

## Chapter 32.

### STREETS, SIDEWALKS AND OTHER PUBLIC PLACES\*

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## **CHAPTER 32. STREETS, SIDEWALKS AND OTHER PUBLIC PLACES\***

### **ARTICLE I. IN GENERAL**

#### **Sec. 32-1. Naming of New Streets.**

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

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

(Code 1968, §17-1)

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

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

(Code 1968, §20-8)

**Cross reference** – Traffic and Vehicles, ch. 36.

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

In order for plans and procedures to be developed to aid in the control of traffic on the public streets, sidewalks, and alleys of the city, every parade or public assembly, including street dances and every other type of public or private assembly upon the streets, sidewalks, alleys and public ways of the city, must obtain a special written permit at least three days prior to the parade or public assembly. The written permit shall be issued by the chief of police and

approved by the city manager. Any person holding or participating in a parade or other public assembly upon the streets, sidewalks, alleys or other public ways of the city without a written permit to hold such parade or public assembly shall be guilty of violating the provisions of this chapter and shall be punished in accordance with Section 1-9.  
(Code 1968, §20-1)

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

#### **Sec. 32-4. Building Numbering.**

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

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

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

(d) *Failure to comply after notification.* Where the owner, agent or occupant of any such dwelling, house or building shall neglect or refuse to affix or inscribe the proper numbers to the dwelling house or building after being duly notified as provided in this article, such owner, agent, or occupant shall be fined \$50.00 per offense and the numbers ordered affixed or inscribed in so as to comply with this section. Pursuant to the provisions of O.C.G.A. S36-34-2(3), city employees designated in writing by the city manager shall be authorized to serve a summons to appear in municipal court upon any person who violates the provisions of this section.  
(Code 1968, SS17-2, 17-3; Ord. No. 2134, §1, 8-1-05)

**Cross reference** – Buildings and Building Regulations, ch. 8

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

All persons are prohibited from playing marbles, baseball, football, or spinning tops, or playing other games on the sidewalks or streets in the business section of the city.  
(Code 1968, §17-4)

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

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

(b) There shall be no skating by roller skates, skateboards, or roller blades at any time in the downtown business area of the city, such area defined as follows: Beginning at the

southwestern corner of Church Street where Church Street intersects with Oliver Street and running north to the right-of-way of Seaboard Coastline Railroad; thence running along the right-of-way of Seaboard Coastline Railroad in an easterly direction to the point where the northeastern most corner of Thomas Street intersects with the property of Seaboard Coastline; thence running along the eastern side of Thomas Street in a southerly direction to the intersection of Thomas Street and the southeastern corner of Church Street; thence running along the southeastern part of Church Street to the beginning corner. Skating, skateboarding and roller blading shall also be prohibited on the city's public tennis courts.  
(Code 1968, §17-5)

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

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

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

**Sec. 32-8. Obstructing with Merchandise Restricted.**

It shall be unlawful for any person to obstruct any street or sidewalk within the city by placing thereon any wares, goods, merchandise, or other articles for the purpose of vending, showing, advertising, or selling the same, or to obstruct the streets or sidewalks by any other means without the permission of the city manager.  
(Code 1968, §17-8)

**Cross reference** – Businesses, ch. 10.

**Sec. 32-9. Excavations; Procedure Required.**

No person shall be permitted to excavate or break up any street, lane, alley or sidewalk of the city for the purpose of laying gas pipes, water pipes, sewer or drain pipes, or for the purpose of planting trees or for any purpose whatsoever without first having obtained the permission of the city and having agreed in writing to light, fence and watch such openings or excavations and obstructions caused by them, in such a manner as the chief of police shall direct, and to repair the street, lane, alley, or sidewalks, as the case may be, or to pay to the city such expense as may be incurred by it and such damage as may be sustained from a failure to watch the opening and obstruction, or from not having the same property lighted, fenced or watched. After having obtained the permission of the city, it shall be unlawful to fail or refuse to comply with the orders and instructions of the chief of police regarding fencing, lighting, and watching the openings or to fail to repair any damage done to any property of the city.  
(Code 1968, §17-9)

**Sec. 32-10. Permission to Erect Wires.**

No person shall erect any wires along the streets or sidewalks of the city for any purpose whatsoever without the consent of the city.  
(Code 1968, §17-11)

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

In case a violation of section 32-12 by the placement or location of trees, hedges, or shrubbery, upon the failure of the owner or occupant to comply with Section 32-12, the street department shall, upon direction of the city manager, take such steps as are necessary to cause a trimming or removal of trees, hedges and shrubbery so as to comply with the provisions of Section 32-12, and the city clerk, upon the direction and approval of the city council, shall extend the cost of such work as a special assessment against the lots, property or parcels of ground upon which the trees, hedges, or shrubbery were cleared or trimmed.  
(Code 1968, §17-13)

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

For the purpose of ensuring reasonable visibility at street intersections in the residential zones of the city, trees shall be trimmed to a height of eight feet above the curb level. Shrubs and hedges shall be trimmed below a height of two feet above the curb level for a distance of 25 feet back from the lot lines of each lot located at the intersections of two streets or for a distance of 25 feet back from the property line located at the intersection of any street and alley. No planting of trees or shrubbery, construction of walls or fences, or placing of signs or other obstructions which will materially obstruct the view of drivers of vehicles approaching the street intersection shall be permitted in any residential zone in the city.  
(Code 1968, §17-14)

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

- (a) It is hereby found and declared to be the policy of the city that the public welfare requires expeditious and convenient access to the city's utility lines located upon the public street rights-of-way.
- (b) It is prohibited for any person to plant, grow or construct any trees, shrubs, flowers, plants, or permanent improvements, except grass, in or upon any public right-of-way of the city, without first obtaining a permit authorizing such from the city manager.  
(Code 1968, §17-15)

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

- (a) It shall be unlawful for the owner or occupant of any property within the city to permit vegetation growing on their property to extend onto any street or sidewalk bordering or touching the property. All vegetation on private property including, but not limited to, grass, vines, shrubbery and hedges shall be cut back to the edges of all streets and sidewalks within the city. In addition, all trees on private property shall be trimmed to a height of twelve feet above the curb level wherever they overhang a street or sidewalk within the city.
- (b) Each such owner or occupant who is in violation of this section shall be given 30 days notice to correct the violation before any action is taken.
- (c) Upon failure of the owner or occupant to comply with this section, the street department shall, upon the direction of the city manager, take such steps as are necessary to cause a trimming or removal of trees or vegetation so as to comply with the provisions of this section, and the city clerk, upon the direction and approval of the city council, shall extend the cost of such work as a special assessment against the lots, property or parcels of ground upon which the trees or vegetation were cleared or trimmed.

(Code 1968, §17-16; Ord. No. 1062, §1, 5-1-95)

**Secs. 32-15 – 32-35. Reserved.**

## **ARTICLE II. DRIVEWAY CONSTRUCTION**

### **Sec. 32-36. Definitions.**

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

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

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

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

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

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

*Parcel of Land* means a lot or a tract under one ownership.  
(Code 1968, §17-25)

**Cross Reference** – Definitions generally, §1-2

### **Sec. 32-37. General Restrictions.**

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

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

(c) All permits granted for the use of public property under the terms of this article shall be revocable at the will of the city council.  
(Code 1968, §17-26)

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

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

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

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

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

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

(1) When property owners or agent request that city forces remove curbing and/or sidewalk or replace curbing and/or sidewalk, a fee per linear foot of curbing or sidewalk removed or replaced, as established from time to time by the mayor and council, shall be paid.

(2) When property owner or agent requests that the city furnish and install a side drainage pipe, a fee per linear foot of pipe installed shall be paid.

(3) The fee for issuance of permits required under this article shall be the same as for a regular building permit.

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

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

**Sec. 32-39. Street Construction.**

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

(Code 1968, §17-29)

**Sec. 32-40. Approach Widths.**

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

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

(Code 1968, §17-30)

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

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

(Code 1968, § 17-31)

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

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

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

(Code 1968, §17-32)

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

No driveway approach shall interfere with municipal facilities such as utility poles, traffic signal standards, signs, catch basins, hydrants, fire alarm supports, underground pipes and ducts, sidewalks, curbs or curbs and gutters, or other necessary street structures, and the public

works director is authorized to order and effect the removal or reconstruction of any driveway approach which now conflicts with street structures or which will conflict with street structures in the future. The cost of removing, reconstructing or relocating such driveway approaches shall be at the expense of the abutting property owners.  
(Code 1968, §17-33)

**Sec. 32-44. Submission of Plans.**

Plans showing the requested location and proposed profile of any driveway approach, as related to the existing conditions, shall be filed with the application for permission to construct. Any plans submitted to the Fire and Building Inspector for approval, which include or involve unusual driveway approaches or problems, shall be referred to the public works director for his approval before a building permit is issued.  
(Code 1968, §17-34)

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

Where it appears that corrective measures are desirable for existing driveway approaches to accommodate modern vehicles or conditions, a permit may be granted for such alterations as stated in the balance of this section; the installation of a concrete pad or plant mix asphalt in the gutter to elevate the rear of the vehicle as it passed from the street to private property, or vice versa. This type of correction may be used in the gutter at the summit of a grade, in gutters with a grade of one percent or more, provided the correction does not interfere with the resurfacing of the street, interfere with the traveling public, have a tendency to cause the gutter water to flow out into the traffic lanes, create standing of pools of water if the grade is not sufficient, or interferes with gutter drainage in the sag of a vertical curve.  
(Code 1968, §17-35)

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

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

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

(Code 1968, §17-36)

**Sec. 32-47. Apron Construction.**

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

(Ord. No. 2103, §1, 5-6-02)

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

**Secs. 32-48 – 32-99. Reserved**

**ARTICLE III. STREET CONSTRUCTION**

**Sec. 32-100. Extension of McKinley Street.**

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

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

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

(c) For the purposes of urban development in this specific instance, Article III “Subdivisions”, sections 22-260(g)(4) and 22-261 of Chapter 22 “Land Use” is hereby suspended and the city of Elberton will construct the approximately 320 feet extension of McKinley Street from its general funds.

(Ord. No. 2109, S1, 1-6-03)

## ARTICLE IV Right of Way Occupancy Ordinance

### DIVISION 1 Scope and Definitions

#### Sec. 32-200. Scope.

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

(Ord. No. 2178, §1, 12-7-12)

#### Sec. 32-201. Definitions.

For 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.

- a. *City* means the City of Elberton, Georgia;
- b. *City Manager* means the City Manager of the City of Elberton, Georgia, or his designee;
- c. *Construct* means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install or remove 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;
- d. *Construction* means, but shall not be limited to, the act of process of digging, boring, tunneling, trenching, excavating, obstructing, installing or removing 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;
- e. *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;
- f. *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;
- g. *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 ensure that 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;
- h. *FCC* means the Federal Communications Commission or any successor thereto;

- i. *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;
- j. *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;
- k. *Services(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;
- l. *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 an between the City and a Utility, which allows such Utility to operate or provide service within the geographic limits of the City;
- m. *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;
- n. *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;
- o. *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.
- p. *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, service, contractor or subcontractor, or any agent thereof, of any above-described utility or utility facility.

(Ord. No. 2178, §1, 12-7-12)

**DIVISION 2**  
**Utility Registration**

Sec. 32-202. Registration required; fee for new utilities.

- 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 or federal law, existing Service Agreement or this Code, shall file a Registration Statement with the City within ninety (90) days of the effective date of this Ordinance.
- b. A Utility which is registering under this Division for the first time shall pay a registration fee in the amount of \$100.00.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-203. 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 (e.g. partnership, corporation, etc.), street address, email address, and telephone number 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;
- b. The name, street address, email address if applicable and telephone number 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;
- 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 authorizes the Utility to use or occupy the Right of Way for the purpose described in the Registration.

(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-204. Incomplete registration.**

If a Registration is incomplete, the City 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 shall so notify the Utility in writing. (Ord. No. 2178, §1, 12-7-12)

**Sec. 32-205. Acceptance of registration.**

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 the 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.

(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-206. 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 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.

(Ord. No. 2178, §1, 12-7-12)

**DIVISION 3  
Construction Permits**

**Sec. 32-207. Permit required.**

It shall be unlawful for any Utility to excavate or to construct, install, maintain, renew, remove or relocate Facilities in, on, along, over or under the public roads of the City without a Utility permit from the City in accordance with the terms of this Chapter.

(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-208. Permit procedure; fee.**

Utility Permits shall be obtained from the City Manager (or such other person as the City Manager may designate) upon application made on forms prescribed by the City. The written application shall include the following:

- 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 described in the Permit application. The plans shall show the size or capacity of Facilities to be installed, their relationship to Street features such as right-of-way lines, pavement edge, structures, etc., horizontal and vertical clearance to critical elements of the roadway, and any other information necessary to evaluate the impact on the Street and its operation;
- c. The name and address of the person or firm who is to do such work;
- d. The name, street address, email address if applicable and telephone number of one (1) or more Facilities Representative(s);

- e. The projected dates for the work to be started and finished;
- f. An indemnity bond or other acceptable security in an amount to be set by the City to pay any damages to any part of the City 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;
- g. A copy, if requested, of the Registrant's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements.
- h. A copy, if requested, of the Service Agreement, if applicable, or other legal instrument that authorizes the Utility to use or occupy the Right of Way for the purpose described in the application; and
- i. A permit application fee in an amount that may be set from time to time by the Mayor and Council, or, for Utilities subject to an existing Service Agreement, permit or other fees shall be as established therein.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-209. Issuance of permit.**

If the City Manager, or his designee, determines the Applicant has satisfied the following requirements, the City may issue a permit.

- a. Whether issuing of the approval will be consistent with this Chapter;
- b. Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by law, if applicable, in order to construct Facilities in the manner proposed by the Applicant; and
- c. The impact on safety, visual quality of the streets, traffic flow, and other users of the right of way and the difficulty and length of time of the Project, construction or maintenance.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-210. Emergency situations.**

- a. Each Utility shall, as soon as reasonable practicable, notify the City Manager of any event regarding its Facilities which it considers to be an Emergency. The Utility may proceed to take whatever actions are necessary in order to respond to the Emergency. A Utility who engages in an emergency excavation shall take all reasonable precautions to avoid or minimize damage to any existing facilities.
- b. In the event that the City becomes aware of an Emergency regarding Utility Facilities, the City may attempt to contact the affected Utility or Facilities Representative. The City may take whatever action it deems necessary in order to respond to the Emergency, including cut or move any of the wires, cables, amplifiers, appliances, or other parts of the Facilities. The City shall not incur any liability to the Utility for such emergency actions, and the cost of such shall be paid by each Utility.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-211. Effective period of permit.**

- a. Each permit shall have a set commencement and expiration date based on information provided in the applicant's permit application.
- b. The Permit shall remain in place until Construction is completed or until its expiration date unless the Utility is in default. The City may 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 Permit application or any law of the City, state, or federal government relating to the applicable scope of work;
  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 or omission of fact in its Permit application.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-212. Cancellation for cause.**

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 Permit. If the City Manager determines there is cause or reason to terminate, the following procedure shall be followed:

- a. City shall serve a Utility with a written notice of the reason or cause for proposed termination and shall allow a Utility a minimum of fifteen (15) calendar days to cure its breach.
- b. If the Utility fails to cure within fifteen (15) calendar days, the City may declare the Permit terminated.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-213. Expiration of permit.**

If work is not begun within six (6) months of the date of issuance, the permit will be deemed abandoned and shall automatically expire.  
(Ord. No. 2178, §1, 12-7-12)

**DIVISION 4  
Required Minimum Standards**

**Sec. 32-214. 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 A (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 Elberton municipal equivalents.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-215. 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.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-216. Grading.**

If the grades or lines of any street within the City Right of Way are changed at any time by the City during the term of the permit and this change involves an area in which the Utility's Facilities are located, then the Utility shall, at its own cost and expense and upon the request of the City upon reasonable notice, protect or promptly alter or relocate the Facilities, or any part thereof, so as to conform with such new grades or lines. In the event the Utility refuses or neglects to so protect, alter, or relocate all or part of the Facilities, the City shall have the right to break through, remove, alter, or 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.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-217. Installation of poles and other wireholding structures and relocation.**

- a. 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.
- b. Upon determination by City that it is in the public interest to do so, the Utility will be required to jointly use poles located within the public Rights of Way. Issuance of a permit may be dependent upon the cooperation of utility companies in the joint use of poles located within the public rights-of-way. Issuance of a permit may be dependent upon the cooperation of utility companies in the joint use of poles.
- c. (Ord. No. 2178, §1, 12-7-12)

**Sec. 32-218. Georgia Utility Facility Protection Act; national code compliance.**

- a. As provided in O.C.G.A. Section 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 Working Day after such notice is provided, excluding hours during days other than Working Days.
- b. All Utility work must conform with the latest versions of the National Electric Code and National Electric Safety Code as applicable. Vertical and horizontal clearances of Utility facilities must comply with National Electric Safety Code standards.  
(Ord. No. 2178, §1, 12-7-12)

**DIVISION 5  
Restoration of Property and Maintenance of Facilities**

**Sec. 32-219. Generally.**

Each Utility shall be responsible for the cost of repairing any Facilities in the Rights of Way and adjoining property or other Facilities which it or its Facilities damage.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-220. Replace and/or restore damage; removal of abandoned facilities.**

- a. 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.
- b. All Facilities that are abandoned following completion of work under a permit must be removed by the Utility. Joint use attachments shall be promptly transferred from abandoned poles to new poles. In the event that a utility does not within sixty (60) days following proper notification remove its abandoned Facilities or transfer its attachments to a new pole, the City may perform the required work, and the Utility shall pay the costs of the same. Should the City elect not to perform the work on behalf of the Utility, the Utility shall be charged a fee of \$5.00 per month per pole beginning on the thirty-first (31st) day after the Utility has been properly notified to remove an abandoned pole or transfer to a new pole. This fee shall increase to \$10.00 per month per pole on the two hundred forty-first (241st) day after the Utility has been properly notified.

(Ord. No. 2178, §1, 12-7-12)

**DIVISION 6**  
**Inspection**

**Sec. 32-221. Right to inspect; fees.**

- a. The Utility shall make the Construction site available to the City Manager, or his designee, and to all other as authorized by Law for inspection at all reasonable times during the execution and upon completion of the Construction.
- b. The Utility shall pay to City a permit inspection fee, which fee shall be the cost of labor and materials incurred by the City in order to inspect the work as required in this Division.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-222. Stop work.**

At any time, including the time of inspection, the City Manager may order the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any law, or which violates the terms and conditions of the Permit and/or this Chapter or issue an order to correct work which does not conform to the Permit and/or applicable standards, conditions or codes.  
(Ord. No. 2178, §1, 12-7-12)

**Sec. 32-223. Notification of completion.**

When the Construction under any Permit is completed, the Utility shall notify the City Manager or his designee.  
(Ord. No. 2178, §1, 12-7-12)

**DIVISION 7**  
Other Approvals, Permits and Agreements

**Sec. 32-224. Additional permits required.**

The Utility shall obtain all construction, building or other permits or approvals as according to City ordinance, state or federal law. In addition, a Permittee shall comply with all requirements of laws, shall complete work in a way as to not cause any unnecessary or unauthorized obstructions of sidewalks, streets, waterways or railways, and is responsible for all work done in the Rights of Way regardless of who performs the work. No Rights of Way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 32-210.  
(Ord. No. 2178, §1, 12-7-12)

**DIVISION 8**  
**Penalties**

**Sec. 32-225. 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.”

(Ord. No. 2178, §1, 12-7-12)