

Chapter 16

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

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ARTICLE I. IN GENERAL

Section 16.1 **Report of Defects, Obstructions, Encroachments, Deposits and Discharges.**

It shall be the duty of every city officer and employee who becomes aware of any defect, obstruction, encroachment, unlawful deposit or discharge, in or on any public street, alley, curb, sidewalk, ditch, or other public way of the city to report the same to the city clerk as soon as possible.

Section 16.2 **Placing Encroachments.**

It shall be unlawful for any person to erect or maintain any building or structure which encroaches upon any public street or property, or to erect any poles or wires or maintain any poles or wires over any public place, street, alley or other public way without having first secured the permission of the council.

Section 16.3 **Obstructions.**

It shall be unlawful for any person to cause, create or maintain any obstruction on any street, alley, sidewalk, ditch or other public way, except as may be provided in this chapter or in the ordinances and laws of the city.

Section 16.4 **Deposits and Discharges onto Streets and Sidewalks.**

a. It shall be unlawful for any person to deposit on any street or sidewalk any material which may be harmful to the pavement thereof, or any waste material, or any glass or other article which may do injury to any person or animal or damage to any property.

b. It shall be unlawful for any person to discharge or allow to be discharged onto any public street or sidewalk any water or other fluid material containing objectionable material such as sewage, waste milk, or other organic material.

Section 16.5 **Defacing Sidewalks, Streets and Curbs.**

It shall be unlawful for any person to deface any public sidewalk, street or curb in the city by painting any signs thereon, whether for commercial advertising purposes or not, or to walk or drive any vehicle upon or damage in any way any newly-laid street, sidewalk or curbing pavement while the same is guarded by a warning sign or barricade or is soft or newly laid.

Section 16.6 **Burning of Leaves and Rubbish.**

It shall be unlawful for any person to burn leaves, paper, rubbish or other substances upon any of the public streets, sidewalks or alleys of the city.

Section 16.7 **Openings.**

a. It shall be unlawful for any person to construct or maintain any opening or stairway in any public street, sidewalk or alley without first obtaining a permit from the city clerk.

b. All such lawfully maintained openings shall be guarded by a suitable strong cover or railing approved by the council.

Section 16.8 **Barricades.**

Any person laying or repairing any pavement on a street, sidewalk or other public place shall maintain suitable barricades to prevent injury to any person or damage to any vehicle by reason of the work, which barricades shall be protected by a light at nighttime.

Section 16.9 **Maintenance and Repair - Public Streets, Supervision.**

All maintenance and repair of public streets, alleys, curbs, sidewalks and other public ways shall be under the supervision of the council. All persons who own real estate in the City which abuts upon any sidewalk which is paved shall be required to keep that portion of such sidewalk which lies between the property line and the curb line of the adjoining street, and upon which the real estate abuts, in good and smooth condition and unsightly vegetation or other things which would mar or detract from the beauty and cleanliness of the street upon which their property abuts. Any property owner who shall place or allow grass to grow upon the portion of the sidewalk lying between the property line and the curb line of the street as foresaid, and upon which his real estate abuts, shall keep such grass properly mowed and free from rubbish of all kinds. If such owners are not in the possession of their property, then this section shall apply to their tenants or those who have possession or control of the same.

Section 16.10 **Attaching Advertisements.**

It shall be unlawful for any person to attach any sign, advertisement or notice to any tree or shrub in any public place.

Section 16.11 **Overhanging Trees; Dangerous Trees.**

a. Any tree or shrub which overhangs any sidewalk, street or other public place in the city in such a way as to impede or interfere with traffic or travel shall be trimmed by the owner of the premises on which such tree or shrub grows so that the obstruction shall cease.

b. The council may cause to be trimmed or removed any and all such trees or shrubs so that the obstruction or danger to traffic or passage shall be removed.

Section 16.12 **Adjacent Poles and Wires.**

Any person who maintains poles and wires in the streets, alleys, or other public places of the city shall keep such wires and poles free and away from any nearby trees or shrubs in such places, and keep all such trees or shrubs properly trimmed, so that no damage shall befall the poles and wires or injury befall the shrubs and trees by their contact.

Section 16.13 **Sidewalk Construction.**

No sidewalk or any description shall be built by any individual, firm or corporation without a written permit from the city.

Section 16.14 **Streets and Sidewalks Not to Be Damaged.**

It shall be unlawful for any person to drag or run, or cause to be dragged or run any harrow or other implement, engine, machine or tool upon any asphalt, bitulitic, warrenite or other type of permanently paved street or sidewalk of the city which shall be liable in any way to injure or cut its surface. It shall also be unlawful to injure any dirt street in the same manner.

Sections 16.15 - 16.25 **Reserved.**

ARTICLE II. EXCAVATIONS.

Division 1. Generally.

Section 16.26 **Permit.**

a. *Required.* No person shall make any excavations or openings or dig any ditch, trench, tunnel or hole in, along, across or under any street, sidewalk, alley or other public place of the purpose of laying or placing therein any pipe, wires or poles for any other purposes, unless a written permit therefor has been issued by the city manager. A permit shall not be required where that work is performed under a contract with the city, but if work requires a sidewalk or street to be wholly or partially obstructed, the person shall notify the city manager and the police department at least two hours before obstructing the sidewalk or street, unless prevented by sudden emergency.

b. *Application.* All persons desiring a permit in order to make an opening in any street, sidewalk, alley, or other public place, as set forth in subsection (a) of this section, shall make written application therefor, which application shall show the location of the proposed opening, the purpose therefor and the approximate number of square yards of surface to be cut.

c. *City indemnified.* Any person obtaining a permit as provided for in subsections (a) and (b) of this section agrees, as a condition of the issuance of the permit to indemnify and hold harmless the city against any claims or expenses, including attorney's fees for bodily injury or property damage for accidents or occurrences arising out of the person's operations.

Section 16.27 **Street Repair.**

When any part of any street, sidewalk, alley or other public place of the city shall be torn or dug up for any purpose, the person making that excavation or opening shall have the duty of refilling the excavation or opening so as to restore it to essentially the same condition that existed prior to the excavation or opening. Any person neglecting, refusing or failing to comply with any provisions of this section shall be guilty of a violation. Where any neglect, refusal or failure is continued, after notice from the city manager, every day's continuance thereafter shall constitute a separate and distinct offense.

Section 16.28 **Leaving Unprotected.**

It shall be unlawful for any person who obtains a permit under this division to do any excavation of any kind which may create or cause a dangerous condition in or near any street, alley, sidewalk or public place of the city without placing and maintaining proper guardrails and signal lights or other warnings at, in or around the work, sufficient to warn the public of any excavation or work, and to protect all persons using reasonable care from injuries on account of the work.

Sections 16.29 - 16.40 **Reserved.**

Division 2. Underground Utility Damage Prevention.

Section 16.41 Definitions.

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

Damage means the substantial weakening of structural or lateral support of an underground utility, penetration or destruction of any protective coating, housing or other protective device of an underground utility, and the partial or complete severance of an underground utility.

Demolish and *demolition* mean any operation by which a structure or mass of material is wrecked, razed, rendered, moved or removed by means of any tools, equipment or discharge of explosives.

Excavate and *excavation* mean an operation for the purpose of the movement or removal of earth, rock or other materials in or on the ground by use of mechanized equipment or by discharge of explosives, and including auguring, backfilling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling, but not including the tilling of soil for agricultural purposes.

Mechanized equipment means equipment operated by means of mechanical power including trenchers, bulldozers, power shovels, augers, backhoes, scrapers, drills, cable and pipe plows and other equipment used for plowing-in or pulling-in cable or pipe.

Operator means any person who owns or operates a utility.

Person means any individual, any corporation, partnership, association, or any other entity organized under the laws of any state; and any employee, agent or legal representative of the same.

Utility means any line, system or facility used for producing, storing, conveying, transmitting or distributing communication, electricity, gas, petroleum, petroleum products, hazardous liquids, water, steam or sewage.

Working day means every day, except Saturday, Sunday and legal holidays.

Section 16.42 Excavation and Demolition Permits.

A permit issued or a notice given, pursuant to law authorizing excavation or demolition operations shall not be deemed to relieve a person from the responsibility for complying with the provisions of this division.

Section 16.43 **Prohibition.**

Except as provided in section 16.48, no person may excavate in a street, highway, public space, a private easement of an operator, or near the location of a utility installed on the premises of a customer served by such utility or demolish a building without having first ascertained in the manner prescribed in section 16.45 and 16.47 the location of all underground utilities in the area that would be affected by the proposed excavation or demolition.

Section 16.44 **Filing Requirements of Utility Operators.**

a. Each operator having underground utilities in the city shall file with the city clerk a list containing the section within the township in which it has underground utilities (including those utilities that have been abandoned in place by the operator but not yet physically removed), the name of the operator and the name, title, address and telephone number of its representative designated to receive the written or telephonic notice of intent required by section 16.45.

b. Changes in any of the information contained in the list filed under subsection (a) of this section shall be filed by the operator with the city clerk within five working days of change.

Section 16.45 **Notice of Intent to Excavate or Demolish.**

a. Except as provided in section 16.48, before commencing any excavation or demolition operation designated in section 16.43, each person responsible for such excavation or demolition shall serve written or telephonic notice of intent to excavate or demolish at least three, but not more than ten, full working days:

1. On each operator which has filed a list required by section 16.44 indicating that it has underground utilities located in the proposed area of excavation or demolition; or
2. If the proposed area of excavation or demolition is served by an association provided for in section 16.46, on such association and on each operator which has filed a list required by section 16.44 indicating that it has underground utilities in the proposed area of excavation or demolition that is not receiving the services of the association; provided, however, that where demolition of a building is proposed, operators shall be given reasonable time to remove or protect their utilities before demolition of the building is commenced.

b. The written or telephonic notice required by subsection (a) of this section must contain the name, address and telephone number of the person filing the notice of intent, and, if different, the person responsible for the excavation or demolition operation to be conducted, the location of the proposed excavation or demolition operation to be conducted, the location of the proposed excavation or demolition, and whether or not explosives are to be used.

c. If the notification required by this section is made by telephone, an adequate record of such notification shall be maintained by the operators and associations notified to document compliance with the requirements of this division.

Section 16.46 **Operator Associations.**

Operators may form and operate an association providing for mutual receipt of section 16.45 notifications of excavation or demolition operations in a defined geographical area. An association that provides such service on behalf of operators having underground utilities within the city shall file with the city clerk, in which those utilities are located, the telephone number and address of the association, a description of the geographical area served by the association, and a list of the names and addresses of each operator receiving such service from the association.

Section 16.47 **Response to Notice of Intent to Excavate or Demolish.**

a. Each operator or designated representative (including an association established in accordance with section 16.46) notified in accordance with section 16.45 shall, not less than two working days in advance of the proposed excavation or demolition (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator or designated representative), supply, by use of maps when appropriate, the following information to the person responsible for the excavation or demolition:

1. The approximate location and description of all of its underground utilities which may be damaged as a result of the excavation or demolition;
2. The location and description of all utility markers indicating the approximate location of the underground utilities; and
3. Any other information that would assist that person in locating and thereby avoiding damage to the underground utilities, including, providing adequate temporary markings indicating the approximate location of the underground utility in locations where permanent utility markers do not exist.

b. For purposes of this section the approximate location of underground utilities is defined as a strip of land at least three feet wide but not wider than the width of the utility, plus 1 ½ feet on either side of the utility.

Section 16.48 **Emergency Excavation or Demolition.**

Compliance with the notice requirements of section 16.45 is not required of persons responsible for emergency excavation or demolition to ameliorate an imminent danger to life, health or property; provided, however, that such persons give, as soon as practicable, oral notice of the emergency excavation or demolition to each operator having underground utilities located in the area (or to an association provided for in section 16.46, that serves an operator) where such

excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to its underground utilities. An imminent danger to life, health or property will result before the procedures under sections 16.45 and 16.47 can be dispensed with.

Section 16.49 **Precautions to Avoid Damage.**

In addition to the notification requirements of section 16.45, each person responsible for any excavation or demolition operation designated in section 16.43 shall:

1. Plan the excavation or demolition to avoid damage to or minimize interference with underground utilities in and near the construction area;
2. Maintain a clearance between an underground utility and the cutting edge or point of any mechanized equipment, taking into account the known limit of control of such cutting edge or point, as may be reasonable necessary to avoid damage to such utility; and
3. Provide such support for underground utilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such utilities.

Section 16.50 **Excavation or Demolition Damage.**

a. Except as provided by subsection (b) of this section, each person responsible for any excavation or demolition operation designated in section 16.43 that results in any damage to an underground utility shall, immediately upon discovery of such damage, notify the operator of such utility of the location and nature of the damage and shall allow the operator reasonable time to accomplish necessary repairs before completing the excavation or demolition in the immediate area of such utility.

b. Each person responsible for any excavation or demolition operation designated in section 16.43 that results in damage to an underground utility permitting the escape of any flammable, toxic or corrosive gas or liquid shall, immediately upon discovery of such damage, notify the operator and the police and fire departments, and take any other action as may be reasonably necessary to protect persons and property and to minimize the hazards until arrival of the operator's personnel or the police and fire departments.

Section 16.51 **Civil Penalties.**

Any person who violates any provision of this chapter shall be subject to a civil penalty of not to exceed \$1,000.00 for each such violation. Actions to recover the penalty provided for in this section shall be brought by the city attorney at the request of any person in the circuit court in and for the city in which the cause, or some part thereof, arose or in which the defendant has its

principal place of business or resides. All penalties recovered in any such actions shall be paid into the general fund of the city. This division does not affect any civil remedies for personal injury or property (including underground utilities damage) except as otherwise specifically provided for in this division.

Sections 16.52 - 16.60

Reserved.

ARTICLE III. PARADES.

Section 16.61 **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 purposes 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 city manager 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 street 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 unreasonably 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. 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 16.62 - 16.70

Reserved.

ARTICLE IV. DISPLAY OF GOODS OR MERCHANDISE.

Section 16.71 **Display of Goods in Public Places Prohibited.**

It shall be unlawful for any person to use any street, sidewalk, or other public place within the city limits as space for the display of goods or merchandise for sale.

Section 16.72 **Lawful Displays Require City Council Approval, Regulation.**

Any adjoining property owner upon application and approval by the city council may display goods and merchandise for sale on the sidewalks immediately adjacent to their property. The display and sale of merchandise, including the sale and service of food and beverages, shall not impede the free flow of traffic.

Section 16.73 **Right Not Conferred by Article.**

The adoption of this article shall not confer any right to any property owner to display merchandise for sale on the sidewalks immediately adjacent to their property. The display and sale of merchandise, including the sale and service of food and beverages, shall not impede the free flow of traffic.

Section 16.74 **Exemptions.**

This article shall not prohibit the sale of goods and merchandise during festivals and other public events that are approved and sanctioned by the city council by resolution.

Sections 16.75 - 16.90 **Reserved.**

ARTICLE V. STREET NUMBERS.

Section 16.91 **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 number not in sequence.

b. All new buildings and structures must be assigned a number address by Thomas and Brooks County 911 Department prior to or simultaneous with granting building permit, septic tank permit, or electrical permit.

Section 16.92 **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 for 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 16.93 **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 16.94 **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 16.95 **Responsibility for Enforcement.**

The Thomas and Brooks County E-911 Department shall be responsible for conducting inspections provided for in this article. The E-911 Department shall notify the City of Barwick Police Department to make cases and issue summonses for violations. However, all law enforcement agencies providing services in the city shall be authorized to enforce this article.

Sections 16.96-16.100 **Reserved.**

ARTICLE VI. UTILITY ACCOMMODATION POLICY.

Division 1.

Declaration of Findings and Purpose, Scope, Definitions.

Section 16.101 **Intent and Purpose.**

The City of Barwick, 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 16.102 **Scope.**

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

Section 16.103 **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.

- a. *City* means the City of Barwick, Georgia.
- b. *City Council* means the legislative governing body of the City.
- c. *Codified Ordinances* means the Codified Ordinances of the City of Barwick, Georgia.
- d. *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.

e. *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.

f. *Director* means the City Clerk of the City of Barwick, Georgia, or his or her designee.

g. *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.

h. *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.

i. *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.

j. *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.

k. *FCC* means the Federal Communications Commission or any successor thereto.

l. *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.

m. *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.

n. *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.

o. *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.

p. *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 (50%) cumulatively over the term of a written approval of Registration of such interests.

q. *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.

r. *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.

s. *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.

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

Division 2.

Rights of Way Registration.

Section 16.104 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 16.105 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 16.106 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 and 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) 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 authorized the utility to use or occupy the Right of Way for the purpose described

in the Registration.

Section 16.107 **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 16.108 **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 16.109 **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 16.110 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 IV.

Conditions of Street Occupancy.

Section 16.111 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 Barwick 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 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.

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 V.

Restoration of Property.

Section 16.112 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 VI.

Discontinuance of Operations, Abandoned and Unused Facilities.

Section 16.113 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 VII.

Termination of Registration.

Section 16.114 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 16.115 **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 VIII.

Penalties.

Section 16.116 **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 IX.

Other Provisions.

Section 16.117 **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 16.118 **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 16.119 **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 16.120 **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 16.121 - 16.130 **Reserved.**

ARTICLE VII. STREET NAMES.

Section 16.131 Standards for Naming of Streets.

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

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

c. The proposed name of any new streets will be verified with the City Clerk to avoid duplication before any assigning will be completed.

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

e. A committee composed of the following officials or their representatives is hereby appointed to review, rationalize, and recommend to the Council members of the city, as appropriate, changes in names or new names for streets and other public right of ways if the city, so as to avoid duplications and/or confusing similarities:

1. The city clerk;
2. Chief of Barwick Police Department;
3. Sheriff of Thomas and Brooks County;
4. U.S. Postmaster of Barwick;
5. Director of Thomas and Brooks County Emergency Medical Services;
6. Director of Barwick Public Works Department.

f. Any party desiring to request in writing a naming of a street shall first submit the request to the Office of the City Manager. The City Manager shall refer the request to the City Council who shall then forward to the Committee.

g. All cost associated with naming an existing street shall be borne by the requesting party and shall be paid before consideration by the Committee. Should the City fail to approve the naming, the payment will be refunded.

Sections 16.132 – 16.135

Reserved.