and No Waiver of Sovereign Immunity.

The owner(s) of land abutting any street in the City shall be responsible for constructing, reconstructing, maintaining and repairing the sidewalk, curbs, driveways and parking strips abutting or immediately adjacent to said land, except as provided in Subsections B and C.

The owner(s) of any property, including any private driveway, which abuts any city street or any of the appurtenances thereof, including but not limited to any sidewalk, curb, curb0-cut, or drainage facility, shall be responsible for maintaining all such abutting real property in safe condition and good repair. Said property owner(s) shall b solely liable for any and all damages to any person who is injured or otherwise suffers damage of any nature resulting from the defective condition of any such abutting real property or by reason of the property owner's failure to keep such property in sage condition and good repair.

No provision contained herein shall be construed to constitute a waiver of the sovereign immunity granted to the City by the Georgia Constitution or any other immunity provided to the City of any of its council member, officers, employees, or agents by any applicable law.

Sections 16.4 - 16.5 Reserved.

ARTICLE II. STREET NUMBERS.

Section 16.6 Display of Street Numbers Required.

a. Every house, mobile home, apartment, business, or other building having a street number assigned to it under the system of numbering in the city shall display such number in a readily visible manner and in compliance with the requirements of this article. Mobile home parks and apartment complexes shall also be required to have each individual pad, lot number, or apartment displayed in a readily visible manner and in compliance with the requirements of this article. Said lot, pad, or apartment numbers shall be in sequence unless directional signs are provided for numbers not in sequence.

b. All new buildings and structures must be assigned a number address by Southwest Georgia Regional E-911 prior to or simultaneous with granting building permit, septic tank permit, or electrical permit.

Section 16.7 Method of Display.

a. *Residences.* Residential numbers shall be on an approved sign and post directly in front of the residence by the street or by the drive leading to the residence and be readily visible from the street by persons traveling along the street in each direction. Alternate locations may be acceptable for mobile home parks and apartment complexes if approved by the building official.

b. *Businesses or other buildings.* Numbers of businesses and other buildings shall be located on or above the door of the main entrance to the building provided the street number to the building would be readily visible from the street by persons traveling along the street in each direction. If the business or other building to be numbered is more than 50 feet from the curb, pavement edge, or edge of the travel way of the street in front of the property then the street number shall not be displayed on the building by the street or by the drive leading to the building and be readily visible from the street by persons traveling along the street in each direction.

Section 16.8 Size, Condition of Numbers.

Residential numbers shall be of a durable type and shall not be less than three inches and must be reflective. Business numbers shall be of a durable type and shall be a minimum of six inches in height and must be reflective. All such signs shall be of a color contrasting to the background so as to be clearly visible. Street numbers and signs to which they are affixed shall be maintained at all times in good condition.

Section 16.9 Duty of Owner, Violations.

The city will supply the numbers for all structures one time, thereafter the obligation of complying with the provisions of this section shall be upon the owner of the property. The property

owner shall have 30 days from the effective date of this article to comply with the provisions of same. If the provisions of this article shall be found to have been violated, notice shall be given to the owner of the property, or his agent, specifying the manner in which this article is being violated and giving the owner 30 days to bring the property into compliance. Each day a violation of this article continues after the expiration date of said 30-day period shall constitute a separate offense and shall be punishable as provided by this article.

Section 16.10 Responsibility for Enforcement.

The responsibility for making the inspection provided for in this article, and for the enforcement of the provisions hereof, shall rest upon the building official and the agents and employees of such department are hereby authorized to notify Early County Sheriff's Department to make cases and issue summonses for violations. However, all law enforcement agencies providing services in the city are authorized to write warnings to the property owner in violation of this article. Any such warnings issued shall be forwarded to the building official for appropriate action.

Section 16.11 Penalties.

Violators determined to be in violation of this article shall be subject to a fine of not less than $25.00 per violation and any other penalties, which may be imposed by law by the municipal court judge of the city.

Section 16.12 Standards for Naming of Streets.

a. A road shall not be given a name which duplicates the name of any other road in the city of county.

b. A road shall not be given a name which sounds like or approximates the name of any other road in the city or county.

c. The proposed name of any new toads will be verified with the planning and development services department database to avoid duplication before any assigning will be completed.

d. An official name shall be given to a private road and approved by the planning and development services department when the private road services five or more residences or the location and/or length of the private road is such that, for safety and emergency purposes, it is more appropriate to name the private road than to assign addresses from the main road.

e. A committee composed of the following officials or their representatives is hereby appointed to review, rationalize and recommend to the board of commissioners of the county and/or the city council of the city, as appropriate, changes in names of or new names for streets and other public and non-dedicated ways of the city and the county, so as to avoid duplications and/or

confusing similarities:

(1) The City Clerk;
(2) Early County Administrator;
(3) Chief of Blakely Fire Department;
(4) Sheriff of Early County;
(5) U. S. Postmaster of Blakely;
(6) Director of Planning and Development Services:
(7) Early County Tax Commissioner;
(8) Director of Early County Emergency Medical Services;
(9) Director of Blakely Public Works Department;
(10) Director of Early County Public Works Department;
(11) The 911 Communication Center manager.

Sections 16.13 - 16.15 Reserved.

ARTICLE III. PARADES

Section 16.16 Parades.

a. *Registration and permit.* Any person who wishes to organize, form, or conduct a parade as defined herein shall be required to register such parade with the Chief of Police at least 24 hours in advance of the event and to obtain a permit therefor.

b. *Definition.* For the purpose of this section, "parade" shall mean any march, ceremony, demonstration, exhibition, or procession of any kind upon any public street of the city.

c. *Application.* Application for a permit to conduct a parade, attached hereto as "Attachment A," shall be made to the Chief of Police in writing, shall be signed by the person responsible for the conduct of the parade, and shall contain the following information:

1. The date and time proposed for the parade;

2. The route of the proposed parade;

3. The number of vehicles, if any, and number of persons whose participation is anticipated in the proposed parade;

4. The name and address of the person or organization sponsoring or promoting the proposed parade; and

5. The name, address, and telephone number of the person making the application for a parade permit.

d. *Review of application.* The Chief of Police shall forward the application to the mayor who shall review the information set forth in the application; shall ascertain the extent of vehicular and pedestrian traffic to be anticipated at the time and place of and on the route of the proposed parade; shall determine the availability of police forces to escort the proposed parade and to direct traffic in conjunction with the proposed parade; and shall determine the light of these circumstances whether or not the proposed parade will unreasonably burden or interfere with the normal use of the streets or sidewalks of the city by the general public.

e. *Disposition.* In the event the mayor determines, in view of the circumstances set out in subsection (d), that the proposed parade will not unreasonable burden or interfere with the normal use of the streets or sidewalks of the city by the general public, the mayor shall grant the parade permit. In the event the mayor determines, in view of the circumstances set out in subsection (d), that the proposed parade will unreasonably burden or interfere with the normal use of the streets or sidewalks of the city by the general public, the mayor shall deny the request for a parade permit. The mayor shall note on the application the reasons for the denial of the permit and shall indicate such

changes in the time, place, and manner of the parade which would allow it to proceed without unreasonably burdening and interfering with the normal use of the streets or sidewalks of the city by the general public, the mayor shall deny the request for a parade permit. The mayor shall note on the application the reasons for the denial of the permit and shall indicate such changes in the time, place, and manner of the parade which would allow it to proceed without unreasonably burdening and interfering with the normal use of the streets or sidewalks of the city by the general public. In the event the changes in the time, place, and manner of the proposed parade are acceptable to the applicant, the permit shall be issued. The mayor shall cause the applicant to be notified of the disposition of the application as soon as possible.

f. *Judicial review.* In the event judicial review of the denial of an application for a parade permit is sought, the city waives trial by jury and waives all applicable time limits so that the matter may be presented to the judge of any court having jurisdiction for immediate decision.

g. *Exemption.* The provisions of this section shall not apply to any parade which is conducted under the supervision of a practicing mortician in conjunction with any funeral, nor shall it apply to any parade sponsored in whole or in part by the city.

Sections 16.17 - 16.20 Reserved.

ARTICLE IV. UTILITY ACCOMMODATION POLICY.

Division 1. Declaration of Findings and Purpose, Scope, Definitions.

Section 16.21 Intent and Purpose.

The City of Blakely, Georgia (the "City") is vitally concerned with the use, Construction within, and occupancy of all Rights of Way in the City as such Rights of Way are a valuable and limited resource which must be utilized to promote the public health, safety, welfare, economic development of the City and to protect public work infrastructure. Therefore, the City, under the authority of the Laws and Constitution of the State of Georgia, including but not limited to Article 9, Section 1, paragraph 1 of the Georgia Constitution, O.C.G.A. 36-34-2 and 32-4-92 has adopted this ordinance for the purpose of regulating public and private entities which use the City Rights of Way.

Section 16.22 Scope.

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

Section 16.23 Definitions.

For the purpose 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. Defined terms remain defined terms whether or not capitalized.

City means the City of Blakely, Georgia.

City Council means the legislative governing body of the City.

Codified Ordinances means the Codified Ordinances of the City of Blakely, Georgia.

Construct means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install wires, install conduit, install pipes, install transmission lines, install poles, install signs, or install 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.

Construction means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavation, obstruction, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs, or installing 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.

Director means the City Clerk of the City of Blakely, Georgia, or his or her designee.

Emergency means a condition that poses a clear and immediate danger to life, health, or safety, or of a significant loss of real or personal property.

Excavation means any work in the surface or subsurface of the public right-of-way, including, but not limited to opening the public right-of-way; installing, servicing, repairing or modifying and Facility in or under the surface or subsurface of the public right-of-way, and restoring the surface and subsurface of the public right-of-way.

Facility or Facilities means any tangible thing, including but not limited to a Utility's poles, wires, optical fibers, cables, electrical conductors, Conduits, Ducts, Innerducts, pipes, subways, manholes, fixtures, appliances, appurtenances and future technology authorized in a permit or written Service Agreement.

Facilities Representative(s) means the specifically identified agent(s)/employees(s) of a Utility who are authorized to direct field activities of that Utility and serve as official notice agent(s) for Facilities related information. Utility shall be required to make sure at least one (1) of its Facilities Representatives is available at all times to receive notice of, and immediately direct response to, Facilities related emergencies or situations.

FCC means the Federal Communications Commission or any successor thereto.

Registration 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 Service Agreement with the City or in a related provision of this Code of Ordinances.

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 of Constructing, operating, repairing or replacing Facilities. Rights of Way shall not include buildings, parks, bridges, river, tunnel, viaduct, conduit or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by law. Rights of Way shall not include private easements or public property, except to the extent the use or occupation of public property is specifically granted in a written approval of Registration.

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, which allows such Utility to operate or provide service within the geographic limits of the City.

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.

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 more than fifty percent (590%) cumulatively over the term of a written approval of Registration of such interests.

Underground Facilities means all lines, cables, conduits, pipes, posts, tanks, vaults, wires and any other Facilities which are located wholly or partially underneath Rights of Way.

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.

Utility or Utilities means any 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, servicer, contractor, sub-contractor or any agent thereof, of any above-described Utility or Utility Facility.

Working Day means any Monday, Tuesday, Wednesday, Thursday, or Friday excluding legal holidays observed by the City.

Division 2. Rights of Way Registration.

Section 16.24 Administration.

The City Clerk or his/her designee shall be the City official responsible for the administration of this Chapter except as otherwise provided herein.

Section 16.25 Rights of Way Occupancy Registration.

a. 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, federal law or this Code, shall file a Registration Statement with the Department within ninety (90) days of the effective date of this Ordinance.

b. Following the effective date of this Ordinance, each Utility who seeks to have Facilities located in any Rights of Way under this control of City, unless specifically exempted by state, federal law or this Code, shall file a notification of Construction with the Department.

Section 16.26 Registration Procedure.

The Registration information provided to the City shall be on a form approved by the City and include, but not be limited to:

a. The name, legal status (i.e. partnership, corporation, etc.) street address, email address if applicable, and telephone and facsimile numbers of the Utility filing the Permit Registration Statement (the "Registrant"). If the Registrant is not the owner of the facility to be installed, maintained or repaired in the Right of Way, the Registration shall include the name, street address, email address if applicable, and telephone can facsimile numbers of the owner.

b. 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) is 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.

c. A copy, if requested, of the utility's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements.

d. A copy, if requested, of the Service Agreement, if applicable or other legal instrument that authorized the utility to use or occupy the Right of Way for the purpose described in the Registration.

Section 16.27 Issuance of Written Acceptance of Registration.

a. If a Registration is incomplete, the City Clerk shall notify the Registrant and shall provide a reasonable period of time in which to complete the registration. If a Registration is complete, the City Clerk shall so notify the Utility in writing.

b. Acceptance of the Registration shall not convey the 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 the 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.

Division 3. Notification to City of Construction.

Section 16.28 Notification Required.

Written notification to the City Clerk from the utility is required prior to any of the following activities.

a. Before any Utility does any work to Construct, install, maintain, remove or relocate facilities on, along, over or under the Right of way in the City; or

b. Construction adjacent to the Rights of Way in the City that require tree trimming within the Rights of Way.

Section 16.29 Notification Procedure.

The written notification shall be submitted on a form provided by the City Clerk and shall specifically include:

a. The name and address of the utility;

b. The nature, extent and location of any work proposed to be done along with satisfactory plans as attachments showing in detail the location of the proposed Facility or operations as describe in the Permit application. The plans shall show the size or capacity of Facilities to be installed; their relationship to Street features such as right-of-way lines, pavement edge, structures, etc., horizontal and vertical clearance to critical elements of the roadway and any other information necessary to evaluate the impact on the Street and its operation;

c. The name and address of the person or firm who is to do such work;

d. The name, street address, email address if applicable and telephone and facsimile numbers of one (1) or more Facilities Representative(s);

e. The projected dates for the work to be started and finished; and

f. An indemnity bond or other acceptable security in an amount to be set by the City to

pay any damages to any part of the City road system or to any member of the public caused by work of the utility performed under authority of the permit issued.

Section 16.30 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 in excavating with mechanized excavating Facilities unless and until the utility planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the utility Protection Center, beginning the next business day after such notice is provided, excluding hours during days other than business days.

Division 4. Conditions of Street Occupancy.

Section 16.31 Failure to Comply.

Failure to comply with the terms and conditions set forth in this Article may result in revocation of Registration and removal of Facilities from the Rights of Way.

a. The 1988 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 Document), 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 Clerk 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 Blakely municipal equivalents.

b. Protection of Traffic and Roadway. In conformance with City policy, no Utility may occupy the City Rights of Way unless sufficient space is available so that the free flow and safety of traffic and other capacity considerations are not unduly impaired and the installation does not prevent the department from reasonably maintaining the streets, structures, traffic control devices and other appurtenant Facilities, and further provided that maintenance and operations of the Facilities do not jeopardize the traffic, street structure, other users of the right of way, or the right of way itself.

c. Grading. If the grades or lines of any street within the City Right of Way are changed at any time during the term of the Permit and this change involves an area in which the utility's Facilities are located, then the Utility shall, at its own cost and expense and upon the request of the City upon reasonable notice, protect or promptly alter or relocate the Facilities, or any part thereof, so as to conform with such new grades or lines. In the even 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 Utility 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 bested 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.

Division 5. Restoration of Property.

Section 16.32 Liability of Utility for Damages.

A utility shall be liable, at its own cost and expense, to replace or repair, any Street, Facilities or property or structure thereon, thereunder or 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 that caused such disturbance or damage. If 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.

Division 6. Discontinuance of Operations, Abandoned and Unused Facilities.

Section 16.33 Discontinuance of Operations.

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 Chapter and any other provision I the Codified Ordinances or other laws have been lawfully assumed by another Utility; or

2. Submit a written proposal to re-use its Facilities; or

3. Submit a written proposal for abandonment of Facilities. Said proposal must be approved by the City Clerk; or

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 under this clause, the City may, at its option do one 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.

Division 7. Termination of Registration.

Section 16.34 Termination of Registration.

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 Clerk shall give written notice of default to a Utility if it is determined that a Utility has:

a. Violated any provision or requirement of the issuance or acceptance of a registration Application or any law of the City, state, or federal government;

b. Attempted to evade any provision or requirement of this Chapter;

c. Practiced any fraud or deceit upon City; or

d. Made a material misrepresentation of fact in its Application for Registration.

Section 16.35 Failure to Cure a Default within Time Established.

If a Utility fails to cure a default within twenty (20) working Days after such notice is provided to the Utility by the City, then such default shall be a material breach and City may exercise any remedies or rights it has at law or in equity to terminate the Approval of Registration. If the City Clerk decides there is cause or reason to terminate, the following procedure shall be followed:

a. City shall serve a Utility with a written notice of the reason or cause for proposed termination and shall allow a Utility a minimum of fifteen (15) calendar days to cure its breach.

b. If the utility fails to cure within fifteen (15) calendar days, the City may declare the Registration terminated.

Division 8. Penalties.

Section 16.36 Penalties.

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.

Division 9. Other Provisions.

Section 16.37 Severability.

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

Section 16.38 Reservation of Regulatory and Police Powers.

The City by issuing a written approval of Registration under this Chapter, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or which may be hereafter vested in the City under the Constitution and Laws of the United States, State of Georgia, 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 approval of registration, 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 rights 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 zoning and other land use requirements pertaining to the placement and specifications of Facilities.

Section 16.39 Compliance.

No Utility 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 prompt compliance.

Section 16.40 Appeals.

All appeals provided for by this Chapter and any notification to the City required by this Chapter shall be in writing and sent via certified mail to the Director of Public Service as specified in this Chapter.

Sections 16.41 - 16.50 Reserved.

ARTICLE V. CELL TOWERS

Section 16.51 Definitions.

Collation: The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Lattice tower: A support structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

Monopole: A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

Open Space: Land devoted to conservation or recreational purposes and/or land designated by a municipality to remain undeveloped (may be specified on a zoning map).

Telecommunication: The technology which enables information to be exchanged through the transmission of voice, video, or data signals by means of electrical or electromagnetic systems.

Wireless telecommunications antenna: The physical devise through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission a re transmitted or received. Antennas used by amateur radio operators are excluded from this definition.

Wireless telecommunications equipment shelter: The structure in which the electronic receiving and relay equipment for a wireless telecommunications facility is housed.

Wireless telecommunications facility: A facility consisting of the equipment and structures involved in receiving telecommunications or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

Wireless telecommunications tower: A structure intended to support equipment used to transmit and/or receive telecommunications signals including monopoles, guyed and lattice construction steel structures.

Section 16.52 Intent.

Wireless telecommunications facilities are either permitted or conditional uses in a variety of zoning districts contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through buffering, sting, design and construction, and reduction of the need for new towers.

Section 16.53 Use Regulations

Division 1. General

The following requirements apply to all wireless telecommunications facilities regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential and residential districts as set forth in Sections 2 and 3 which follow.

A. When the proposed wireless telecommunications facility is to include a new tower, a plot plan at a scale of not less than one inch is equal to 100 feet shall be submitted. This plot plan shall indicate all building uses within 300 feet of the proposed facility. Aerial photos and/or renderings may augment the plot plan.

B. The location of the tower and equipment shelter shall comply with all natural resource protection standards established in the Zoning Code, including those for floodplain, wetlands, and steep slopes.

C. Security fending eight feet in height shall surround the tower, equipment shelter and any guy wires, either completely or individually as determined by the Planning Commission.

D. The following buffer plantings may be located around the perimeter of the security fence as deemed appropriate by the Planning Commission.

1. An evergreen screen shall be planted that consists of either a hedge, planted three feet on center maximum, or a row of evergreen trees planted five feet on center maximum.

E. Existing vegetation (trees and shrubs) shall be preserved to the maximum extent possible.

F. Any applicant requesting permission to install a new tower shall provide evidence of written contract with all wireless service providers who supply service within a quarter mile of the proposed facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted providers shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be presented to the Planning Commission as a means of demonstrating the need for a new tower.

G. Any application to locate an antenna on a building or structure that is listed on an historic register, or is in a historic district shall be subject to review by the municipality's Architectural Review Board of Building Commissioner, if there is no such review board.

H. The tower shall be painted a non-contrasting gray or similar color minimizing its

visibility, unless otherwise required by the Federal Communications Commission (FCC) or Federal Aviation Administration (FAA).

I. No advertising is permitted anywhere on the facility, with the exception of identification signage.

J. All providers utilizing towers shall present a report to the Building Commissioner notifying them of any tower facility locate in the municipality whose us will be discontinued and the date this use will cease. If at any time the use of the facility is discontinued for 180 days, a designated local official may declare the facility abandoned. (This excludes any dormancy period between construction and the initial use of the facility.) The facility's owner/operator will receive written notice from the Building Commissioner and instructed to either reactivate the facility's use within 180 days, or dismantle and remove the facility. If reactivation or dismantling does not occur, the municipality will remove or will contract to have removed the facility and assess the owner/operator the costs.

K. No tower under 150 feet shall be artificially lighted except to assure safety or as required by the FAA. Any tower between 150 and 200 feet in height shall follow safety marking and obstruction lighting as prescribed by the FAA. Security lighting around the equipment shelter is permitted.

L. "No Trespassing" signs shall be posted around the facility with a telephone number of who to contact in the event of an emergency.

M. Applicants will provide evidence of legal access to the tower site thereby maintaining this access regardless of other developments that may take place on the site.

N. A Conditional Use Permit must be approved by the City Planning Commission and/or City Council with a subsequent Building Permit issued by the Building Commissioner for construction of new towers in nonindustrial districts. Collocation of antennas on a single tower, antennas attached to existing structures/building, towers located in industrial districts, or replacement towers to be constructed at the site of a current tower are permitted used and will not be subject to the Conditional use permitting process.

O. Any decision to deny a request to place, construct or modify a wireless telecommunications antenna and/or tower shall be in writing and supported by evidence contained in a written record of the proceedings of the Planning Commission.

P. Underground equipment shelters are encouraged, especially in nonindustrial districts, and may be requested by the Planning Commission.

Division 2. Nonresidential Districts.

Wireless telecommunications facilities proposed for the following zoning districts–industrial, commercial and institutional (*as determined by the municipality*) are subject to the following conditions:

A. Sole use on a lot:

A wireless telecommunications facility is permitted as a sole use on a lot subject to the following:

1. Minimum lot size -
   (*Include minimum lot size allowable for the district*)
2. Minimum yard requirements -
   Tower: the minimum distance to any single-family or two-family residential use or district lot line shall be 300 feet
3. Maximum height -
   Tower: 200 feed (includes antenna)
   Equipment shelter: (*insert maximum building height for the district*)
4. Maximum size of equipment shelter -
   300 square feet for a single shelter, or, if there is more than one, 750 square feet.

B. Combined with another use:

A wireless telecommunications facility is permitted on a property with an existing use subject to the following conditions:

1. The existing use on the property may be any permitted use in the district or any lawful nonconforming use, and need not be affiliated with the wireless telecommunications provider. The wireless telecommunications facility will not be considered an addition to the structure or value of a nonconforming use.
2. The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
3. Minimum lot area -
   The minimum lot area shall be the area needed to accommodate the tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.
4. Minimum yard requirements -
   Tower: the minimum distance to any single-family or two-family residential use or district lot line shall be 300 feet.
   Equipment shelter: shall comply with the minimum setback requirements for the primary lot.
5. Access - The service access to the equipment shelter shall, whenever feasible,

be provided along the circulation driveways of the existing use.

6. Maximum height -
   Tower: 200 feet (includes antenna)
   Equipment shelter: (*include the maximum building height for the district*)
7. Maximum size of equipment shelter -
   300 square feet for a single shelter, or, if there is more than one, 750 square feet.

C. Combined with an existing structure:

Where possible an antenna for a wireless telecommunications facility shall be attached to an existing structure or building subject to the following conditions:

1. Maximum height -
   20 feet or 20% of the building height above the existing building or structure, whichever is greater.
2. If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located on, or attached to, the building) the shelter shall comply with the following:
   a) The minimum setback requirements for the subject zoning district.
   b) A buffer yard may be planted in accordance with section 1D.
   c) Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the sire for the principle use.
   d) The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 751 total square feet.

Division 3. Residential Districts

Wireless telecommunications facilities that include towers are not permitted in single-family or two-family residential districts with the exception of placement on any property with an institutional use (e.g., church, park, library, municipal/government, hospital, school, utility) located in either of these two districts. However, antennas attached to existing buildings or structures are permitted, in applying for a permit in any residential district, the applicant must present substantial evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts have been exhausted, a wireless telecommunications facility may be located in a residential district subject to the following conditions:

A. General:

The wireless telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to B, C, D, and E below.

B. Combined with a nonresidential use:

An antenna may be attached to a nonresidential building or a structure that is a permitted use in the district; including, but not limited to, a church, a municipal or governmental building or facility, agricultural building, and a building or structure owned by a utility. The following conditions shall be met:

1. Maximum height, 20 feet above the existing building or structure
2. If the applicant proposes to locate the telecommunications equipment in a separate shelter, the shelter shall comply with the following:
   a) The shelter shall comply with the minimum setback requirements for the subject zoning district.
   b) The maximum size of the equipment shelter shall not exceed 300 square feet, or if there is more than one, 750 total square feet.
   c) A buffer yard shall be planted in accordance with section 1D.
   d) Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the sire for the principal use.

C. Located on a nonresidential-use property:

A tower to support an antenna may ve constructed on a property with a nonresidential use that is a permitted use within the district, including but not limited to a church, hospital, school, municipal or government building, facility or structure, agricultural use and a utility use, subject to the following conditions:

1. The tower shall be set back from any property line abutting a single-family or two-family residential lot by 300 feet.
2. Maximum height -
   Tower: 200 feet (includes antenna)
   Equipment shelter: (*include the maximum building height for the district*)
3. The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
4. Vehicular access to the tower and equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
5. In order to locate a telecommunications facility on a property that is vacant or with an agricultural use the tract shall be at least 2.5 acres.

D. Located on a residential building:

An antenna for a wireless telecommunications facility may be attached to a mid-rise or high-rise apartment building subject to the following conditions:

1. Maximum height, 20 feet above the existing building.

2. If the applicant proposes to locate the telecommunications equipment in a separate shelter (not located in, or attached to, the building), the shelter shall comply with the following:
   a) The shelter shall comply with the maximum setback requirements for the subject zoning district.
   b) The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
   c) A buffer yard shall be planted in accordance with section 1D.
   d) Vehicular access to the shelter shall, if at all possible, use the existing circulation system.

E. Located in open space:

A wireless telecommunications facility is permitted on land that ha been established as permanent open space, or a park subject to the following conditions:

1. The open space shall be owned by the municipality, county or state government, a homeowners association, charitable organization, or a private, non-profit conservation organization.
2. Maximum height -
   Tower: 200 feet (includes antenna)
   Equipment shelter: (*include the maximum building height for the district*)
3. The maximum size of the equipment shelter shall not exceed 300 square feet, or, if there is more than one, 750 total square feet.
4. The tower shall be set back from any single-family or two-family property line 300 feet.

Division 4. Criteria for a Conditional Use

A wireless telecommunications facility which includes a tower may be permitted as a conditional use in a multi-family residential, institutional or commercial district, or located on an institutionally-used property in any residential district. In order to be considered for review, the applicant must prove that a newly-constructed tower is necessary in that opportunities for collocation on an existing tower is not feasible. The following steps must also be taken for the application to be considered for review in this category:

A. The applicant shall present a landscaping plan that indicates how the wireless telecommunications facility will be screened from adjoining uses.

B. The applicant shall demonstrate that the telecommunications tower must be located where it is proposed in order to service the applicant's service are. There shall be an explanation of why a tower and this proposed site is technically necessary.

C. Where the telecommunications facility is located on a property with another principal use, the applicant shall present documentation that the owner of the property has granted an easement or entered into a lease for the proposed facility and that the vehicular access is provided to the facility.

D. Any applicant requesting permission to install a new tower shall provide evidence of written contact with all wireless providers who supply service within a quarter mile of the proposed facility. The applicant shall inquire about potential collocation opportunities at all technically feasible locations. The contacted provides shall be requested to respond in writing to the inquiry within 30 days. The applicant's letter(s) as well as response(s) shall be presented to the Planning Commission as a means of demonstrating the need for a new tower.

Sections 16.54 - 16.60 Reserved.