3/05/01

AMENDED
SUBSTITUTE

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STREETS, SIDEWALKS AND
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CITY COUNCIL
ATLANTA, GEORGIA

A SUBSTITUTE ORDINANCE 00-O-1307

BY FULL COUNCIL

AN ORDINANCE TO AMEND CHAPTER 138, STREETS, SIDEWALKS AND OTHER PLACES, ARTICLES I, II, III, IV AND V, SO AS TO INCLUDE DEFINITIONS OF NEW TERMS WHERE APPLICABLE; TO REORGANIZE SECTIONS AFFECTING THE PUBLIC RIGHT-OF-WAY; TO CONSOLIDATE, WHERE APPROPRIATE, VARIOUS SECTIONS PERTAINING TO ENCROACHMENTS, CONSTRUCTION AND EXCAVATIONS IN THE PUBLIC RIGHT-OF-WAY, BUS SHELTERS, PUBLIC VENDING DEVICES AND TELEPHONES; TO PROVIDE FOR THE GRANTING OF ONE OR MORE NONEXCLUSIVE FRANCHISES FOR TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

WHEREAS, It is the charge of the City Council to protect the health, safety, welfare, comfort, and convenience of the residents of and visitors to the City of Atlanta, including maintaining a safe and convenient municipal street system and other Public Right-of-way; and

WHEREAS, based on comments from the general public and the observation of City staff, there is a need to enhance protection of the conditions in the City's Public Right-of-Way, particularly as they relate to construction and maintenance activities conducted in the Public Right-of-Way by utility companies and their subcontractors; and

WHEREAS, it is the goal of the City to protect, maintain, and maximize Public Right-of-Way; and

WHEREAS, joint utility construction activities and sharing resources is one way to protect the integrity and future capacity of the Public Right-of-Way and should therefore be encouraged; and

WHEREAS, repeated, duplicative, excessive construction activities in the Public Right-of-Way undermines these objectives and therefore should be avoided where possible; and

WHEREAS, a framework is needed which will allow the City to otherwise manage its Public Right-of-Way in a manner as contemplated by the Federal Telecommunications Act of 1996; and

WHEREAS, the City has established a schedule of fees in furtherance of the above objectives and which are rationally related to the reasonable compensation from utilities to the City for commercial use of the Public Right-of-Way

NOW, THEREFORE BE AND IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: That Chapter 138, Articles I, II, III, and IV of the Code of Ordinances be amended by deleting Sections 138-1 through 138-136 in their entirety and be replaced with the following:

ARTICLE I. IN GENERAL

Sec. 138-1. Definitions.

For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended.

Sec. 138-1.1. "Abutting Property Owner"means the owner(s) of property abutting and contiguous to the street or Right-of-way in question.

Sec. 138-1.2 "Affected Persons or Groups" means any property owner, Person or group that may presently use or may reasonably expect to make future use of the Right-of-Way in question for transportation or other standard purpose which shall constitute greater interest than that of the general public including all Persons described in Section 138-68 and any Persons that have facilities located in such Right-of-Way.

138-3. "Bridge Agreement" means an agreement arranging the terms for constructing, operating and maintaining a privately owned bridge in the Public Right-of-Way.

Sec. 138-1.4. "Decorative Sidewalk Agreement" means an agreement arranging the terms for construction and maintenance of a decorative sidewalk in the Public Right-of-Way.

Sec. 138-1.5. "Encroachment Agreement" means an agreement arranging the terms under which an encroachment shall be allowed to exist within the Public Right-of-Way.

Sec. 138-16. "Licensee" means any Person which is a party to a Revocable License issued by the City.

Sec. 138-1.7. "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 is subject to the conditions set forth in Chapter 138 of this Code.

Sec. 138-1.8 "Permittee" means any Person who holds a permit issued by the City.

Sec.138-1.9. "Person" means any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but shall not mean the City.

Sec. 138-1.10. "Petitioner" means the Person requesting the abandonment and providing the required submittals. Only abutting property owners or their agents shall qualify as a petitioner to initiate the abandonment of any street or Right-of-Way.

Sec 138-.10"Public Right-of-Way" or "Right-of-Way" means generally property of any interest therein, whether or not in the form of a strip, for or devoted to (a) public transportation purposes; or (b) the placement of utility easements and other traditional uses along a transportation route, whether by dedication, prescription or otherwise, as well as the spaces above and below.

Sec. 138-.11 "Street" means the surface of, as well as the spaces below, any and all paved or unpaved public roads consistent with GA. Code Ann. §32-1-3 (24) 1998."Street" shall include the land area set aside for public uses as a travel way for vehicular traffic, pedestrian access, public utilities and other uses.

Sec. 138-1..12 "Tie-back Agreement" means an agreement arranging the terms for placing and removing tie-back cables in the Public Right-of-Way.

Sec. 138-2. Interest of City.

Any work conducted in, on, or along any street, or Public Right-of-Way in the City limits of Atlanta must be permitted by the City of Atlanta.

Sec. 138-3. Authority to regulate assigned to Commissioner of Public Works.

The authority and responsibility to regulate activities within Public Right-of-Way is hereby assigned to the Commissioner of Public Works.

Sec. 138-4. Enforcement, Penalties, Violations.

(a) Authority.

The primary authority and responsibility for the enforcement of the provisions of this chapter shall be vested in the Commissioner of Public Works. Upon a determination that a Person is in violation of this chapter, the Commissioner of Public Works or his designee shall give notice or issue a citation that indicates they are in violation of a section in this chapter. Should the violation continue after receiving notice of violation, the Commissioner of Public Works or his designee may cite the violator to appear before the judge of the Municipal Court for a hearing on the charge of violation of this chapter. Upon a finding that a section of this chapter has been violated, the violator shall be subject to one or more of the penalties:

(1) The revocation or suspension of a license, permit or franchise agreement for access to the Public Right of Way after written notice and reasonable opportunity to cure.

(2) The issuance of a stop work order by the Department of Public Works preventing work on the Public Streets, Public Right-of-Way or any associated private projects of the City of Atlanta until the conditions outlined in the stop work order are met.

(3) A fine not exceeding One Thousand Dollars ($1,000.00) a day for a violation of a provision of this chapter.

(4) Imprisonment for a term not exceeding six months.

(b) Additional Penalties. The imposition of any of the foregoing penalties shall not prevent revocation or suspension of a license, permit, franchise, other administrative sanctions or any other relief that may be granted under law.

(c) Continuous and Repeated Violations.

(1) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief and by such other means as are provided by law. The imposition of a penalty does not prevent equitable relief.

(2) With respect to violations of this chapter that are continuous with respect to time, each day the violation continues, it is a separate offense.

Section 138-5 ALLEYS

(a) The City of Atlanta is not and shall not be responsible for the maintenance of alleys, with the exception of three alleys (sometimes referred to as "public alleys") which have been historically maintained by the City of Atlanta. These three alleys are located in the central business district, connect major thoroughfares, are paved, and serve general transportation and public purpose. The alleys thus excepted are:

1. Mortgage Place, N.W. , from Carnegie Way to Ellis Street
2. Equitable Place, N.E., from Auburn Avenue to Edgewood Avenue
3. Cain Place, N.W., from International Boulevard to Harris Street.

(b) The City has no interest in, and shall not be responsible for any other alley within the City limits. Public service vehicles such as garbage trucks, fire safety vehicles, or police vehicles may make use of alleys in the provision of their service. However, none of these or other historic or present uses shall constitute public ownership of, interest in, or responsibility for said alleys.

(c) The City shall not maintain or improve any private alley provided however the City is an abutting property owner or the alley serves as access to a City facility.

(d) When the City shall need to acquire real property, Right-of-Way, or easements within an alley, the City has and will, barring evidence to the contrary, assume the centerline of the alley to be the property line between abutting private properties, and shall consider the area within the alley to belong in equal proportions to the abutting property owners. Calculations as to the value of such property or property rights to be acquired shall be made accordingly.

Sec. 138-6. Standard specifications adopted.

The street, sidewalk and concrete curb specifications, latest revision, copies of which are on file in the offices of the Municipal Clerk and Commissioner of Public Works, are adopted. The Commissioner of Public Works is authorized to perform updates and revisions, from time to time, in order to reflect changes in acceptable design standards and materials, and to reflect current construction costs.
(Code 1977, § 9-3017)

Sec. 138-7. Approval of design, construction, repair, maintenance or modification of subdivisions.

When design, construction, repair, maintenance or modification of subdivisions or the infrastructure under the jurisdiction of the Commissioner of Public Works is proposed, the design, construction, repair, maintenance or modification shall be approved in writing by the Commissioner of Public Works or the Commissioner's designee pursuant to the standards and requirements of this chapter.
(Code 1977, § 9-3001)

Sec. 138-8. Street name changes.

(a) The Municipal Clerk shall notify in writing all abutting property owners and occupants of any proposed street name changes, giving all pertinent information, including the date of the public hearing to be held as required in this section. The notices shall be mailed to the addresses shown on the tax records of the City and to the managing authority if such street address contains more than one unit. These notices shall be mailed at least 14 days prior to the date of the public hearing.

(b) The appropriate committee of the City Council shall conduct a public hearing on any proposed street name change prior to its final adoption and after notification to all abutting property owners and occupants.

(c) The Municipal Clerk shall advertise the public hearing in a newspaper of general circulation in the City at least once during the seven days immediately preceding the public hearing.

(d) The effective date of each street name change shall be 30 days after the enabling ordinance becomes law.

(e) The Municipal Clerk shall make and keep a record of all street name changes, reflecting the previous street name as well as the new street name and the effective date of the street name change.
(Code 1977, § 1-2002(d))

Sec. 138-9. Vacating and abandoning streets.

(a) In order to initiate a petition for the abandonment of any street or portion of any street, the petitioner or petitioners shall submit a petition to the Commissioner of Public Works, which shall consist of the following:

(1) Name and addresses of petitioners; and a statement that the petitioner owns or is the agent of one who owns property that abuts the parcel under consideration.

(2) Survey or plat of the area to be abandoned, prepared by a registered surveyor in a manner suitable for filing, and reviewed and approved by the Department of Public Works. The plat shall show the Right-of-Way divided on a pro-rata basis among the abutting property owners;

(3) Legal description and area in square feet of each parcel of the subdivided Right-of-Way to be abandoned;

(4) Name and mailing address of each abutting property owner(s) property tax identification numbers, deed book and page number of all recorded deeds and plats for each abutting property;

(5) A fee of Two Thousand Five Hundred Dollars ($2,500.00) for abandoned streets abutting the development of residential subdivisions or commercial or industrial tracts, or a fee of Two Thousand Dollars ($2,000.00) for abandoned streets abutting individual residential lots, which fees shall be applied to the cost of the appraisal of the parcel and advertisement of the proposed abandonment which shall be deposited in account number 3P02491102M22F03349999.

(6) A signed certification of intent from the petitioners and each abutting property owners that they intend to acquire title and compensate the City for the fee simple fair market value of the pro-rated portion of the Right-of-Way abutting their property, if abandoned, in exchange for the consideration of the petition and acknowledgment that if the property owner fails to acquire title and complete the transfer after the abandonment, the City may place a lien upon the property in an amount equivalent to the fair market value; and

(7) If a property owner is unwilling to acquire his pro-rata share of the Right-of-Way to be abandoned, that property owner may agree that his share may be paid for and/or acquired by another abutting property owner as long as the right of way in question is contiguous to the property to which it is to be joined; and

(8) Any other information deemed necessary or appropriate by the Commissioner of the Department of Public Works.

(b) Upon a determination that the petition is complete, the Commissioner of Public Works or his designee shall do the following:

(1) Notify all abutting property owners and others known affected Persons or groups by certified mail of the petition to abandon said street and of their right to respond to the petition. Those notified shall be allowed thirty (30) days to respond.

(2) Notify and receive responses from, City agencies, and other public agencies including but not limited to Police, Fire, Planning, Traffic and Transportation, Water, MARTA, Georgia Department of Transportation, Highways and Streets, Atlanta Public Schools, and Grady Hospital, and all other affected Persons, including utilities or others with facilities located in such street.

(3) Review existing records and make a site visit.

(4) Post appropriate signage notifying the public of the proposed abandonment.

(5) Evaluate the responses, documents, and findings from Abutting Property Owner, Affected Person, and Petitioner and determine, based on criteria established by the Commissioner, whether the street in question is no longer necessary as a Public Right-of-Way and whether the petition for a street abandonment can be accommodated.

(6) Advise the petitioner on the feasibility of abandoning the street and if the petition for abandonment is not feasible, advise the petitioners on what must be done to make it feasible.

(7) Request of the refund of the fee paid pursuant to this section if the Commissioner of Public Works does not recommend the street abandonment.

(c) Upon a determination by the Commissioner of Public Works that the street is no longer necessary for the public's use and convenience as a Public Right of Way, and

that the conditions outlined in this section have been fulfilled, the Commissioner of Public Works shall submit an abandonment ordinance to the Council for consideration. An ordinance cannot be considered until the provisions outlined in this section have been fulfilled.

(1) The fees described in Section this section may be waived by ordinance of the Council upon recommendation by the purchasing agent; or

(2) In the event that the value of the abandoned Right-of-Way parcels are determined to be equal to or less than the cost of conducting an appraisal, the Council may waive the requirement for an appraisal and may declare that the fair market value shall be an amount equal to the square foot unit value of the abutting property as determined by the most recent appraisal by the appropriate County Tax Commissioner.

(d) All legislation related to street abandonments shall originate in the City Utilities Committee as a committee paper. The City Utilities Committee shall not consider legislation for abandonment of Public Right-of-Way unless the conditions outlined in this section have been met.

(e) In order to vacate or abandon any street or a portion of any street, an ordinance prepared by the Department of Public Works declaring the intent of the City to abandon the street or a portion of the street which, in the judgment of the Council, has ceased to be used by the public to the extent that no substantial public purpose is served by it or is no longer needed for public road purposes shall be passed by the Council. There shall be attached to the ordinance a plat or sketch showing the street or portion of the street to be vacated or abandoned, and indicating which sections shall be acquired by which affected parties.

(f) Prior to consideration of the ordinance shall authorize and require an advertisement shall be published in at least one of the daily papers published in the City, which advertisement shall notify the public that a hearing on the question of the abandoning of the street or a portion of the street will be held by the City Utilities Committee on a day certain, which date shall be not less than ten (10) days from the date of the paper in which the advertisement appears. The advertisement shall give notice of the introduction of the ordinance, the street or portion of the street proposed to be vacated or abandoned and the time and place of the hearing thereon. The Council staff of the City Utilities Committee through the Municipal Clerk's Office shall be responsible for the advertisement being done in a timely manner. The Municipal Clerk shall be authorized to place said advertisement upon receipt from the Commissioner of Public Work or his designee that the petition is complete. Written Notice of the hearing shall be given by the Department of Public Works to the owners of property located on the street or portion of the street to be vacated or abandoned. At the hearing, any Person opposed to the vacation or abandonment shall be allowed a reasonable time within which to present such Person's views and opposition thereto, after which the City Utilities Committee shall

make its recommendation to the Council on the ordinance. Thereafter, the Council shall have full power and authority to adopt or reject the ordinance.

(g) If the City utilities committee recommends that the street or Right-of-Way be abandoned, the owner(s) of each abutting property shall post funds with the Clerk of Council, within a time limit set by the City Utilities Committee, in an amount equal to the fair market value of the portion of the Right-of-Way to be acquired. Upon receiving the recommendation from the committee, and funds being posted for all portions of the Right-of-Way in question, the Council shall have full power and authority to adopt or reject the ordinance. Council shall not act upon the abandonment ordinance until all funds have been received.

(h) Upon the adoption of the ordinance by the Council after the hearing before the City Utilities Committee, and upon approval of the ordinance by the Mayor, notice of vacation or abandonment shall be given to property owners located on the street or portion of the street vacated or abandoned, and the street or portion of the street shall thereafter cease to be a street for any purpose whatsoever and the rights of the public in and to that section of the street vacated or abandoned shall cease, provided that all easements and rights of the utilities, telecommunications providers and other Persons that have facilities located in the street shall continue as governed by state law.

(i) Streets or Right-of-Way having been abandoned shall be divided along the center line and transferred by quit claim deed to the abutting property owners along each side of the abandoned Right-of-Way in sections defined by extension of existing property lines. Said transfer shall be conditioned upon the abutting property owner having posted funds as outlined in paragraph (e) above. If the abutting property owner fails to post funds as outlined in paragraph (e), another abutting property owner may post such funds and shall thereby assume the right to acquire that portion of the abandoned Right-of-Way. Any such quitclaim deed shall not effect utilities located in such street or Right-of-Way.

(j) If, having duly signed a certification of intent as described in this section ,the property owner shall fail to complete the transaction to acquire the appropriate pro-rata share of the abandoned Right-of-Way, the City Attorney shall unilaterally file a quit-claim deed and shall simultaneously file a lien against the abutting property in an amount equal to the fair market value of the Right-of-Way portion in question.

(l) No street nor Right-of-Way shall be abandoned where the abandonment shall result in any parcel of land being left landlocked, nor shall any new unbuildable lot be created. No abandonment shall occur until all portions of the Right-of-Way are identified and accounted for as to whom shall be the receiving owner, and appropriate funds have been posted. All property boundaries resulting from the abandonment of any street or Right-of-Way shall be as regular and reasonable as possible.

(k) Physical Conditions for Abandonment. No street nor Right-of-Way shall be abandoned unless the following conditions are met.

1. No abandonment shall result in any parcel of land being left landlocked, nor shall any new lot be created which does not comply with the current applicable zoning and building permitting requirements.
2. No abandonment shall occur until all portions of the Right-of-Way or with a City standard cul –de-sac as defined in City of Atlanta Department of Public Works Standard Details. It shall be a condition of any abandonment that appropriate City standard infrastructure shall be construed by the petitioner, including the appropriate dedication of any additional land area required by construction of a cul-de-sac.

(Code 1977, §§ 9-3014, 9-3015; Ord. No. 1999-60, § 2, 8-10-99)
State law reference(s)--Abandonment of roads, O.C.G.A. § 32-7-1 et seq.

Sec. 138-10. Dangerous or Hazardous conditions near the Right of Way.

(1) Fences

(a) Prohibited. It shall be unlawful for any Person to erect or maintain any barbed wire fence, electric fence or any other character of fence or object that would endanger the Persons or clothing of passersby along the sidewalks on the portion of any lot adjacent to a Public Right-of-Way in the City, unless the fence is amply protected by a barrier approved by the Commissioner of Public Works or unless the fence is placed not less than three feet from the inside edge of the sidewalks of the street, the location being totally on abutting private property.

(b) Enforcement. The Police Chief shall, upon request of any citizen or upon the request of the Commissioner of Public Works, give notice to the owner of the property where the fence may be that the fence violates this section, and, unless removed within three days after notice, the owner shall be cited to appear before the judge of the Municipal Court for a hearing on the charge of violation of this section. Upon finding that this section has been violated, the owner may be required by the court to remove the barbed wire within a time prescribed by the court or the Commissioner of Public Works shall be authorized to remove the barbed wire and the cost of removal shall be a lien against the property.

(Code 1977, § 9-3004)

Sec. 138-11. Digging up, carrying away gravel, earth and other material from street or sidewalk.

Except as otherwise provided, it shall be unlawful for any Person to dig or scrape up and carry away gravel, earth, dirt, rock, sand or other materials which are a part of any street or sidewalk of the City.

(Code 1977, § 9-3005)

Sec. 138-12. Depositing, dumping or storing material in street or sidewalk.

Except as otherwise provided in this chapter, it shall be unlawful for any Person to dump, deposit, or store any refuse, waste, garbage or other material of any nature, in or along the Public Right-of-Way.

Sec. 138-13. Affixing signs within Right-of-Way.

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

(1) "Affix" includes the act of tacking, nailing, posting, gluing, painting, stapling, marking or writing upon the surface of any structure or directing, authorizing or paying another to do such act.

(2) "Signage" includes any handbill, poster, paper or written or drawn communication.

(b) Signage prohibited. Except as provided in this section, it shall be unlawful for any Person to affix or cause to be affixed any signage to or upon any sidewalk, crosswalk, curb, street lamppost, hydrant, traffic signal control box, utility pole, tree or other structure located within the Public Right-of-Way or affixed to any stake or pole that is placed in the ground of the Public Right-of-Way.

(c) Exceptions. Nothing in this section shall apply to the installation of the following:

(1) Metal plaques or plates commemorating a historical, cultural or artistic event, location or personality;

(2) Signage identifying licensed franchisees of the City or indicating the presence of workers of permitted utilities and their facilities or equipment within or immediately adjacent to the Right-of-Way;

(3) Signage identifying or directing vehicular or pedestrian traffic to or from property immediately adjacent to the signage when displayed on structures under the ownership or control of the property owner or lessee;

(4) Signage providing public transportation information;

(5) Signage providing direction to governmental facilities, hospitals or houses of worship;

(6) Signage affixed pursuant to permits issued by governmental entities having authority to do so;

(7) Signage used to provide for the safety of individuals using the Public Right-Of-Way or immediately adjacent property;

(8) Flags, banners, bunting, signs, displays or other forms of decoration which are displayed in conformance with and permitted by Section 138-60; or

(9) Commercial advertisements which are displayed in and on bus shelters in conformance with the requirements of O.C.G.A. § 32-6-51.

(d) Enforcement. The Department of Police shall enforce the provisions of this section.

(e) Removal. The Department of Public Works shall remove such signage.

(f) Penalties. Any violator of this section shall be held accountable as provided in the penalty section of this chapter. The placement of each individual signage shall constitute a separate offense.
(Code 1977, § 9-3012)
Cross reference(s)--Signs generally, § 6-26 et seq.
Land Development Code reference--Supplemental zoning provisions pertaining to signs, § 16-28A.001 et seq.

Sec. 138-14. Maintenance of sidewalk area.

(a) Removal of snow and ice from sidewalks. When there is an accumulation of ice, naturally or by artificial means, or snow sufficient to cover the sidewalks, the occupants or owners of the houses and other establishments fronting the sidewalks shall have the ice or snow cleared from the sidewalks in front of their establishments when an accumulation occurs, within a reasonable time after such accumulation.
(Code 1977, § 9-3016)

(b) Maintenance of unpaved portion of sidewalk space. Whenever a sidewalk is paved and not all of the sidewalk space is covered by the pavement, but a space is left between the sidewalk and the curbs or between the sidewalk and property line or both or where there exist planted materials in the ground or in planters within such unpaved portion, the owner of the abutting property shall be responsible for maintenance of that space and for keeping it free of holes and weeds, level with the sidewalk and sodded with grass and for watering, pruning and maintaining the planted materials, whether such materials are planted in the ground or in planters placed in or alongside the sidewalk area. Upon the failure of that Person to do so, the Commissioner of Public Works may give written notice to the Person to do so within ten (10) days, and upon the failure of that Person to comply, the Person shall be cited to appear for a hearing to show cause for

noncompliance, after which the Commissioner shall have the property put in a condition complying with this section and shall notify the Chief Financial Officer of the costs thereof. Execution shall issue against the owner of the property for the full amount of costs, which execution shall be collected by the Chief Financial Officer as are all other executions issued by the City.
(Code 1977, § 9-3086)

(c) Paving of grass plots upon repaving sidewalks. Whenever a sidewalk is repaved on a street which has a grass or dirt plot between the curb and the pavement, the Commissioner of Public Works shall be authorized to extend the repavement to the curbline. If the extension to the curbline is repaved, the grass or dirt plot so paved shall be paved with the same material as the new pavement.
(Code 1977, § 9-3087)

(d) Damaged sidewalk abutting the Right-of-Way. When the sidewalk abutting the Right-of-Way is damaged, it is the obligation of the abutting property owner to repair such sidewalk upon notice from the Department of Public Works. If after receiving such notice, the abutting property owner fails to repair the sidewalk within a reasonable time, the Department of Public Works is authorized to make such repairs and assess the abutting property owner for costs incurred.

Sec. 138-15. Obstructing sidewalks by display or sale of goods

Except as otherwise provided in this Code, it shall be unlawful for any Person to obstruct any sidewalk by placing thereon goods, wares, merchandise or other things of value for the purpose of display or advertising or to erect or use thereon any boxes, steps, stands or other structures or contrivances for the purpose of displaying goods, wares, merchandise or other things of value or to sell or offer for sale thereon any goods, wares, merchandise, service or other things of value. However, temporary use of the sidewalks as may be necessary to get merchandise into or away from places of business fronting on any such sidewalk shall not be held to be prohibited by this section. Nothing in this section shall be construed to prohibit peddling by licensed peddlers.
(Code 1977, § 9-3018)
Cross reference(s)--Businesses, ch. 30.
State law reference(s)--Obstruction of Roads, O.C.G.A. § 32-6-1 et seq.

Sec. 138-16. Compliance with Noise Ordinance.

All Permittees performing construction or other activities in the Public Right-of-Way must comply at all times with Chapter 74 which regulates noise within the City. Notwithstanding this section, however, the Commissioner of Public Works shall have the authority to waive noise restrictions for an applicant when doing so is in the best interest of the City.

Sec. 138-17. Design Objectives for Sidewalks.

Sidewalks installed in the Public Right-of-Way shall be a minimum width of **60** inches, shall be located at the edge of the Right-of-Way and shall conform with all ADA requirements. Sidewalks shall be designed and installed in such a manner as to protect existing mature trees and to allow for the planting of future trees. **In the event that topographical or other conditions do not allow for the installation of a 60-inch minimum sidewalk, the Commissioner of Public Works is authorized to exercise his discretion to determine an appropriate resolution.**

Sec. 138-18. Utility Markings.

(a) Temporary Markings. Prior to any utility construction or repair that may damage other utilities located in the Public Right-of-Way, Persons performing construction activities, to the extent permitted by law, shall locate and mark the location of all existing utilities. Upon the completion of all construction activities, all temporary utility location markings shall be removed.

(b) Permanent Pavement Marker. All permanent utility markers in the Public Right-of-Way shall ; identify the owner of such facility, be no larger than three (3) inches in diameter, installed flush with the pavement , and constructed with such material that in the event of failure, will not create a public safety hazard.

Sec. 138-19. Reserved

ARTICLE II. ENCROACHMENTS

Division 1. In General

Sec. 138-20. Minimum requirements for changes, excavations or encroachments in Right-of-Way for any purpose other than its intended use as a public street or highway.

(a) When performing construction activities, any cutting of trees or shrubs, or the erection of a permanent encroachment, such Persons shall provide concurrent written notice to the abutting land owner and the City. In addition, prior to conducting such activities, all such Persons shall obtain prior approval from the Department of Public Works.

(b) For the purposes of this Article, encroachments include but are not limited to:

(1) Vehicle, pedestrian or utility bridges.

(2) Vehicle, pedestrian or utility tunnels.

(3) Pipes, wires, conduits or similar facilities.

(4) Basements, vaults, elevator shafts, stairs, stairwells, ventilation shafts, gratings or similar facilities.

(5) Canopies, ledges, bay windows, balconies, decorative lighting, flagpoles, gargoyles, architectural embellishments, area walks or similar facilities.

(6) Any building, parking garage, structure, or part of thereof, including footings, foundations, tie-backs, supports, walls, eves, or projections; which extend into the Public Right-of-Way; whether intended for public or private use; whether new or historic shall be defined as an encroachment.

(7) A vault encroaching under the Public Right-of-Way which is covered by the franchised agreements between the City and the various utility companies is excluded, except when that vault is an integral structural part of the building being served, including the basement walls, footings or foundations of the building, in which case the vault will also be subject to an agreement as outlined in this section between the building owner and the City.

Sec. 138-21. The Commissioner of Public Works is authorized to establish and implement such administrative rules and procedures necessary to carry out the intent of this chapter.

Sec. 138-22. Non-conforming encroachments.

(a) Structure or properties that encroach into Public Right-of-Way and for which there is not an applicable agreement shall be considered "non-conforming uses." The City may, at the discretion of the Commissioner of Public Works, permit certain non-conforming encroachments. The City may at any time determine that continued encroachment is not in the public interest and may require the removal of said encroachment.

(b) If a non-conforming encroachment ceases to have continuous use, has a change in the type or degree of use, or if the structural or functional soundness of the structure or property deteriorates due to lack of maintenance, damage by fire, flood, wind, or other act of God, it shall no longer be tolerated and shall not be eligible for repair, replacement, or further use until an encroachment agreement has been executed. The City shall have the right and duty to require the removal of any encroachment thus affected.

(c) Past tolerance of an encroachment or failure to enforce the prohibition against encroachment shall not be grounds for continued existence of a non-conforming encroachment.

Sec. 138-23. Obligation to relocate upon notice.

(a) The City reserves the right to perform any public works or public improvements necessary to maintain the Public Right-of-Way. The City may therefore, upon written request to the Permittee, require relocation of the Permittee's facilities existing in the Public Right-of-Way at the Permittee's own expense when the relocation is necessary to maintain the health, safety, or welfare of the public or to improve or maintain the Public Right-of-Way for transportation uses.

(1) Notification, failure to remove. Upon receiving written notice from the City to remove, or relocate facilities which are using or occupying a Public Right-of-Way which the City has to improve, the Permittee shall, within sixty (60) days thereafter, begin arrangements for said removal or relocation in accordance with said written notice from the City. Should the Permittee fail to comply with such notice within a reasonable time sufficient to allow for procedures reasonably necessary for the removal and relocation of the facilities, the City may give the Permittee a final notice directing that such removal begin not later than ten (10) days from the receipt of such final notice.

(2) Removal or relocation of facilities by the City. If the Permittee refuses or neglects to relocate said facilities existing in the Public Right-of-Way within ten (10) days of receipt of such final notice, or if an emergency affecting public safety or health exists requiring immediate relocation of the Permitee's facilities, to the extent not inconsistent with state and federal law, the City may relocate such facilities and the Permittee shall pay to the City the reasonable costs incurred in connection with such relocation.

(3) Removal or relocation of facilities for aesthetic purposes. If the relocation of facilities in the Right-of-Way is for aesthetic purposes or purposes not related to improving the Public Right-of-Way for transportation purposes or to maintain the Public Right-of-Way for health or safety reasons, then the cost of such relocation shall be borne by the requesting third party and not by the City or the Permittee.

(4) Removal or relocation of facilities by an act of God. If an act of God necessitates the relocation of the Permittee's facilities located in the Public Rights-of-Way, the cost of such relocation shall not be borne by the Permittee.

Sec. 138-24. Conditions of Permit.

(a) Encroachment Agreement. It shall be prohibited and shall be unlawful for any Person to erect or maintain any temporary or permanent Right-of-Way encroachment in the City, unless that encroachment is covered by an encroachment agreement administered by the Department of Public Works.

(b) The City will not enter into an encroachment agreement to any owner of property adjacent to any street or roadway that is part of the street system of the City or Right-of-Way along the limited-access highways of the federal or state aid road system within the City limits or any agent or contractor employed by the owner to make changes to, to alter or to construct an encroachment over, upon or under the Right-of-Way unless:

(1) Changes to benefit public. In the opinion of the Commissioner of Public Works the proposed alteration, excavation or encroachment will constitute a benefit to the public and, except for permitted temporary disruptions of service, will not adversely impact the ability of the Right-Of-Way to handle vehicular or pedestrian traffic or otherwise to perform their intended function.

(2) Agreement as a condition of a permit. The owners of the adjacent or connected properties abutting the Right-of-Way seeking a permit to alter, excavate or encroach on the Right-of-Way enter an agreement with the City, which agreement shall be binding upon the owners of the property abutting the Right-of-Way and their successors in title in perpetuity or until the agreement is ended by mutual consent of the City and the agreeing parties and which will provide but is not limited to the following:

(3) Submission of plans and technical specifications. All alterations, excavations or encroachments permitted on, in, over, under or within the Public Right-of-Way of the City shall be pursuant to a plan, calculations and technical specifications prepared by a professional engineer licensed to practice in the state, which plans, calculations and technical specifications have been approved by the Commissioner of Public Works pursuant to the standards set forth in this Chapter or promulgated pursuant to this Chapter and, when applicable, the standards of State Department of Transportation or the Federal Highway Administration or both. Minimally, the plans should show the location of any supports, the height or depth of the structure and the width and volumetric cubic feet of the structure, where applicable.

(4) Performance bond as a condition of a permit. When in the opinion of the Commissioner of Public Works it is deemed appropriate and prior to beginning any work on, in, over or under the Public Right-of-Way of the City, the owner of the abutting property or the contractor employed by the owner to perform the work shall present to the City a performance and completion bond for the full value of the work contemplated furnished by a corporate surety satisfactory to the City, the amount of the surety being determined by the City's Risk Manager to be adequate to either complete the proposed work impacting the Public Right-of-Way in its entirety or to restore the Public Right-of-Way to its condition prior to commencement of

the work if the owner or the owner's contracting agent fails to complete the work to the satisfaction of the Commissioner of Public Works.

(5) Indemnification insurance as a condition of a permit. Evidence of insurance shall be issued to indemnify and hold harmless the City, its agents, officers and employees from all claims arising out of any injury to Persons or damage to property resulting from the changes to or work on, in, over, under or within the Right-of-Way by the property owner or the contractor employed by the owner or any of the agents or employees of the owner or contractor.

(6) Signatures required of all parties to agreement. All parties required for the execution of such agreement shall be signatories thereto, as evidenced by a title certificate of an attorney licensed to practice law within this state, which title certificate sets forth the names and addresses of the owners of the property or structures to be connected by the bridge or tunnel and the names and addresses of the lessors and lessees of the property or structures, together with sufficient information as to the terms of any leases of the property or structures and the corporate names of any parties.

(7) Obligation to replace the area beneath the street. The granting of permission to construct an encroachment or excavation on, in, over, under or within any public street or public alley within the City shall be contingent upon the agreement of the owner and the lessor of the tracts of land adjacent to the street or alley affected by the encroachment or excavation to remove the encroachment or excavation and to replace any area beneath the street or alley where the encroachment or excavation is constructed to a condition satisfactory to the City within ninety (90) days after being notified to do so by the Commissioner of Public Works without cost to the City and to provide security, if requested to do so by the City, to ensure that the encroachment or excavation will be removed or backfilled and the area returned to a condition satisfactory to the Commissioner of Public Works without the cost to the City.

(8) Performance bond required to replace the area beneath the street. The granting of permission for an encroachment or construction of an excavation on, in, over, under or within any public street or public alley within the City shall be contingent upon an agreement by the owner or lessee of the building or property to furnish and maintain a bond, at no expense to the City, with a corporate surety satisfactory to the City, to guarantee the performance of the principal in removing the encroachment or backfill the excavation as provided for in subsection (e) of this section.

(9) Annual rental of space. The granting of permission to construct the encroachment or excavation on, in, over, under or within any public

street or public alley within the City shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land connected by the encroachment or excavation to pay to the City an annual rental for the space occupied by the encroachment or excavation at a rate per cubic foot as determined by the Council, computed on the outside dimensions of the encroachment or excavation lying within the bounds of the Public Right-of-Way of the City, which rental shall be collected by the department of finance and shall be subject to change from time to time. For rental of less than 5,000 cubic feet, the Commissioner of Public Works may require one year's rental payments in advance.

(10) Public liability insurance requirement as a condition of a permit. The granting of permission to construct an encroachment or excavation on, in, over, under or within a public street or public alley of the City shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land permitted by the City to effectuate the encroachment or excavation to hold the City harmless from any and all claims arising out of the construction, operation, use, maintenance or removal of the encroachment or excavation and upon the additional agreement of the owners or lessors or lessees to maintain a policy of public liability insurance, at no expense to the City, satisfactory to the City and naming the City as a named insured, in an amount approved by the City's Risk Manager. The agreement of the owners or lessors or lessees of the tracts of land to hold the City harmless shall not be limited to the amount of the insurance.

(11) Non-waiver of City negligence. The granting of permission to construct an encroachment or excavation shall be contingent upon the agreement of the owners or lessors or lessees of the tracts of land permitted by the City to effectuate the encroachment or excavation that the obligation to hold the City harmless against all claims arising out of the construction, operation, use, maintenance or removal of the encroachment or excavation shall not be waived by the City because of the Commissioner of Public Works having approved by the plans and specifications for the encroachment or excavation or by the requiring or not requiring modifications thereto, even though the City may be found to have been negligent as a matter of law because of its acts or failure to act in regard thereto.

(12) Locating all pre-existing public and private utilities. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the City shall be contingent upon the parties' seeking permission to construct the encroachment or excavation, determining at their expense the location of all aboveground and below ground public utilities and private utilities of the City in the area where the encroachment or excavation is to be

constructed, and making arrangements for the removal or relocation of those utilities, at the expense of the parties seeking permission to construct the encroachment or excavation and at no expense to the City.

(13) Compliance with this chapter. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the City shall be contingent upon the agreement of the parties seeking permission to construct the encroachment or excavation to comply with all the terms of this chapter and to comply with all other ordinances and regulations of the City.

(14) Reimbursement of damages to City. The granting of permission to construct the encroachment or excavation on, in, over, under or within a public street or public alley of the City shall be contingent upon the agreement of the parties seeking permission therefore to repair any damage to the street or alley resulting from the construction, maintenance or use of the encroachment or excavation and to reimburse the City for any damage to the street or alley beneath, on or above where the encroachment or excavation is constructed, because of that construction and during the construction, use and maintenance of the encroachment or excavation.

(c) Enforcement. The Police Chief shall, upon request of any citizen or upon the request of the Commissioner of Public Works, give notice to the owner of the property which may be encroachment that the owner may be in violation of this section. Alternatively, the Commissioner of Public Works may give notice of violation to the owner. The owner shall then be allowed thirty (30) days to resolve the conflict by removing the encroachment, entering into an "encroachment agreement" with the City, or by demonstrating to the satisfaction of the Commissioner of Public Works that the structure or property in question is not in violation. Failing compliance, the owner shall be cited to appear before the judge of the Municipal Court for a hearing on the charge of violation of this section. Upon finding that this section has been violated, the owner may be required by the court to remove the encroachment within a time prescribed by the court or the Commissioner of Public Works shall be authorized to remove the encroachment and the cost of removal shall be a lien against the property.

d) Penalties. Any violator of this section shall be held accountable as provided in the penalty section of this chapter. Each day of continuation of violation after notice shall constitute a separate offense.

138-25. Erection of bridges, tunnels or similar structures across streets or alleys.

(a) It shall be unlawful to erect a bridge, tunnel or similar structure which crosses any public street or public alley, whether above or below the surface of the Right-

of-Way, for the purpose of providing a passageway between property or structures adjacent to the Right-of-Way shall be permitted to be erected across any public street or public alley except upon the approval and authorization of the Council by ordinance and upon compliance with all applicable sections of this Code and other ordinances of the City, including this section, as follows:

(1) It shall be unlawful to place supports for any bridge or tunnel or any other obstruction shall be placed within the Public Right-of-Way of any street or public alley or of any portion thereof set aside for or used for sidewalk purposes.

(2) The minimum height above or depth below street level in each instance of the construction of the bridge or tunnel shall be fixed and determined in advance by the Commissioner of Public Works in order to provide for the safe and efficient use of the Right-of-Way for public transportation purposes.

(3) The maximum outside width and height dimensions of each bridge or tunnel shall be as fixed and determined in advance by the Commissioner of Public Works in order to provide for the safe and efficient use of the Right-of-Way for public transportation purposes.

(4) The bridge or tunnel shall be designed by an architect or an engineer licensed to practice in the state, and the plans and specifications for the bridge or tunnel presented to the City for approval shall bear the architect's or engineer's official registration seal thereon. The plans and specifications shall be submitted to the Commissioner of Public Works, the Director, Bureau of Buildings and the Urban Design Commission for their written recommendations before the Council shall consider approval thereof.

(5) The outside appearance of any bridge permitted by this section shall not detract from the adjoining buildings or the neighborhood, and no articles of any nature, other than lighting fixtures, shall be permitted to be suspended from the outside of the bridge.

(6) It shall be unlawful to display or place any advertisements or mercantile displays upon or attached to any outer surface of the bridge or placed upon or attached to any window or glass-like surface of the bridge so as to be visible from outside.

(b) The granting of permission to construct any bridge or tunnel across any street or public alley shall be contingent upon the owner or, where applicable, lessor and lessee of the property or structures between which the bridge or tunnel is to be constructed entering into an agreement with the City, which shall be executed by all the

parties prior to the issuance of any building permit therefore and the covenants of which shall include, at a minimum, the following:

(1) The owner, lessor or lessee shall remove the bridge or tunnel within ninety (90) days after the Commissioner of Public Works directs the bridge or tunnel to be removed without cost to the City, following the Commissioner's determination that such removal is required for the safe and efficient use by the Public of the Right-of-Way for transportation purposes.

(2) The owner, lessor or lessee shall furnish and maintain a bond, at no expense to the City, with a corporate surety satisfactory to the City, to guarantee the performance of the principal in removing the bridge or tunnel as provided for in subsection (b)(1) of this section.

(3) The owner, lessor or lessee shall pay to the City a monthly rental for the air space or subsurface space occupied by the bridge or tunnel, as follows:

(a) The monthly rental rate for all bridges or tunnels used for pedestrian transportation or utility purposes only shall be determined by the Council, on a per-cubic-foot basis, which shall be subject to change from time to time by ordinance and which shall be calculated by the outside dimensions of each such bridge or tunnel.

(b) The monthly rental rate for each bridge or tunnel used for the sale of merchandise and mercantile displays shall be the fair market value of the space occupied by such bridge or tunnel, which rate per cubic foot shall be determined by the Council annually after submission of an appraisal by a competent appraiser selected by the Director, Bureau of Purchasing and Real Estate. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or lessee. The appraisal shall be submitted in ordinance form and shall be reviewed and approved by the City Utilities Committee before submission to the Council.

(c) The monthly rental rate for each bridge or tunnel used for the purpose of general advertising shall be determined by the fair market value of the space occupied by such bridge or tunnel and in accordance with standard advertising practices to establish such rate, which shall be determined by the Council annually after submission of an appraisal by a competent appraiser selected by the Director, Bureau of Purchasing and Real Estate. A fee to cover the cost of such appraisal shall be paid by the owner, lessor or

lessee. The appraisal shall be submitted in an ordinance form and shall be reviewed and approved by the City Utilities Committee before submission to the Council.

(4) The owner, lessor or lessee shall hold the City harmless from any and all claims arising out of the construction, operation, use, maintenance or removal of the bridge or tunnel and shall furnish and maintain a policy of public liability insurance satisfactory to the City, naming the City as a named insured, in an amount approved by the City's Risk Manager, and the agreement to hold the City harmless shall not be limited to the amount of such insurance.

(5) The obligation to hold the City harmless against all claims arising out of the construction, maintenance, use or removal of the bridge or tunnel shall not be waived by the City's having approved the plans and specifications for the bridge or tunnel or by the City's requiring or not requiring modifications to the bridge or tunnel or by the City's requiring or not requiring maintenance of the bridge or tunnel, even though the City may be found to have been negligent as a matter of law because of its action or failure to act in regard thereto.

(6) All parties required for the execution of such agreement shall be signatories thereto, as evidenced by a title certificate of an attorney licensed to practice law within this state, which title certificate sets forth the name and address of the owner of the property or structures to be connected by the bridge or tunnel and the names and addresses of the lessors and lessees of the property or structures, together with sufficient information as to the terms of any leases of the property or structures, and the corporate names of any parties.

(7) The owner, lessor or lessee shall determine the location of all public utilities and all utilities of the City in the area where the tunnel or bridge is to be constructed and shall make arrangements for the removal or relocation of those utilities, if necessary, all at such Person's own expense and at no expense to the City.

(c) This section shall apply to all rentals of air space or subsurface space above or below the Public Right-of-Way for bridges and tunnels and supersede the Procurement and Real Estate Code in Chapter 2, Article X to the extent of any conflict. (Code 1977, § 9-3008)

Sec. 138-26. Erection of balconies over sidewalks.

(a) It shall be unlawful to attach a balcony or erect other structures to a building so as to extend over any portion of a public sidewalk, except upon the

authorization of the Commissioner of Public Works and upon compliance with all applicable sections of this Code or other ordinances of the City, including this section.

(b) Balconies shall be designed by an architect or an engineer licensed to practice in the state and the plans and specifications for balconies presented to the City for approval shall bear the official registration seal of the architect or engineer. The plans and specifications shall be submitted to and approved by the Urban Design Commission and the Director, Bureau of Buildings before the Commissioner of Public Works authorizes the balconies.

(c) The granting of permission to construct these balconies so as to extend over the public sidewalks shall be contingent upon the owner, lessor or lessee of the building onto which the balconies are constructed, the owner of the land upon which the building is erected and all creditors secured by all or a part of the land or building entering into an agreement with the City which shall include but not be limited to agreements by the owner or lessee of the building to which the balconies are attached to:

(1) Construct and maintain the balconies so as to prevent any portion thereof from becoming detached and falling to the street or sidewalk below;

(2) Remove any or all of the balconies without cost to the City within a ninety (90) day period after the Council directs such removal by mailing a notice to remove the balconies to the owner, or lessee at an address set forth in the agreement;

(3) Furnish and maintain a bond, at no expense to the City, with a corporate surety satisfactory to the City, to guarantee the performance of the principal in removing the balconies as provided for in subsection (c)(2) of this section;

(4) Indemnify and hold the City, its officers, agents and employees harmless from any and all claims arising out of the construction, maintenance, use of or removal of any and all of the balconies, including claims arising out of Persons falling or jumping from the balconies or arising out of objects being dropped or thrown from the balconies;

(5) Furnish a policy of public liability insurance and property damage insurance satisfactory to the City and naming the City as a named insured or an additional named insured, in an amount approved by the, City's Risk Manager, which protects the City and its officers, agents and employees from claims arising out of the construction, maintenance, use of or removal of the balconies, including claims arising out of any Person falling or jumping from any such balcony or throwing or dropping any object from a balcony;

(6) Provide insurance covering the agreement to indemnify and hold the City and its officers, agents and employees harmless from any and all claims arising out of construction, maintenance, use of or removal of any or all of the balconies, including claims arising out of Persons falling or jumping from the balconies or similar structures or arising out of objects being thrown or dropped from the balconies, with a further agreement that the obligation to indemnify and hold the City and its officers, agents and employees harmless shall not be limited to the amount of the public liability and property damage insurance naming the City as a named insured or an additional named insured; and

(7) Pay to the City a monthly rental for the air space occupied by the balconies extending over a sidewalk of the City or a portion thereof at a rate per square foot, as determined by the Council, of the total area of the balconies, which rate per square foot shall be subject to change by the Council by an amendment to the ordinance establishing those rates.

(d) Each request for permission to erect those balconies shall be accompanied by a title certificate of an attorney authorized to practice law in the state setting forth the names and the addresses of the owner and lessee of the building and the land on which it is erected, the names and addresses of any creditors who are secured by all or any part of the land or building involved, together with sufficient information as to the terms of any leases on the land or building, the corporate names of any of the parties sufficient to accurately disclose the names of any of the parties required in the agreement between the City and the parties desiring to construct the balconies, which agreement shall be executed by all the parties desiring to construct the balconies, which agreement shall be executed by all the parties prior to the issuance of any building permit for the construction of the balconies or similar structures. The agreement shall be binding on all the parties, their heirs, administrators, assigns and successors in title, and upon the execution of the agreement it shall be filed in the Office of the Clerk of the Superior Court of Fulton County.
(Code 1977, § 9-3009)

Division 2. Utilities

Sec. 138-27. Franchise Utilities.

Nothing contained in this article or any other section of this Code or other ordinances, resolutions or acts of the Council in relation to the construction, operation, or maintenance of any public or private utility and transmission and distribution facilities shall be construed to mean that the City holds itself in any manner responsible or liable for damages to Persons or property caused by such, and the City disclaims any liability whatsoever in the premises.
(Code 1977, § 9-3125)

Secs. 138-28 through 138-39 Reserved

Division 3. Poles, Conduits, Wires and other Facilities

Sec. 138-40. Poles.

(a) Granting of permits to erect poles and facilities conditioned on right to grant use to others.

(1) In granting permits to erect poles and transmission and distribution facilities for purposes of electric light or power or for the use of telephone, telegraph or other wires, the Council reserves the right, if the interest of the City so requires, to encourage other Persons to use the same poles and transmission and distribution facilities for similar purposes, upon the payment to the owner thereof of a proper compensation to be determined by agreement. All permits shall be subject to this condition and in accepting a permit the applicant binds the applicant according thereto.

(2) To the extent permitted by law, permits for newly issued franchises may be conditioned upon the placement of transmission and distribution facilities underground.

(3) To the extent practicable, Persons shall locate all above ground facilities in such a manner as to minimize disruption to the access of private property and pedestrian traffic.

(b) Duty to reset or remove poles to facilitate street improvements.

(1) It shall be the duty of any street railway or electric light or power, CATV, telephone or telegraph company authorized to set poles for the stringing of wires thereon, within thirty (30) days upon notice from the Commissioner of Public Works, to remove or reset any poles belonging to that company, when the removal or resetting of poles is necessary in the judgment of the Commissioner to facilitate the improvement of any Public Right-of-Way *or* in order *to* protect public health, safety and welfare. In such instances, the expense of the removal shall be borne by the owners of the poles. The Commissioner of Public Works may also request that the owner of poles reset poles for the convenience of a lot, but the owner of such poles shall have no obligation to reset such poles unless the lot owner agrees to reimburse the owner of such poles for the costs of resetting the poles. Relocation requirements are located in Sec. 138-23.

(2) To the extent permitted by law, permits for franchises will be conditioned upon the placement of transmission and distribution facilities underground.

(c) Restoration of streets and sidewalks after setting or removing poles. All surplus dirt remaining after setting telegraph, telephone, electric light and other poles on a street or sidewalk shall be removed by the company placing the poles. When any poles are removed, the street or sidewalk shall be repaired and left in a condition satisfactory to the Commissioner of Public Works.

Sec. 138-41. Conduits.

(a) Application of section. This section shall apply to all Persons installing conduits under any ordinance or resolution of the Council. However, this section shall not apply to any Person having a specific contract or agreement with the City with reference to the manner in which conduits or subways maintained by that Person within the City may be used by any other Person, if the provisions of the contract or agreement are different from or contradictory to this section.

(b) Restrictions upon installation. All grants or permissions given by the Council by ordinance or resolution to any Person to install multi-duct conduits of any kind in or upon the streets and public places of the City, for the purpose of having wires or other appliances, such as cables and the like, placed or strung therein to convey electric current, gas or steam to supply electric light, electric power or heat or for the use of telephones, telegraphs or television shall be subject to the right of the Council to grant similar privileges and permits to other Persons to use the same conduits for similar purposes, provided such additional use is practicable and capacity is available as determined in the discretion of the owner which shall not be unreasonably withheld. Persons using such conduits shall pay a reasonable value, as determined by agreement, to the owner. Such value shall be determined by agreement or condemnation subsequent to the grants or permits made by the Council to the second applicant. All grants, permits and privileges made by the Council for any of the purposes named in this section shall be subject to all the conditions of this section, and the applicant therefore binds the applicant thereto by accepting any of the grants or privileges.

(Code 1977, § 9-3123)

Sec. 138-42. Location of certain electrical wires.

(a) Overhead electrical wires installed within the Public Right-of-Way which carry 2,000 volts or more and are located less than ten feet, measured horizontally, from any wire or structure owned by another Person shall be at least five feet above such wire or structure.

(b) New installations of electrical wires that carry 2,000 volts or less shall be located underground.
(Code 1977, § 9-3126)

Division 4. Bus Shelters

Sec. 138-43. Bus shelters.

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

(1) "Bus shelter" means a shelter or bench located at a bus stop for the convenience of passengers of public transportation systems owned and operated by governmental units or public authorities.

(2) "Commercial advertisement" means a printed or painted sign encouraging or promoting the purchase or use of goods, services or events and includes public service announcements and art displays, but does not include campaign posters, signs or advertisements prohibited by O.C.G.A. §§ 32-6-51 and 21-1-1.

(b) Restrictions; permit required. It shall be unlawful to erect or maintain a bus shelter located within the City except by issuance of a permit by the Commissioner of Public Works. No bus shelter shall be erected, located or maintained except in accordance with this chapter. No bus shelter shall be permitted within the sight distance triangle of another street as defined in this section. Any violator of this section shall be held accountable as provided for in the penalty section of this chapter. Any violator of this section shall also be subject to an order by the Commissioner of Public Works to remove any bus shelter found to be in violation of this section. Failure of the owner of the bus shelter to remove the bus shelter within thirty (30) days of being issued a written order of removal by the Commissioner of Public Works shall authorize the Commissioner of Public Works to remove the bus shelter, at the expense of the owner of the bus shelter. Applications for permits shall be in the form and shall contain such information as shall be required by the Commissioner of Public Works. All bus shelters shall be erected and maintained by the permit holder in conformity with the City's zoning ordinance, and this section shall be in addition to and shall in no way modify or replace the City's zoning ordinance and all permits required therein. Only governmental units or public authorities which own and operate public transportation systems within the City or their approved designees shall be permitted to erect or maintain bus shelters. All applicants for bus shelters permits shall comply with the requirements of O.C.G.A. § 32-6-51 imposed by the state, shall obtain any other permit required by any other political jurisdiction and shall abide by all applicable state and federal regulations.

(c) Agreement for use of Public Right-of-Way. Permits for bus shelters erected or maintained on the Right-of-Way of a public road or street shall only be issued upon a written agreement being entered into by the City and the respective public authority or governmental unit owning and operating the public transportation system.

No permit for any bus shelter in the Public Right-of-Way shall be authorized or issued unless the property immediately adjacent to such shelter is zoned to the C-1, C-2, C-3, C-4, C-5, I-1, I-2, SPI-1, SPI-2, SPI-3, or SPI-4 zoning district pursuant to part 16 of this Code.

(d) Authorization for use of other property. All permits issued for bus shelters erected or maintained on property other than on the Right-of-Way of public roads or streets shall be issued only upon the governmental unit or public authority owning and operating the public transportation system first obtaining authorization of the owner of property on which the bus shelter is to be erected and providing proof thereof at the time of filing an application for the permit. No permit for any bus shelter or property other than such Right-of-Way shall be authorized or issued unless the property upon which such shelter is to be located is zoned to the I-1 or I-2 zoning district pursuant to part 16 of this Code.

(e) Limitation on number. There shall be a limit of 300 total bus shelters on the Right-of-Way of public roads or streets or on other property within the City. There shall be no more than 300 bus shelter permits issued by the Commissioner of Public Works. Permit numbers shall be affixed to the permit in the upper right hand corner of the shelter. Permits are not transferable.

(f) Design plans; location. Before a bus shelter is permitted to be erected, the applicant must submit design plans, which should be accompanied by photographs and any other supporting documents, to the Commissioner of Public Works for approval. If an applicant proposes that a bus shelter contain illumination, the applicant must submit illumination plans at the time the application is made. It shall be unlawful for a bus shelter to contain illumination except pursuant to a permit issued by the Commissioner of Public Works authorizing illumination. All permits authorizing the erection or the illumination of a bus shelter are subject to the final inspection and approval of the Commissioner of Public Works before the bus shelter may be used to serve bus passengers. All permit requests shall be reviewed by the Urban Design Commission as is required by Chapter 90, Article II, Division 2 of this Code. The Commissioner of Public Works shall not issue a permit until the permit application has been reviewed by the Urban Design Commission pursuant to Chapter 90, Article II, Division 2 of this Code. Each application must be approved by the Commissioner of Public Works as to location and design and a permit issued before a bus shelter is erected. The criteria for evaluating the bus shelter design shall be the design compatibility with the site proposed, and the factors to be considered in making the determination shall be the aesthetics, size, scale, massing, detailing and materials of the proposed bus shelter. Additionally, the applicant must receive the approval of the Commissioner of Public Works regarding the location of each and every proposed bus shelter before it is erected. The criteria for evaluating bus shelter locations shall be whether the bus shelter is compatible with the site selected, whether the proposed setback for the bus shelter would allow for the proper flow of pedestrian traffic and whether public transit usage levels justify the erection of a bus shelter at a particular location. All bus shelters shall be erected in accordance with the location and design approved and permitted by the Commissioner of Public Works. All

shelters serving bus passengers shall be handicap accessible and provide handicap access to and from the bus to the shelter.

(g) Setbacks. Where a curb and gutter are present, there shall be a minimum of five feet of clearance from the face of the curb to any portion of the bus shelter. Where no curb or gutter is present, the front of the bus shelter shall be at least ten feet from the edge of the main-traveled roadway. In special public interest (SPI) districts 1, 2, 3 and 4, the minimum amount of unobstructed pedestrian space shall be as set forth in the pedestrian space plan in Chapters 18A--18D of part 16 of this Code.

(h) Maintenance. All governmental units and public authorities permitted to erect and maintain bus shelters or their designated agents shall be responsible for maintaining the bus shelters in a safe, clean and complete condition and in good order and repair at all times. A notice shall be placed on all bus shelters listing the name, address and telephone number of the Person designated by the bus shelter permit holder who is responsible for the maintenance of the bus shelters and for fielding complaints by the public. The permit holder or designee shall maintain a log of each and every complaint made regarding the bus shelters and corrective action taken, which shall be available during normal business hours for inspection by the Department of Public Works. The bus shelters shall be subject to inspection by the Department of Public Works at all times, which may issue citations for maintenance violations. All maintenance violations shall be corrected within 48 hours upon the permit holder's being provided notice by the Commissioner of Public Works of a violation.

(i) Commercial advertisements. Commercial advertisements are permitted on shelters serving bus passengers only in those zoning districts specified in subsections (c) and (d) of this section. It shall be unlawful to place commercial advertisements on any shelter serving bus passengers within 100 feet of any designated landmark district, historic district, conservation district, landmark building or site; historic building or site; and 50 feet of any park. In addition, such commercial advertisements are prohibited within any landmark district, historic district, conservation district or park. However, bus shelters containing advertising shall be permitted on the Public Right-of-Way in otherwise prohibited areas when at least one adult from 70 percent of residences within 500 feet in either direction on the street of the proposed bus shelter location signs a petition requesting a bus shelter be permitted. It shall be unlawful to place commercial advertisements on a bus passenger bench, whether inside or outside a shelter. One double-faced commercial advertisement, not to exceed 24 square feet in sign area, may be attached to a shelter for bus passengers; provided however, such commercial advertisements must be placed at the end of the shelter furthest from the approaching traffic flow on the side of the street on which the shelter is located and may not be placed on the back or any other portion of the shelter. Such commercial advertisement shall not extend beyond the limits of the shelter. Placement of such commercial advertisement on the top of any shelter serving bus passengers is specifically prohibited and a violation of the City Code. Double-faced commercial advertisements are defined and measured as set out in Chapter 28A of part 16 of this Code.

(j) Nonconformities. Any legal bus shelter in existence on the effective date of the ordinance from which this section derives which does not comply with this section shall be removed by the permit holder or owner after a period of ten years commencing with the effective date of the adoption of the ordinance from which this section derives. Any such nonconforming bus shelter which shall cease being used for a continuous period of one year shall be removed after such period of nonuse. However, no commercial advertisement which was not permitted prior to the adoption of the ordinance from which this section derives shall be permitted on any shelter serving bus passengers unless the shelter is in conformity with this section.

(k) Indemnification. All permit holders for bus shelters located within the City shall at all times assume all risks for the bus shelters and shall indemnify and hold harmless the City against all losses or damages resulting from or alleged to have resulted from the existence, maintenance or any other aspect of the bus shelters.

(Code 1977, §§ 9-3020, 9-3021; Ord. No. 1995-76, § 1, 11-28-95)

Secs. 138-44 through 138-50. Reserved

Division 5. Vending Devices and Telephones

*Cross reference(s)--Identification of coin-operated vending machines or amusement devices, § 30-1; vending on public property, § 30-1401 et seq.

Sec. 138-44. Definitions.

(1) The following words, terms, and phrases, when used in this Article, shall have the meaning set forth in this section, unless it is apparent from the context that a different meaning is intended:

(a) "Downtown improvement district" means that certain area of downtown Atlanta designated as a community improvement district pursuant to Resolution 95-R-1374 passed by the City Council.

(b) "Equivalent publication vending device" means any publication vending device which is of the same size, material, dimensions, and style of the specified publication vending device and which is approved by the Commissioner of the Department of Public Works.

(c) "Olympic corridors" means Peachtree Street from Memorial Drive to Third Street; Auburn Avenue; Capitol Avenue from Decatur Street to Little Street; International Boulevard; North Avenue from Techwood Drive to Peachtree Street; Ralph David Abernathy Boulevard from Lee Street to Capitol Avenue; Georgia Avenue from Capitol Avenue to Grant Terrace; Tenth Street from Fowler Street to Peachtree Street; Marietta Street from International Boulevard to Peachtree Street; Pine Street from

West Peachtree Street to Peachtree Street; Currier Street from Courtland Street to Piedmont Avenue; the Atlanta University Center/Westside Pedestrian Corridor System; and extending 30 feet in either direction on all cross streets intersecting the foregoing streets. A map indicating the boundaries of the Olympic Corridors shall be on file and available for public inspection in the office of the Municipal Clerk.

(d) "Publication" means newspapers; news-related, non-news-related, and commercial periodicals; or published materials of any nature.

(e) "Publication vending device" means any self-service or coin-operated box, container, storage unit, or other dispenser installed, used, or maintained for the display, distribution, or sale of publications.

(f) "Public sidewalk" means that portion of the Public Right-of-Way designed or ordinarily used for pedestrian travel.

(g) "Public street" means that portion of the Public Right-of-Way designed or ordinarily used for vehicular travel.

(Ord. No. 1996-07, § 1, 3-3-96)
Cross reference(s)--Definitions generally, § 1-2.

Sec. 138-45. Enforcement, violations and penalties.

It shall be the duty of the Commissioner of Public Works to enforce this Article. Any Person violating any section of this Article shall be deemed guilty of an offense and upon conviction shall be punished as provided in Section 138-4. Each day's continuance of a violation shall be considered a separate offense.
(Code 1977, § 14-11011)
Sec. 138-46. Permit.

(a) It shall be unlawful for any Person to place, locate, operate or maintain any publication vending device in or on any part of the public sidewalk without first obtaining a permit from the Commissioner of Public Works.

(b) No fee shall be required for the issuance of a publication vending device permit.

(c) Applications for all permits for the placement and maintenance of publication vending devices must contain the following:

(1) The applicant's name and address at which any notices required by this Article shall be deemed received when placed on an envelope and deposited in the United States mail with adequate postage affixed.

(2) The telephone number of the applicant at which notice of any repairs deemed necessary to permitted publication vending devices are appropriately received.

(3) The total number of and exact location of each publication vending device to be permitted.

(4) An agreement of indemnification, as required by this Article.

(5) A certification that the applicant has reviewed, understands, and will comply with all requirements of this Article.

(6) An agreement by the applicant promptly to inform the director in writing of any changes in the applicant's name, address or telephone number, and that failure to do so shall constitute grounds for revocation of the permit.

(d) Applications for all permits for the placement and maintenance of publication vending devices shall be reviewed, and if in compliance with all requirements of this Article, shall be approved by the Commissioner of Public Works within thirty (30) days of receipt of such applications. Only one permit shall be required for the placement of any number of publication vending devices, provided that the application clearly states the location of each.

(e) If at any time the Commissioner of Public Works determines to deny an application for a permit, or determines that a publication vending device for which a permit has been issued does not comply with any requirement of this Article, the Commissioner shall issue a written notice of intent to deny, or intent to revoke, the applicable permit to the applicant or Permittee. The notice shall state specifically the reason for the denial or revocation of the permit, and shall offer the applicant or Permittee an opportunity for a hearing before the Commissioner of Public Works or his or her designee, on such denial or revocation not less than ten days following the issuance of such notice. The applicant or Permittee may file a written response to the notice prior to such hearing setting forth the reason the permit should issue or should not be revoked. In the alternative, the applicant or Permittee shall submit sufficient evidence that any application deficiency or violation has been corrected. If the Commissioner of Public Works or his or her designee determines, following a hearing, that the denial was proper, or that the violation as charged is true and accurate, and that the applicant or Permittee has not caused the application or violation to be corrected, or if the applicant or Permittee fails to appear at the hearing and can present no justifiable excuse for the nonappearance, a final notice of denial or revocation shall issue. If sufficient evidence is submitted that the applicant or Permittee is in compliance with the requirements of this Article, the Commissioner shall issue the requested permit, or withdraw the notice of violation.
(Code 1977, § 14-11010; Ord. No. 1996-07, § 3, 3-3-96; Ord. No. 1996-47, § 1, 7-8-96)

Sec. 138-47. Hold-harmless agreement.

Every Person who installs, places or maintains a publication vending device on a public sidewalk in the City shall file a written statement with the Municipal Clerk satisfactory to the City Attorney whereby the Person agrees to indemnify and hold harmless the City, its officers, directors and employees from any loss of liability or damage, including expenses and costs, for bodily or personal injury and for property damage sustained by any Person as a result of the installation, placement or maintenance of a publication vending device within the City.
(Code 1977, § 14-11009; Ord. No. 1996-07, § 3, 3-3-96)

Sec. 138-48. Projection onto public streets.

It shall be unlawful for any Person to install, place or maintain any publication vending device which projects onto, into or over any part of a public street or which rests wholly or in part upon, along or over any portion of any public street.
(Code 1977, § 14-11002; Ord. No. 1996-07, § 3, 3-3-96)

Sec. 138-49. Dangerous condition or obstruction.

It shall be unlawful for any Person to install, place or maintain any publication vending device which in whole or in part rests upon, in or over any public street or any public sidewalk when such installation, placement or maintenance endangers the safety of Persons or property or when the site or location is used for public utility purposes, public transportation purposes or other governmental use or when such publication vending device unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, including any legally parked or stopped vehicle, the ingress or egress of any residence or place of business, the use of poles, posts, traffic signs or signals, hydrants, mailboxes or other objects permitted at or near the location.
(Code 1977, § 14-11003; Ord. No. 1996-07, § 3, 3-3-96)

Sec. 138-50. Identification.

Every Person who installs, places or maintains a publication vending device on a public sidewalk of the City shall have affixed thereto, in a place easily seen, the name, address and telephone number of such Person.
(Code 1977, § 14-11004; Ord. No. 1996-07, § 3, 3-3-96)

Sec. 138-51. Standards for installation and maintenance of publication vending devices in designated areas.

(a) Publication vending devices shall be installed and maintained as mandated for the district in which they are located, as set forth below:

(1) Olympic corridors and downtown improvement district. In the olympic corridors and downtown improvement district, all publication vending devices shall be uniform and standardized as outlined below.

(a) The color of publication vending devices shall be CODA Green (Pantone Color 5467C). The publication's name shall be permitted to be displayed on the front of the publication vending device directly below the publication display window in letters a maximum of two inches high. The publication's name shall also be permitted to be displayed one time on the back of the publication vending device, centered, exactly four inches from the top edge of the publication vending device, with letters a maximum of two inches high. A service telephone number for the reporting of publication vending device malfunctions may be displayed directly below the publication's name on the front (the side which contains the display window) of the publication vending device in letters a maximum of 1-½ inches high. This service telephone number may also be displayed, instead of the publication's name, one time on the back of the publication vending device, centered, exactly four inches from the top edge of the publication vending device, with numbers a maximum of two inches high. No other logo, advertising, or lettering shall be permitted on publication vending devices. Face plates for coin boxes may be customized to contain a publication's name or logo. Free publications or other publications whose vending device does not require a coin box may also customize the face plate where a coin box would otherwise be located. Card holders may be permitted to be displayed on publication vending devices provided that card holders contain logos, lettering or advertising for that publication only. Card holders shall not exceed 11 inches by 17 inches and shall be placed in the space provided directly below the front display window.

(b) Publication vending devices shall be standard Sho-Rack galvanized material model 100, or equivalent publication vending device, as defined in section 138-156.

(c) Publication vending devices shall weigh a minimum of 75 pounds and may be fastened to one another in such a manner that they cannot be easily moved or toppled or otherwise pushed or thrown into a Right-of-Way or street.

(d) Publication vending devices shall not be fastened to the sidewalk without prior approval from the Commissioner of the Department of Public Works.

(e) Publication vending devices shall abut one another and shall be located so as to abut one another beginning at a location not less than 30 feet from the intersection point of the projected curblines of any intersection. No group of publication vending devices may extend for

more than 13 feet. There shall be a space of 50 feet between groups of publication vending devices.

(f) Publication vending devices shall not be located:

(1) Within 5 feet from the nearest outer edge of any crosswalk;

(2) Within 20 feet from any fire hydrant, fire call box, or police call box;

(3) Within 5 feet from the nearest outer edge of any driveway;

(4) Within 2 feet of signs, parking meters, streetlights, or utility poles; or

(5) Within 15 feet of any designated bus stop sign or post.

(6) In such a manner that hinders egress to parked vehicles in marked parking stalls;

(7) In such a manner that impairs bus, taxicab, truck or passenger loading zones; or

(8) In a manner that blocks historic markers, benches, or other public improvements.

(g) Publication vending devices shall be placed within the street furniture zone as described by the pedestrian space plan (sheets 137 and 138 of the City official zoning map) no closer than 18 inches from the back of the nearest curb of the road and shall be positioned to provide for a minimum of nine feet of unobstructed sidewalk so as not to impede reasonable pedestrian traffic on sidewalks. Publication vending devices shall not be permitted on sidewalks with a width, which is less than 12 feet.

(2) All other locations. Publication vending devices within the City that are not within the olympic corridors or the downtown improvement district shall not be subject to the regulations imposed on publication vending devices as set forth in subparagraph (1), but shall comply with the following:

(a) Publication vending devices shall not be located:

(1) Within 5 feet from the nearest outer edge of any crosswalk;

(2) Within 20 feet of any fire hydrant, fire call box or police call box.

(3) Within 5 feet from the nearest outer edge of any driveway.

(4) In such a manner that impairs bus, taxicab, truck or passenger loading zones;

(5) Within 15 feet of any designated bus stop sign or post;

(6) Within 50 feet of any other publication vending device on the same side of the street containing the same edition of the same publication; and

(7) At any location whereby the area of unobstructed public sidewalk for the passage of pedestrians is reduced to less than six feet.

(b) No single publication vending device shall exceed 5 feet in height, 30 inches in width or two feet in thickness.

(c) No vending device shall be chained to any property not owned by the owner of the publication vending device or to any permanently fixed object; however, publication vending devices, when placed side by side, may be chained or otherwise attached to one another.

(d) Publication vending devices may be placed next to each other, provided that no group of publication vending devices shall extend more than 6 feet along a curb or wall.

(Ord. No. 1996-07, § 2, 3-3-96; Ord. No. 1996-21, §§ 1, 2, 5-13-96)

Sec. 138-52. Maintenance; advertising prohibited.

(a) Each publication vending device shall be maintained in a state of good repair at all times.

(b) It shall be unlawful for any Person to use a publication vending device for advertising or publicity purposes other than that dealing with the display, sale or purchase of the publications sold therein.

(Ord. No. 1996-07, § 2, 3-3-96)Sec. 138-53. Abandonment.

Any publication vending device placed upon the Public Right-of-Way which appears to have been in disuse by the Permittee for that location for at least forty-five (45) days shall be considered abandoned, and to constitute a public nuisance subject to abatement procedures as provided for in this Code of Ordinances.

(Ord. No. 1996-07, § 2, 3-3-96; Ord. No. 1996-47, § 2, 7-8-96)

Secs. 138-54--138-59. Reserved.

Division 6: Flags, Banners, Signs, Displays

Sec. 138-60. Flags, banners, signs, displays.

(a) Permit required. No Person shall attach any flag, banner, bunting, sign, display or other form of decoration to any light pole or other standard erected on any sidewalk Right-of-Way along any street, whether the pole or standard is the property of the City or of a Person, unless a permit to attach the flags, banners, bunting, signs, displays or other forms of decorations to the pole or other standard shall have been issued by the Commissioner of Public Works under the following conditions:

(1) No flag, banner, bunting, sign, display or other form of decoration shall be permitted which contains any advertising or any reference to any organization organized or operated for profit or which contains advertisement of any event or occurrence to take place under the sponsorship or for the benefit of any Person operating for profit. However, for permitted festivals and centennial celebrations of local companies or corporations, the Commissioner of Public Works may issue a permit allowing a limited form of advertising, if the following conditions or others determined by the Commissioner of Public Works are met:

(a) The actual surface area of the flag, banner, bunting, hanging sign, display or other form of decoration does not extend more than 3 feet horizontally and 4 feet vertically, such dimensions resulting in an area no greater than 12 square feet, with the exception of those poles designated specifically for the purpose of accommodating flags, banners, buntings, hanging signs, displays, the dimensions of which shall not exceed 8 feet horizontally and 8 feet vertically, such dimensions resulting in an area no greater than 24 square feet total;

(b) The form of advertising shall be the corporate logo or trademark of the for-profit sponsoring organization;

(c) The corporate logo or trademark shall not exceed one-tenth of the total surface area on either side;

(d) Only one corporate logo or trademark shall be allowed per street decoration; and

(e) All provisions of this section are strictly adhered to. The approved size of the flag, banner, bunting, hanging sign or other display shall be in the discretion of the Commissioner of Public Works, considering the areas to be decorated, structures upon which such decorations are to be installed, length of street Right-

Of-Way involved and the impact on adjacent structures, properties and activities. The determination of the Commissioner of Public Works with respect to approving applications and permitting the hanging of flags, banners, buntings, signs, displays or other forms of street decorations shall be final.

(2) No flag, banner, bunting, sign or display or other form of decoration shall be permitted which, in the opinion of the Fire Chief, would create a fire hazard. No permit shall be issued under this section by the Commissioner of Public Works until the materials to be used in such decorations have been approved in writing by the Fire Chief.

(3) No permit shall be issued by the Commissioner of Public Works for any decorations to be attached to any poles or standards in any sidewalk area, which poles or standards belong to any Person, other than the City, unless permission in writing from the owners of the poles or standards to attach the decorations is submitted to the Commissioner of Public Works with the application for the permit.

(4) No permit shall be issued under this section which will allow flags, banners, buntings, signs, displays or other forms of decoration to be placed within the Public Right-of-Way for a duration of more than thirty (30) days, unless the Council by resolution extends that period of the permit.

(5) No permit shall be issued until the Person requesting the permit agrees in writing to remove all flags, banners, bunting, signs, displays or other forms of decorations, without cost to the City, within five (5) days after the end of the permit period.

(6) No permit shall be issued until a deposit of One Thousand Dollars ($1,000.00) is made by the applicant for the permit to the Commissioner of Public Works. The deposit shall be returned to the applicant if all flags, banners, buntings, signs, displays or other forms of decorations attached to any poles or standards under the permit granted are removed within five (5) days after the end of the permit period. If the flags, banners, buntings, signs, displays or other forms of decorations are not removed within five (5) days, the deposit shall be forfeited as liquidated damages and the Commissioner of Public Works shall remove the flags, banners, buntings, signs, displays or other forms of decorations. If the expense of removal shall exceed the amount of the deposit, the excess over the amount of the deposit shall be collected from the Person to which the permit was issued, as provided by law.

(7) The number of banners, buntings, signs, displays or other forms of decoration shall not exceed 100 per permitted festival, subject to the approval by the Commissioner of Public Works of the distribution of such decorations along the Public Right-of-Way. The criteria for approval of the number of such

decorations shall include those standards and requirements set forth in this subsection pertaining to size and format.

(8) The fee for a permit shall be One Hundred Dollars ($100.00).

(9) The Commissioner of Public Works shall approve all brackets, supports or any type of supporting structures for hanging the banners.

(10) The printing process for the banners shall be approved by the Special Events Coordinator of the Department of Parks and Recreation.

(11) The applicant shall enter into an agreement with the City indemnifying and holding the City, its officers, agents and employees harmless from any and all claims arising out of the placement of, maintenance of, use of or removal of banners, including claims of banners or the structures upon which they are hung falling on people or property.

(b) Hanging across streets. No banners, bunting, signs, displays or other forms of decoration may be constructed to cross any street in the City, and no permit shall be issued therefore.

(c) Use of City personnel or equipment for installation. No City agency may use any City personnel or any City equipment to install or to aid in the installation of any flags, displays or other forms of decoration along the City Right-of-Way for any private organization.

(d) Certain waivers for sporting events. The Commissioner of Public Works is authorized to waive the requirements of subsections (a)(1), (a)(7) and (b) of this section for applicants sponsoring one-day sporting events when, in the Commissioner's judgment, public safety will not be compromised.
(Code 1977, § 9-3010)

Cross reference(s)-Sign regulations generally, § 6-26 et seq.
Land development code reference-Supplemental zoning regulations pertaining to signs, § 16-28A.001 et seq.

Secs. 138-61 through 138-64. Reserved.

ARTICLE III. CONSTRUCTION OR EXCAVATION IN THE RIGHT-OF-WAY

Sec. 138-65. Permits for Construction or Excavation.

(1) Permit Required. Any Person desiring to conduct construction activities within the Public Right-of-Way or to have an excavation or opening made within a public street, sidewalk, or Right-of-Way shall make application for a permit to the Commissioner of

Public Works. The Commissioner of Public Works shall have the authority to impose such permit terms and conditions necessary to protect the public health and safety, and the Permitee shall comply with all terms and conditions imposed by the Commissioner of Public Works including the right to maintain a register of authorized contractors. Only authorized contractors shall engage in permitted activities in the Rights-of-Way. Applications for all permits for construction and excavation pursuant to this section shall be reviewed, and if the application is complete and the Permittee is in compliance with all requirements of this Article, to the extent practicable, the City shall issue a permit within sixty (60) days of receipt of the last application and notice to all parties; provided that all joint application permits for excavation by two or more Persons shall be expedited and if in compliance with all requirements of this Article shall, if practicable, be approved by the Commissioner of Public Works within thirty (30) days of receipt of such applications.

(a) Scheduled Maintenance Permits-There shall be a standing permit for the routine maintenance and repair by the franchisees to existing facilities in the Public Rights-of-Way.

(b) Construction Permits -Persons desiring to conduct excavation work in the streets or Public Rights-of-Way including, but not limited to, any street cuts, boring activity and the placement or removal of conduit, manholes, cable, shall apply for a Construction Permit. Such permits shall be issued for a fee of Two Hundred Dollars ($200.00) per permit. The permit fee shall include one hour of inspection by a Department of Public Work's Inspector upon the completion construction activity. In addition, the City may charge an inspection fee of Fifty Dollars ($50.00) per hour. However, where the Georgia Department of Transportation has primary permitting authority over a particular construction activity, the Permittee may show a copy of the GDOT permit upon application for a City permit, and the City permit fee and inspection fees shall be waived for that permit.

(c) Emergency Repair Permit-Persons conducting excavation work in the Public Rights-of-Way pursuant to an emergency shall comply with the provisions set forth in Sec. 138-74.

(2) Permit maintained on site. The permit granted by the Commissioner of Public Works to conduct construction activities within the Public Right-of-Way, maintenance activities, or to open any street or sidewalk shall be maintained on site and displayed to any official of the Department of Public Works, Police, or other City official upon request. A Scheduled Maintenance Permit shall be exhibited for scheduled maintenance. A Construction Permit shall be exhibited for excavation activities. Emergency Repair Permits shall be exhibited for emergency repairs. Failure to exhibit the appropriate permit shall not only be a violation of this Article but shall also be cause for revocation of the permit by the Commissioner of Public Works.

(3) Working without a permit. It shall be unlawful, and a violation of the City Code to perform any regulated activity within the Public Right-of-Way without complying with the permit requirements of the Department of Public Works in this chapter.

(4) Denial of a permit. The Commissioner of Public Works shall grant no permit where the applicant has failed to comply with the terms of a prior permit. It shall be within the reasonable discretion of the Commissioner of Public Works to decline a permit to any Person who shall have failed to carry out any prior order or instruction of the Commissioner of Public Works in connection with the opening of a street or sidewalk at any time. The Commissioner of Public Works may in the Commissioner's discretion decline to grant a permit if the Commissioner determines that the permit will not be in the public interest. A Person may appeal the denial of a permit to the Commissioner of Public Works. The responsibility shall be upon the Commissioner of Public Works to see that no permit is granted to any Person to open any street or sidewalk where the results to be accomplished under the permit will unreasonably interfere with the use of the street or sidewalk. Time length for allowing excavations to remain shall be determined by the Commissioner of Public Works.

(5) Signed petition required. The Commissioner of Public Works shall not grant any permit to conduct construction activities within the Public Right-of-Way or for an excavation underneath sidewalks or streets for any purpose, unless the petition for that use in each instance is signed by the owner of the proposed facility, who shall enter into an agreement with the City binding the owner and the owner's successor in title. The owner shall agree to indemnify the City against any and all damages to either Persons or property caused by the construction or maintenance of the excavation or opening and agree that the Commissioner of Public Works shall have the right to have said excavations closed and filled at any time the Commissioner of Public Works determines and the owner shall vacate the area beneath the sidewalk when requested to do so by the City without cost to the City. The work in each instance shall be done under the supervision and to the satisfaction of the Commissioner of Public Works. Any Person violating this section shall be required to close the excavation and remove any obstructions upon the direction of the Commissioner of Public Works. If such notice is not complied with, such encroachment shall be removed by the Commissioner of Public Works at the owner's expense.

(6) Supervision of work. All such openings, except as provided in this subsection, shall be made and refilled and permanent improvements removed shall be replaced by or under the supervision of the Commissioner of Public Works.

(7) Cost of work. The cost of conducting construction activities within the Public Right-of-Way or making and refilling any opening and of replacing any permanent improvement removed shall be paid by the Person at whose request such opening is made. If work is performed by the City on behalf of or at the request of an applicant, charges therefore shall be in such amounts as may be fixed by the Commissioner of Public Works, subject to the approval of the Council. The Commissioner of Public Works shall likewise in each case estimate the cost of replacing permanent improvements and

shall have authority to replace or require the replacement of all of a sidewalk or street when it is necessary to put the sidewalk in as good condition using materials of equal or better quality as before the opening. All such cost, whether computed from a schedule fixed by the Commissioner of Public Works or embodied in an estimate made under this subsection by the Commissioner of Public Works, shall be paid before the work is done by the City or the permit is granted.

(8) Conditions of maintaining a permit.

(a) The Commissioner of Public Works is authorized to establish and publish a list of conditions and requirements for all construction, repair, maintenance, and other activities within the Public Right-of-Way including, among other things, the power to establish reasonable fees and fines not inconsistent with this chapter. Said conditions shall contain, but shall not be limited to, requirements pertaining to:

(1) Notice of proposed construction activities and projected impediment to the abutting commercial and residential land five (5) business days prior to construction activity. Notice shall be visibly displayed in a conspicuous manner on the door of the residence or commercial establishment

(2) Traffic protection;

(3) Emergencies;

(4) Clear Identification of all construction and maintenance sites, vehicles, metal plates i and other obstacles with the name and phone number of the utility owner and the Person performing the work;

(5) Construction plans to show length of cut, construction activity to install the equipment, size, type and location of utilities in the Rights-of-Way and technical specifications for street rehabilitation;

(6) Placement of Warning Signs identifying construction and excavation site;

(7) Replacement of decorative sidewalk -style and material;

(8) Coordination of excavation and paving activities between and among any Persons;

(9) Placement and removal of paint markings for utility locations;

(10) bonds, insurance and other financial protection for the City;

(11) As-built plans and drawings in a form specified by the Department of Public Works. Permitee shall not be required to supply privileged information. No Person shall artificially under-estimate the size of their proposed system to evade the purpose of this article; and

(12) Permitee shall provide to the Department of Public Works a list identifying all subcontractors used by a Permitee on a construction or excavation project. List shall include the name and telephone number of the subcontractor, location and the anticipated duration of the project; and

(13) Any other requirements, limitations, or conditions that may be necessary and proper.

(b) Restoration of the Right-of-Way. Upon the determination by the Department of Public Work that all construction and excavation activity in the Right-of-Way, has ceased, within fourteen (14) business days of such determination, all Persons shall begin to restore the Right-of-Way to its pre-construction condition. The restoration of the Right-of-Way shall include; the repaving of all streets and sidewalks, removal of temporary utility markings, the removal of all barricades, obstructions, surplus excavation material and the restoration of the appropriate vegetation. However, trees and shrubs should be planted during the appropriate season. All restoration shall be completed within twenty-one (21) days after the end of construction activity. Failure to comply with this section will subject all Persons to the maximum penalties as set forth in Sec. 138-4 of this ordinance.

(9) Safety barriers. It shall be the duty of all Persons doing any kind of non-emergency work in the streets of the City, such as paving, laying sewers, sidewalks and curbing, moving buildings or any other work that in any way obstructs free passage thereon to notify the Commissioner of Public Works at least ninety-six (96) hours before the work is commenced and on its completion. It shall be the duty of the Commissioner of Public Works to see that this subsection is enforced, both as to the erection of barriers or enclosures and as to travel on the street by vehicles or otherwise during the time prohibited. It shall also be the duty of the Commissioner of Public Works to notify the Fire Chief and Police Chief, Grady Memorial Hospital, the Metropolitan Atlanta Rapid Transit Authority and Persons named by the Mayor or the Mayor's designee of the date and time the street will be closed.

(10) Performance Bond. Persons performing construction or excavation work in the Right-of-Way shall maintain a performance and completion bond in the amount of Five Hundred Thousand Dollars ($500,000.00) or in an amount determined by the City's Risk Manager to be adequate to either complete the proposed work impacting the Public Right-of-Way in its entirety or to restore the Public Right-of-Way to its condition prior to the commencement of the work if the Person fails to complete the work to the satisfaction of the Commissioner of Public works.

(11) Insurance. The City's Risk Manager shall require the Person conducting construction activities within the Public Right-of-Way to obtain a policy of public liability and property damage insurance naming the City as an additional insured and affording coverage for personal injury, including death in an amount not less than Three Million Dollars ($3,000,000.00), or such amounts established by the City's Risk Manager, to protect the City from liability claims arising out of the permitted construction activities. These insurance requirements may be met by evidence of self-insurance acceptable to the City.

(12) Cash Deposit and Irrevocable Letter of Credit. The Permittee conducting construction activities within the Public Right-of-Way shall maintain either an irrevocable letter of credit from a qualified financial institution or a cash deposit securing the compliance of the terms of this chapter and the faithful performance of the obligations of the party conducting construction activities within the Public Right-of-Way. The Permitee is not required to obtain an irrevocable letter of credit or cash deposit for each individual construction activity for the year beginning January 1. The irrevocable letter of credit or cash deposit shall cover all construction activities conducted by the Permittee from January to January of the next year.

(a) Amount. The Irrevocable letter of credit or cash deposit shall be in the sum of Ten Thousand Dollars ($10,000.00) for work up to 500 feet in the Public Right-of-Way. A Twenty-Five Thousand Dollars ($25,000.00) irrevocable letter of credit or cash deposit shall be required for work performed in the Public Right-of-Way in excess of 500 feet. The deposit shall be placed in an interest bearing account.

(b) Demand on the irrevocable letter of credit or from cash deposit. The Commissioner of Public Works may demand payment from the institution that issued the letter of credit for a violating party or make deductions from the cash deposit, as applicable to offset the costs of, among other things, the repair, excavations or work performed by the Department of Public Works, or to pay any assessed penalties or costs associated with violations of this chapter. Where practicable, the City shall provide the Permitee with 10 days advance written notice of a deduction from the deposit.

(c) Release of the letter of credit or cash deposit. The letter of credit or cash deposit shall be maintained for a period of one year after the satisfactory completion of work performed in the Public Right-of-Way to secure the obligations in the permit and this ordinance. Upon expiration of one year of the satisfactory completion of the latest activity conducted in the Public Right-of-Way, the Department of Public Works shall either release the letter of credit or cash deposit securing satisfactory completion of the work performed in the Public Right-of-Way. If the Department determines that the work is unsatisfactory, the Department of Public Works shall

provide written notice of the reasons why the work is unsatisfactory to the person conducting the construction activities. If no notice of unsatisfactory work is provided by the Department of Public Works within thirty (30) days after a request for release pursuant to this section, any letter of credit or cash deposit plus accrued interest will be refunded

(d) Notwithstanding the foregoing, the requirement for an irrevocable letter of credit or cash deposit may be waived, or the amount may be decreased at the discretion of the City's Risk Manager.

(13) Notification to abutting property owners. The Commissioner of Public Works shall require the Person conducting activities pursuant to the permit and construction activities within the Public Right-of-Way to provide each abutting property owner with reasonable notification of any impending construction work that would unreasonably interfere with either egress or ingress onto said owner's property.

(14) Indemnity of the City. The Commissioner of Public Works shall require the Person conducting activities pursuant to the permit and construction activities within the Public Right-of-Way to indemnify and hold harmless the City, its officers, agents and employees, from any and all claims or litigation arising from any construction activities which interfere with the ability of the abutting property owner to conduct his business and/or personal activities in a manner to which he is accustomed.

(15) Consequential damages. The Commissioner of Public Works shall require the Person conducting activities pursuant to the permit and construction activities within the Public Right-of-Way to indemnify and hold harmless the City, its officers, agents and employees, from any and all claims or litigation arising from any consequential damages arising from any construction activities within the Public Right-of-Way, including but not limited to vehicular damage caused by such disruption to the Right-of-Way.

(16) Guarding of temporary excavations. All Persons making an excavation in any street, sidewalk or public place for any purpose shall erect around the excavation a fence or barrier adequate to protect the public from the excavation. When the excavation is made across the sidewalk or at a place used by pedestrians, a bridge shall be erected over the excavation sufficient for the safe passage of the public. All excavations shall be properly lighted at night as determined by the Commissioner of Public Works. The guarding and protection of excavations shall be in accordance with state law and with specifications promulgated by the Commissioner of Public Works and on file in the office of the Commissioner of Public Works. Appropriate signage shall be erected by all Persons making an excavation in the street to provide notice of the excavation to the public.

Sec. 138-66. Neighborhood identification signs.

Neighborhood identification signs as defined in Section 16-28A.012(a)(10) shall be subject to the requirements of this section, except for Section 138-24(2)(a) and (c).,

and Section 138-24(2)(f)., (g.) , and (h) which shall not apply to such signs. In lieu of said provisions which shall not apply to such signs, the Commissioner of Public Works shall review and approve the plans and technical specifications and the location of the proposed neighborhood identification signs.

Sec. 138-67. Pedestrian access.

(1) Where it is necessary to close a portion of the pedestrian Public Right-of-Way, only the minimum necessary width of the Right-of-Way shall be obstructed so as to leave a safe, passable thoroughfare not less than four feet in width, and providing appropriate access at and between intersections in accordance with the Americans With Disabilities Act (the "ADA") standards, and separated from the construction area by adequate safety barriers as approved by the Commissioner of Public Works.

(2) Where a 4 foot wide pedestrian route on the existing thoroughfare cannot be dedicated, a temporary covered, lighted walkway shall be constructed over the existing pedestrian thoroughfare in accordance with regulations set out by the Department of Public Works.

(3) Where it is not possible to provide access via methods (1) or (2) above, a temporary pedestrian route shall be erected utilizing a combination of the existing sidewalk, the adjacent parking lane, and/or the adjacent vehicular traffic lane at the discretion of the Commissioner of Public Works. Where a traffic or parking lane is used, appropriate barricades and signage shall be utilized to separate the pedestrian lane from the vehicular lane and the route shall be accessible as per the guidelines of the ADA.

(4) Where the party seeking the permit has shown due diligence to perform either (1), (2), or (3) of this section and are unable to do so due to the structural necessities of the work to be completed, proper signage must be provided at each pedestrian-accessible intersection, between which lies the permitted closure or obstruction, directing pedestrian traffic to cross to the other side of the street. Signage must be visible to pedestrian traffic both on the side of the street with the obstruction and to pedestrian traffic at intersections with access to the segment of the sidewalk containing the permitted obstruction.

(5) The Commissioner of Public Works is prohibited from accepting, as reason for an inability to comply with items (1), (2), or (3) of this section, that the pedestrian Right-of-Way must be closed due to a need for vehicular parking on the site of the work being performed necessitating the closure.

(6) All such walkways mandated by this section, shall be maintained by the party responsible on the permit for closure and any damage, or obstructions to this temporary Right-of-Way shall be repaired and cleared immediately by that party. Permittee is required to display the permit in a conspicuous place so that the public and inspectors can visibly see it.

(Code 1977, §§ 9-3031, 9-3034; Ord. No. 1995-60, § 1, 9-24-95; Ord. No. 1998-82, §§ 1-3, 11-20-98)

(Code 1977, § 9-3037)

Section 138- 68 Scheduling and Coordination of Excavation.

(a) Twenty –Four Month Plans. In order to facilitate an interactive planning process, Persons desiring to cut or make an opening in the street shall submit a quarterly plan in a format acceptable to the Commissioner of Public Works that shows all major excavation work anticipated to be done in the Public Right-of-Way for the next twenty-four (24) months. The plan shall include a method of excavation designed to protect to the maximum extent possible, the existing infrastructure and minimize the interference with pedestrian and vehicular traffic plans may be revised and updated from time to time by such Person. The Person submitting the plans shall mark such plans as proprietary, or trade secrets and the plans will be protected from disclosure by the City, to the extent permitted by law. This requirement shall not impose any requirement on any Person desiring to cut a street to disclose confidential business information. This Twenty-Four Month Plan shall not require Persons to disclose information on lateral construction marked protected. In addition, this information is only an estimate and will only be used for general location of construction activities of the Person and no liability shall be incurred due to or on account of the submission of such projection.

(b) Persons participating in joint excavation. The Permit holder shall be deemed the lead Person on the joint excavation. In addition, the Permit shall list the names of all Persons participating in the joint excavation.

(c) Application Fee. When two or more Persons for a joint excavation submit an application for an excavation permit, the joint applicants shall pay one fee for the excavation permit.

(d) Coordination of Twenty-Four Month Plans. The Commissioner shall review all twenty-four month plans on file in order to identify conflicts and opportunities for coordination of activities. The Commissioner shall notify Persons with a twenty-four month plan on file of such conflicts to the extent possible to maximize coordination of major excavation work and to avoid unnecessary and repeated excavations in street. All Persons shall coordinate, to the extent possible, major excavation with other potentially affected Persons to minimize disruption of the City's Public Right-of-Way. The Department of Public Works may schedule monthly meetings with Persons who desire to work in the Right-of-Way for the purpose of reviewing submitted as-built plans as required in Section 138-65. Persons who seek to perform excavation activities in the Right-of-Way shall be required to attend such meetings. Failure to attend such meetings shall subject all Persons to; revocation or suspension of licenses or permit, the issuance of a stop work order or the imposition of a fine not to exceed One Thousand Dollars ($1,000.00)

(e) Department Repaving Schedule. In October of every year, the Commissioner of Public Works shall prepare for public inspection, a preliminary twelve month repaving plan showing anticipated and proposed resurfacing and repaving of the Public Right-of-Way. Upon completion, such twelve month repaving plan shall be provided to every Person with a twenty-four month plan on file with the Department of Public Works. The Commissioner of Public Works will update such plan as appropriate and provide a copy to the Persons referenced in the preceding sentence.

(f) The Persons subject to this chapter will use their best efforts to conduct industry meetings on a regular basis to try and better coordinate excavation activities. The Department of Public Works may participate in these industry meetings and endeavor to coordinate major excavation work of the City and the industry.

(g) Good Faith Efforts. Persons subject to this chapter will use good faith efforts to conduct joint excavation activities subject to technical, economic and competitive considerations. Joint applications shall be approved in an expedited manner. Any joint application shall identify the lead Person responsible for the requested permitted activity. The lead Person will coordinate the activities of the other Persons participating in the joint project. As an incentive, to encourage joint excavation activities, the City shall implement expedited permit procedures and other fee schedules.

Sec. 138-69. Rehabilitation and restoration of the pavement.

Whenever any Person desires to cut or make an opening in any street, such Person shall repair and restore the street, including milling and resurfacing, to the specifications of the Department of Public Works.

Sec. 138-70. Work done by public utilities.

The Commissioner of Public Works may require public utilities to make their own cuts, backfills and permanent improvements, but all that work shall be done under the supervision and subject to the approval of the Commissioner of Public Works.

Sec. 138-71. Availability of material and equipment before starting work.

It shall be unlawful for a contractor to tear up or interfere with the pavement upon a street or sidewalk unless, immediately prior to the time the contractor commences work on the contract, the contractor has sufficient material and equipment immediately available with which to carry out the paving proposed and the Commissioner of Public Works is satisfied that this section has been complied with. If the Commissioner of Public Works determines that the contractor has not complied with this section, the Commissioner shall refuse to allow the street and sidewalk to be torn up or interfered with, nor shall this be done until the contractor shall comply with this section.
(Code 1977, § 9-3051)

Sec. 138-72. Building adjoining viaduct, bridge or tunnel.

(a) Bearing upon or against viaduct, bridge or tunnel. No portion of a building adjoining a viaduct, bridge or tunnel shall bear upon or against the viaduct, bridge or tunnel structure, but a space of not less than one inch shall be left open between the sidewalk and the structure and then filled with an approved expansion joint material.

(b) Responsibility for damages. Any and all damages to streets, on either level, or damage to bridge, viaduct or tunnel structures caused by the contractor or by the contractor's employees must be repaired immediately at no cost to the City and to the satisfaction of the Commissioner of Public Works.
(Code 1977, § 9-3039)

Sec. 138-73 Protection for gas lines.

(a) It shall be unlawful for any Person to commence, perform or engage in blasting or in excavating with mechanized excavating equipment in any street Right-Of-Way or any tract or parcel of land inside the City limits of the City until such Person has complied with O.C.G.A. 25-9-5 and O.C.G.A 25-9-6 and all other applicable State laws.

(b) The provisions of this section are in addition to the requirements set forth in O.C.G.A. tit. 25, ch. 9 (O.C.G.A. § 25-9-1 et seq.).
(Code 1977, § 17-11006)

Sec. 138-74. Emergency Excavations-Nothing contained in this section shall be construed to prevent any Person from taking any action reasonably necessary for the preservation of life or property or for the restoration of interrupted service provided by a utility when such necessity arises during days or times when the Department of Public Works is closed. In the event that any Person takes any action to excavate or cause to excavate the Public Right-of-Way pursuant to this section such Person shall apply for an emergency permit within four hours after the Department of Public Works' offices are first opened. Permits submitted pursuant to this section shall receive an expedited review. The applicant for an emergency permit shall submit a written statement of the basis of the emergency action and described excavation performed and any work remaining to be performed. Persons conducting emergency excavations pursuant to this section shall prominently display a notice of such emergency activity.

Sec. 138-75. Reserved.

ARTICLE IV. IMPROVEMENTS WITHIN THE RIGHT-OF-WAY

DIVISION 1. GENERALLY

Sec. 138-76. Cost and fees of street paving and the improvement of unimproved Right-of-Way by City assessed against abutting property owners.

Whenever any street or sidewalk or part thereof in the City is originally paved, or the improvement of unimproved Right-of-Way is accomplished by the City, the cost and fees of street paving and the improvement of unimproved Right-of-Way shall be assessed against abutting property owners unless other method of payment is authorized by City Council. Whenever such work is by direction of the Council, there shall be added to the total assessable cost of the work a fee for inspection and engineering services furnished by the City, and the total of cost and fee shall be assessed against the abutting property owner. The fee shall be retained by the Chief Financial Officer to cover the cost of inspection and engineering services. The fee shall be established by ordinance and may be found in the City's rules and regulations.
(Code 1977, § 9-3052)

Sec. 138-77 Engineering and inspection fees for improvements by owner or developer.

When any owner of property or developer thereof shall install any public improvement, such as the grading and paving of streets, sidewalks, the installation of curbs and combination curbs and gutters, either by such owner or developer or by any duly authorized contractor, the contractor or the owner or developer of those properties causing the work to be done shall pay to the City, in advance of construction, a fee for inspection and engineering services as provided by ordinance.
(Code 1977, § 9-3053)

Secs. 138-78--138-80. Reserved.

DIVISION 2. STREETS

Sec. 138-81. Notice to contractor and public utilities of paving.

(a) Definition. As used in this section, the term "public utility" includes power, gas, light, telephone, CATV and telegraph corporations and such others as may operate like public services and also includes the department of water.

(b) Notice to contractor that street is ready for paving. The Commissioner of Public Works shall notify the contractor to whom a street paving contract has been awarded that the street is ready for paving under the contract. After the notice has been given the contractor, it shall be unlawful for any Person to make any opening of any kind in the street, without the written joint consent of the contractor and the Commissioner of Public Works.

(c) Notice to public utilities. At least sixty *(60)* days prior to commencing of paving, the Commissioner of Public Works shall notify public utilities and all other Persons that have a twenty-four month plan on file as of the date that the street will be paved, and if any public utility so notified is unable to complete any of its work in the street within thirty (30) days from this notice, the Commissioner of Public Works shall be

notified in writing by the public utility, whereupon the Commissioner may, at the Commissioner's discretion, delay the sending of the notice to commence paving.
(Code 1977, § 9-3057)

Sec. 138-82. Closing of streets during paving operations.

(a) Authority, duties of Commissioner. For paving or repaving a street, construction of a bridge or any other work, the Commissioner of Public Works shall be authorized to close the street or part of the street from the time the work is started until, in the Commissioner's judgment, the street is suitable for ordinary traffic thereon. If there is any dispute as to the time when the pavement is sufficiently set or hardened or otherwise has become fit for travel, the decision of the Commissioner of Public Works shall be final. The Commissioner of Public Works shall see that this section is enforced, both as to the erection of barriers or enclosures and as to travel on the street by vehicles or otherwise during the time prohibited. The Commissioner of Public Works shall notify the Police Chief, Fire Chief, Grady Memorial Hospital, the Metropolitan Atlanta Rapid Transit Authority and Persons named by the Mayor or the Mayor's designee of the date and time street will be closed.

(b) Violation. Any Person interfering with the street closing or undertaking to operate a vehicle or otherwise travel upon a street closed by authority of the Commissioner of Public Works before the enclosures have been removed therefrom and the street opened for travel shall be deemed guilty of an offense and shall be punished as provided in the penalty section of this chapter.

Sec. 138-83. Closing of streets during construction of bridges, viaducts and similar structures.

Whenever the City, a public utility or a railroad undertakes work such as the construction of bridges, viaducts or the like, which necessitates the use of a roadway for the erection of such public work, all streets and sidewalks affected by these works shall be closed. The Commissioner of Public Works shall have power to keep any portions of those streets and sidewalks open temporarily where necessary to ensure public safety, but any permits to allow any portions of those streets or sidewalks to be kept open temporarily shall be subject to be revoked at any time in the discretion of the Commissioner of Public Works.
(Code 1977, § 9-3059)

Sec. 138-84. Speed humps-Installation.

(a) The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection except when the context requires otherwise:

(1) Guidelines mean the document entitled "Guidelines for the Design and Application of Speed Humps" issued by the Institute of Transportation Engineers' I.T.E. Technical Council Speed Humps Task Force in March, 1993.

(2) Speed hump means that geometric roadway design feature described and defined in the Guidelines, which shall be no less than 22 feet in width.

(3) Street segment means a portion of a local residential street within the City located between any two intersecting streets.

(b) When presented with petitions in form satisfactory to the City signed by 75 percent of the property owners on any local residential street segment (based on front footage), evidencing their desire to have such speed humps, to accept the signage and markings appurtenant thereto, and acknowledging that installing the speed humps will slow the response time of the Fire Department by several seconds per hump and slow other emergency vehicles as well, the Department of Public Works shall be responsible for the administration of the speed hump program to include conducting traffic engineering studies to determine whether all of the conditions set forth below are met. As a part of such study, the Police and Fire Departments shall be notified and given the opportunity to comment on the applicability of Section 2.11 of the Guidelines to the particular street segment. If all conditions are met the City shall construct and install speed humps on such street segment. The conditions which must be met are as follows:

(1) The street segment must be on a residential street functionally classified as local;

(2) The 85th percentile speed of traffic on such street must be at least 11 miles per hour over the posted speed limit;

(3) The property owners on such street segment may apply to the City for funding for all costs of construction and installation; in the alternative, the property owners may elect to engage a private contractor to construct the speed humps in accordance with all requirements of the Department of Public Works and to pay all costs of construction and installation; and

(4) That the street segment meet the criteria contained in Part 2.0 of the Guidelines and the speed humps meet the criteria in Part 4.0 of the Guidelines, except to the extent this Article expressly provides for different criteria. Further provided, that if I.T.E. revokes or suspends the Guidelines, then this requirement shall not be deemed to have been met for any speed hump installation not completed by the date of such revocation or suspension.

(Ord. No. 1995-03, § 9-3061, 2-14-95; Ord. No. 1997-46, §§ 1, 2, 8-25-97)

Sec. 138-85. Same-Removal.

Speed humps on a street segment shall be removed if all of the following are met:

(1) 75 percent of property owners on the street segment, via formal petition, request their removal.

(2) The speed humps have been in place no less than 1 year.

(3) The property owners are made aware that speeds will increase.

(4) The property owners agree to pay all costs associated with such removal, and are assessed same under Section 134-27.
(Ord. No. 1995-3, § 9-3062, 2-14-95)

Secs. 138-86--138-95. Reserved.

DIVISION 3. SIDEWALKS, CURBS, CURBS AND GUTTERS AND DRIVEWAYS

Sec. 138-96. Schedule of charges for construction or repair.

The Commissioner of Public Works shall maintain a schedule of charges for sidewalks, curbing or driveway aprons constructed or repaired by the City which may be revised from time to time by the Commissioner of Public Works, subject to Council approval, and which shall be available for public inspection during normal business hours.
(Code 1977, § 9-3091)

Sec. 138-97. Construction of sidewalks, driveways and curbs in multifamily residential, commercial and industrial zoning districts.

(a) Before any building permit shall be issued for the construction of any structure on property within any planned development-housing (PD-H) district or any zoning district which permits multifamily residential, commercial or industrial uses, the owner shall agree to construct or have constructed sidewalks, driveways and curbs on all public streets within and abutting the property. This subsection does not apply to property already having such improvements in a condition satisfactory to the Commissioner of Public Works. Failure to construct these improvements shall be grounds for denial of occupancy or use of the improvements constructed on the property. The Director, Bureau of Buildings shall not issue an occupancy permit until the improvements are made. The plans and specifications for the sidewalks, driveways and curbs shall be submitted to and approved by the Commissioner of Public Works prior to the issuance of the building permit.

(b) The requirements of subsection (a) of this section may be waived by the Commissioner of Public Works upon a showing by the applicant of sufficient evidence that the proposed work includes only site improvements and no new construction of new occupiable space.

(c) The Commissioner of Public Works may, in the Commissioner's discretion, require the installation of curbs on property exempted pursuant to subsection (b) of this

section in conformance with City standards if such is required for proper storm drainage on the abutting or adjacent properties.
(Code 1977, § 9-3092; Ord. No. 1996-28, § 1, 5-28-96)

Sec. 138-98. Constructing sidewalks, driveways and curbs by private contractors.

(a) Private contractors may be permitted to lower curbs and construct sidewalks and curbs and driveways across sidewalks in the City subject to the following conditions:

(1) License required. The contractor shall hold a business license from the City.

(2) Permit required. The contractor shall obtain a permit from the Commissioner of Public Works to construct the sidewalks, driveways and curbs.

(3) Standards. All work performed under the permit shall be in accordance with plans and specifications approved by the Commissioner of Public Works, and such sidewalks, driveways and curbs shall be constructed only in accordance with the established lines and grades of the City.

(4) Inspection required. Whenever any contractor holding a permit authorized by this section shall desire to pour any sidewalks, driveways and curbs, the contractor shall notify the Commissioner of Public Works of the contractor's readiness and desire to do so, whereupon it shall be the duty of the Commissioner of Public Works, as soon thereafter as is practical, to send an inspector of the Department of Public Works to inspect the work, and no work shall be poured except on approval of the Commissioner.

(5) Insurance. All contractors constructing driveways, sidewalks and curbs shall carry insurance which will protect the City and its officers, agents and employees from all claims for personal injury and property damage arising out of the construction of the sidewalks, driveways and curbs. The insurance shall be in an amount and shall provide such coverage as determined by the City's Risk Manager after consultation with the Commissioner of Public Works. The insurance shall indemnify and hold harmless the City and its officers, agents and employees against all claims resulting from injuries to persons or property damage for a period beginning on the date of the commencement of any work being performed by the contractor and continuing for (thirty) 30 days after the completion of the work by the contractor. Presentation and delivery of the policy of insurance or appropriate certificate thereof to the Commissioner of Public Works shall be a condition precedent to the issuance of any permit for the work.

(6) Charge for permit. The charge for the permit required by this section shall be fixed by the Council, and the sum shall be paid to the Department of Public Works at the time of the issuance of any permit under this section.
(Code 1977, § 9-3093)

Sec. 138-99. Permit required for construction of driveways or sidewalks on streets.

It shall be unlawful for any Person to construct any driveway or sidewalk on any street without first having obtained a permit from the Commissioner of Public Works. If any Person without first obtaining the permit should construct a driveway or sidewalk on any street, then the Person shall be in violation of this Code, and the Commissioner of Public Works shall be authorized to condemn the driveway or sidewalk and have it removed and replaced at the expense of the owner of the property, the owner being notified of this action prior to construction.
(Code 1977, § 9-3094)

Sec. 138-100. Notice to abutting property owners prior to construction of sidewalks.

Except for a single-property request for the construction of a sidewalk, it shall be the duty of the Commissioner of Public Works to give all abutting property owners written notice prior to construction of any sidewalk abutting their property.
(Code 1977, § 9-3095)

Sec. 138-101. Additional standards for replacement or reconstruction of sidewalks in certain districts and areas.

(a) Applicable districts and areas. This section shall apply in the following districts and areas:

(1) Any landmark district.

(2) Any historic district.

(3) Any Urban Conservation District which existed prior to 1991, as so defined by the Urban Design Commission.

(4) Any street sidewalks located inside the boundaries of the Freedom Parkway, as so defined in the settlement agreement which was adopted by the City on June 15, 1992, excluding all bikeways and other pedestrian paths that might be built inside the park itself.

(b) Existing standard sidewalks. In any of the districts or areas listed in subsection (a) of this section where replacement or reconstruction of the standard sidewalk is deemed necessary, the standard sidewalk shall be replaced or reconstructed with hexagonal pavers or a standard sidewalk inlaid with an 18-inch-diameter hexagonal imprint. This shall be considered a standard sidewalk replacement in such circumstances in such districts and areas. All such sidewalks shall be constructed in accordance with the plans and specifications approved by the Commissioner of Public Works and in accordance with established lines and grades of the City.

(c) Existing sidewalks constructed of hexagonal pavers or inlaid with hexagonal imprint. In any of the districts or areas listed in subsection (a) of this section, a sidewalk constructed of hexagonal pavers or a standard sidewalk inlaid with a hexagonal imprint shall only be replaced or reconstructed with material of equal or better quality and similar in design to the original. Hexagonal pavers may be replaced with hexagonal pavers or a standard sidewalk inlaid with an 18-inch-diameter hexagonal imprint. This shall be considered a standard sidewalk replacement in such circumstances in such districts. All such sidewalks shall be constructed in accordance with the plans and specifications approved by the Commissioner of Public Works and in accordance with established lines and grades of the City.
(Code 1977, § 9-3096)

Sec. 138-102. Additional standards for limited local residential streets in new subdivisions.

(a) Standards of construction for limited local residential streets in new subdivisions are as follows:

(1) The width of the street as measured from face of curb to face of curb shall be 28 feet.

(2) The pavement section shall meet the following minimum requirements:

(a) All natural ground under fill or base shall be scarified to a depth of not less than 6 inches and recompacted to 90 percent of maximum density at optimum moisture content as determined by the modified Proctor method in accordance with ASTM D-1557.

(b) The crushed aggregate base course shall conform to the requirements of the Department of Public Works streets and sidewalk construction specification, January 1975, and the crushed aggregate base course shall be a minimum thickness of 6 inches.

(c) The asphalt concrete base and top shall conform to the requirements of the Department of Public Works street and sidewalk construction specifications, January 1975, and the asphalt concrete base course and top course shall be a minimum total thickness of four inches.

(3) The standards of the Department of Public works are amended to include a curb and gutter cross section having the dimensions of six inches thick by 24 inches wide with a curb six inches high, materials and workmanship conforming to the standards of the Department of Public Works, subject to the following:

(a) Pending the adoption of a revised standard by the City, by the Department of Public Works and, where applicable, the owner shall agree to install a modified grate and frame compatible with the reduced gutter

width provided for in this section. The type, style, thickness, weight and other mechanical properties of such grate and frame, as well as modifications that may be required of existing standard basins permitted, shall be subject to the approval of the Commissioner of Public Works or the Commissioner's authorized agent.

(4) On limited local residential streets in proposed new subdivisions, the owner shall agree to dedicate to the use of the public forever a 9 foot wide utility easement on either side and abutting the Right-of-Way of the limited local residential street, including around the bulb of any cul-de-sac which is a part thereof, the purpose of such dedication being to install traffic signs, fire hydrants, gas, water, sewer mains, related appurtenances and public sidewalks as provided for in this section. On all limited local residential streets, the sidewalk may be installed by petition of the abutting property owner or, when in the opinion of the Commissioner of Public Works it is necessary, by any other means provided in this section.

(5) On limited local residential streets and higher classification streets in proposed new subdivisions permitted under this section, the owner shall agree to install the full roadway prism in accordance with the standards of the Department of Public Works and the governing sections of this Code or other ordinances of the City. The roadway cross section to be developed will extend from the Right-Of-Way line or utility easement line to the Right-of-Way line or utility easement line, whichever distance is greater. Cuts and fills employed to construct the roadway prism to the limits specified shall be two feet horizontal to one foot vertical rise, which, in the case of cut slopes and at the discretion of the Commissioner of Public Works for unusual difficulty or hardship, may be reduced to eleven feet horizontal to one foot vertical rise.

(6) On limited local residential streets and higher classification streets in proposed new subdivisions permitted under this section, where such new or existing street has a proposed intersecting street or is a through street serving other subdivisions or areas and on looped limited local residential streets, the owner shall agree to install a minimum five-foot-wide by four-inch-thick concrete sidewalk, with the back of the sidewalk being located at the Right-of-Way line or at the most far removed utility easement line, whichever distance from the centerline of the street is greater, with the exception that the owner will not be required to install sidewalks around the bulb of the cul-de-sac of a proposed street classified as limited local residential.
(Code 1977, § 9-3097)

Land development code references--Subdivision design standards, § 15-08.001 et seq.; required improvements in subdivisions, § 15-09.001 et seq.

Sec. 138-103. Inspection and repair of sidewalks.

The Commissioner of Public Works is authorized to inspect the sidewalks along Public Right-of-Way, to see that the sidewalks thereon are in a safe and suitable condition for public use and travel, to condemn promptly pavements on such sidewalks that are unsafe or unsuitable for public travel, and to cause repairs to be made in accordance with City law and to charge the cost of the repair to the abutting property owner.
(Ord. No. 1996-26, 5-28-96)

Secs. 138-104--138-125. Reserved.

SECTION 2: That Chapter 138, Article V of the Code of Ordinances is hereby amended by creating a new Chapter 138 Article V, entitled "Telecommunications Franchises and Revocable Licenses," and shall hereafter read as follows:

ARTICLE V: TELECOMMUNICATIONS FRANCHISES AND REVOCABLE LICENSES

DIVISION 1: DEFINITIONS

Section 138-126. Definitions.

(1) For purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended.

(a) "Affiliated Person" means such Person who falls into one or more of the following categories: (i) each Person having directly or indirectly, a Controlling Interest in the Applicant or Franchisee; (ii) each Person in which the Applicant or Franchisee has, directly or indirectly, a Controlling Interest; (iii) each officer, director, joint venturer or joint venture partner, of the Applicant or Franchisee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common Control with the Applicant or Franchisee; provided that "Affiliated Person" shall in no event mean the City or any creditor of the applicant solely by virtue of its status as a creditor and which is not otherwise an Affiliated Person by reason of owning a Controlling Interest in, being owned by, or being under common ownership, common management or common Control with, the Applicant or Franchisee.

(b) "Applicant" means any Person seeking to obtain a Franchise or Revocable License pursuant to this chapter.

(c) "Cable Services" means "cable services" as defined in the Communications Act of 1934, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of

1992, and the Telecommunications Act of 1996 and as may be further amended from time to time (the "Cable Act"). In the event that "cable services" is no longer defined in the Cable Act or the definition in the Cable Act otherwise becomes inapplicable, "Cable Services" shall mean "cable services" as defined in the Cable Act immediately prior to such term no longer being defined in the Cable Act or such definition otherwise becoming inapplicable.

(d) "Control" or "Controlling Interest" means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the applicant or the Equipment in the Streets. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than 5 percent of any Person (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.

(e) "Equipment" means any and all transmission facilities, poles, wires, electrical conductors, fiber, conduits, subways, manholes, fixtures, appliances and appurtenances that are used in connection with the provision of Telecommunications Services.

(f) "Franchise" means an initial authorization, or renewal thereof, issued by the City in accordance with the provisions of this Ordinance, which authorizes the occupation and use of the Streets to construct, install, operate, upgrade, repair, maintain, and remove equipment used to provide Telecommunications Services upon, along, over & under the Streets. A Franchise does not guarantee the universal use of the Right-of-Way. Each site-specific use of the Right-of-Way shall be assessed during the Permit application process for that particular site.

(g) "Franchisee" means a Person which is party to a franchise issued by the City.

(h) "Gross Revenues" means all revenue that is received, directly or indirectly by the Franchisee with facilities in the Right-of-Way, from or in connection with the provision of Telecommunication Services over the Franchisee's Telecommunications System in the established corporate limits of the City; provided that Gross Revenue shall not include any fees or any sales or excise taxes collected for direct pass-through to any entity with facilities in the Right-of-Way other than an Affiliated Person, including any local, state or federal government, and further provided that Gross Revenue shall not include any revenue generated by the rental, lease, sale, or other use of a Franchisee's Facilities by a Person who is also a Franchisee.

(i) "Peachtree Corridor" means those commercial areas in the City of Atlanta known as Midtown, Downtown, and Buckhead and which are more specifically defined in the handbook of the Department of Public Works.

(j_) "Revocable License" means an initial authorization or renewal thereof, issued by the City in accordance with the provisions of this Ordinance, which authorizes the limited occupation and use of specifically identified Streets, provided that a Revocable License shall be issued only in the limited circumstances set forth in Sections 138-127 and 138-135 of this Ordinance.

(k) "Revocable License Fee" means a payment for the fair and reasonable compensation for the use of the City's Right-of-Way in providing telecommunication services. This fee shall not include fees associated with any other license agreement with the City.

(l) "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(m) "Telecommunications Franchise Fee" means a payment of for the fair and reasonable compensation for the use of the City's Right-of-Way in providing telecommunication services. This fee shall not include fees associated with any other franchise agreement with the City.

(n) " Telecommunications Provider means" any Person who:

(1) owns, constructs, operates or maintains Equipment in the Streets used to provide Telecommunications Services regardless of whether such Telecommunications Services originate or terminate in the City; or

(2) provides Telecommunications Services that originate or terminate in the City by means of:

(i) specifically identifiable Equipment in the Streets, which Equipment is owned by such Person or made available to such Person under a lease or any other arrangement for a period longer than 120 days; or

(ii) Equipment in the Streets if the use of such Equipment is continuing and substantial, and the City has determined that it is necessary and appropriate to impose the requirements of this Ordinance in order to preserve the application of this Ordinance on a competitively neutral and nondiscriminatory basis consistent with applicable law.

(o) "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to resellers or other such classes of users as to be effectively available directly to the public, regardless of the facilities used. The term "Telecommunications Services" shall not include Cable Services.

(p) "Telecommunications System" means the plant, Equipment, real property (including interests in real property), tangible and intangible personal property, buildings, offices, furniture, customer lists, cable, wires, optical fibers, amplifiers, antenna, switches, and all other electronic devices equipment and facilities used to provide Telecommunications Services.

(q) "Utility Easement" means any easement owned by the City and acquired, established, dedicated, or devoted for public utility purposes not inconsistent with Telecommunications Facilities.

(r) "Universal Access Provider" means a local exchange company that is obligated to provide basic local exchange service in Atlanta in response to reasonable requests for such service.

DIVISION 2:
GRANTING AUTHORITY AND FRANCHISING PROCEDURE

Section 138-127 Granting Authority

(a) It shall be unlawful for any Person to use or occupy the Streets as a Telecommunications Provider, or construct, operate or maintain Equipment in the Streets used to provide Telecommunications Services, without a Franchise or Revocable License granted in accordance with the provisions of this Article. A Franchise may be granted for all or any defined portion of the City. A Revocable License is granted only for a specified portion of (a) particular Street(s). Franchises and Revocable Licenses are not required for Telecommunications Providers that do not construct, operate, or maintain Equipment in the streets.

(b) It shall be unlawful for any Person seeking to use the Streets to construct, operate or maintain Equipment to provide Telecommunications for or in connection with the internal operations of such Person's business, residence or employment and not for or in connection with the provision or offering of Telecommunications Services for sale or resale to any Person in the City, without first obtaining a Revocable License in accordance with the provisions found in Sections 138-129 and 138-135 of this Article. A Revocable License is intended to be a limited grant of authority to use and occupy specifically identified Streets to provide Telecommunications and shall be granted only if:

(1) the use or occupation of such Streets, together with all Revocable Licenses previously granted to such Person and Affiliated Persons, shall not exceed 500 linear feet; and

(2) the use or occupation of such Streets does not involve:

(i) the offering or provision of Telecommunications Services to or from any Person in the City; or

(ii) the origination or termination of any Telecommunications Service to or from any Person in the City. In determining whether the provisions of clause (2) of this Section 138-127 are satisfied, the City may consider whether it is necessary or appropriate to require a license or franchise to preserve the application of this Ordinance on a competitively neutral and non-discriminatory basis consistent with applicable law.

(c) The City Council may grant one or more Franchises and Revocable Licenses in accordance with this Article, provided that the City Council reserves the right to modify any provision of this Article by amendment hereof.

(d) The grant of any Franchise or Revocable License shall be made by adoption of a separate ordinance by the City Council and shall be on such terms and conditions as shall be specified in said separate ordinance and/or a franchise or license agreement between the City and the franchisee or licensee.

(e) Any Franchise or Revocable License granted shall be nonexclusive. The City specifically reserves the right to grant, at any time, such additional Franchises, Revocable Licenses or other authorizations for use of the Streets by any means, as the City deems appropriate.

(f) A Franchise or Revocable License granted in accordance with the provisions of this Article shall not be construed to grant any rights or authorization to provide Cable Services in the City, and any Person seeking to provide Cable Services in the City shall first obtain a separate franchise in accordance with the City of Atlanta Cable Communications Ordinance, 94-0-1777.

(g) In the event an application for a Revocable License would cause a Telecommunications Provider to exceed the limits established in Section 138-127, or fail to comply with the requirements therein, then such Telecommunications Provider must apply for a Franchise in accordance with the provisions of this Ordinance, and the use of specifically identified Streets pursuant to all previously granted Revocable Licenses shall thereafter be pursuant to and in accordance with any such Franchise that may be granted It shall be unlawful to provide service pursuant to a Revocable License where the Licensee exceeds the limitations or fails to meet the requirements contained in Section

(h) Compensation. It is the purpose of this section to fix a fair and reasonable compensation to be paid for the use of the City's Rights-of-Way.

1. Measure of Compensation- Telecommunication Franchisees and Revocable Licensees shall pay the City an annual franchise fee equal to **three percent (3%)** of the franchisee's annual Gross Revenue, provided that a Universal Service Provider shall pay the City a franchise fee equal to **three percent (3%)** of the Universal Service Provider's Gross Revenue, and further provided that in any calendar year that a Franchisee's Gross Revenue does not exceed $500,000.00, the franchise fee shall be $15,000.00 per year.

2. Where a request is made for a determination that ascertaining the amount of Gross Revenue of a particular Franchisee or Licensee is impossible, upon such determination the requesting party shall pay compensation to the City at a rate of Eight Dollars ($8) per linear foot for the use of the Right of Way within the Peachtree Corridor, and Two Dollars ($2) per linear foot for the use of the Right of Way outside the Peachtree Corridor. Such impossibility shall be determined by an auditor and other professionals selected by the City and paid for by the requestor, and as used above, the term impossible shall not mean inconvenient or difficult for the Franchisee or Licensee, but instead, shall mean that Gross Revenue is truly incapable of calculation.

3. The measure of compensation for Equipment installed for private use only, which is not used to provide Telecommunications Services or Facilities to end-users or other third parties, shall be One Thousand Dollars ($1000.00) per year.

4. Such fees represent the fair and reasonable compensation to be paid for the use of the City's Public Rights-of-Way.

5. Certification and Payment of Fees. Fees shall be paid on a quarterly basis for the prior quarter, and shall be due on April 1, July 1, October 1, and the first business day of January of each year. Projections from the prior year shall be adjusted in the first quarter in the following year. On or before each quarterly payment date, all Franchisees shall provide a certificate, signed and attested to by appropriate corporate officers, which verifies the Franchisee's Gross Revenue for the prior quarter.

OMC – Amendment Incorporated by tcp 3/14/01

6. Quarterly Reports. On or before each quarterly payment date, each Telecommunications Franchisee and Revocable Licensee shall submit a quarterly report to the Department of Public Works to inform the City of its on-going activities related to the occupancy of the Right-of-Way, to provide an on-going inventory of its Equipment located in the Right-of-Way, and to provide reasonable documentation of the accuracy of the Franchise Fees or License Fees paid.

7. Inspection and audit. The City reserves the right to audit the accuracy of the reports submitted for the purpose of insuring compliance with this Article. Such audits shall be conducted by an auditor chosen by the City. In cases where the Franchisee has failed to submit a certificate verifying Gross Revenue for two consecutive quarters, the costs of such audit shall be paid for by the Franchisee. In addition, should the audit reveal understatement of Gross Revenue by more than Five Percent (5%) by the Franchisee, the costs of such audit shall be paid for by the Franchisee

8. Right-of-Way Management Fee. In the event the franchise fee is passed through by a Telecommunications Provider to the citizens of Atlanta as a costs of providing service, such fees shall not be labeled as attributed to the City of Atlanta; however, they shall be labeled as Right-of-Way Management Fee.

(i) Franchisee and Revocable Licensee shall report linear miles, linear feet, cable-run, and fiber-run miles, depth and width of all manholes and handholes for their use and occupancy in the Right-of-Way.

Section 138-128 Compliance with Rules; Licenses Required.

(a) Subject to the provisions of this Ordinance, the City may adopt rules, policies and requirements to carry out the purposes and provisions of this Article. Each Applicant, Franchisee and Licensee shall comply with such rules, policies and requirements.

(b) No Person shall construct or install any Equipment in the Streets to provide Telecommunications Services without first obtaining such permits or other authorizations as may be required by the City. Such permits which may be required are described more particularly in Article II of this Section. Neither the fees paid in conjunction with obtaining such permits, nor any penalties imposed for the failure to obtain necessary permits or for any other purpose shall be construed as franchise fees nor shall they be used to set off franchise fees or

additional permit fees owed by the Franchisee or Licensee. No permits or other authorizations for such construction or installation shall be issued prior to the granting of a Franchise or a Revocable License pursuant to this Article or such other authorization as may be required by applicable law.

(c) No Person shall construct or install equipment in the streets without clear identification of all construction maintenance sites, vehicles, metal plates, and other obstacles with the name and phone number of the Franchisee or Revocable Licensee.

(d) The Department of Public Works may schedule monthly meetings with the Franchisee and Revocable Licensee for the purpose of reviewing the as-built plans as required in Section 138-65. Franchisees and Licensees who seek to perform construction activity in the Right-of-Way shall be required to attend the meetings.

(e) Each day during which a Franchisee or Licensee is in violation of the permitting requirements shall constitute a separate violation.

Section 138-129 Submission of Application for Franchise or Revocable License

(a) Applications for Franchises and Revocable Licenses shall be submitted to the Office of the Mayor and shall be in such form and request such information as the Mayor may determine, subject to applicable law.

(b) The Mayor may require that an application contain the following information with respect to the proposed Franchise or Revocable License and such other information, documentation, and items with respect to the proposed Franchise or Revocable License as the Mayor shall deem necessary or appropriate, consistent with applicable law:

(1) the name, address and telephone number of the Person to be contacted concerning the application;

(2) a description of the Telecommunications Services proposed to be provided, including, without limitation, a description of facilities and Equipment to be located within the Streets;

(3) a description of the proposed Franchise area or in the case of a Revocable License, the specifically identified Streets proposed to be used;

(4) a proposed construction schedule and sequence;

(5) an application fee, which shall consist of a one time non-refundable fee of Ten Thousand Dollars ($10,000.00) for Franchise

Applicants and Five Thousand Dollars ($5000.00) for Revocable License Applicants;

(6) indicia of ownership of the applicant and identification of all Affiliated Persons;

(7) a statement from the applicant that they will abide by all applicable laws; and

(8) such other information as the Mayor may determine to be necessary or appropriate to manage the Public Right-of-Way and ensure compliance with this Article, subject to applicable law.

Section 138-130. Compliance With All Legal Requirements.

It shall be the responsibility of each applicant for a Franchise or Revocable License to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local governmental authority having jurisdiction.

Section 138-131. Factors for Review of Application.

(1) In making any determination hereunder as to any application for a Franchise or Revocable License, the City may consider such factors as it deems appropriate and necessary to ensure proper management of the Public Right-of-Way and compliance with this Article, provided such factors are consistent with applicable law, including without limitation:

(a) the adequacy of the proposed compensation to be paid to the City;

(b) the ability of the applicant to maintain the property of the City in good condition throughout the term of the Franchise or the Revocable License;

(c) any services or uses of the Streets that may be precluded by the grant of the Franchise or Revocable License; and the adverse impact of the proposed Franchise or Revocable License on the efficient use of the Streets at present and in the future;

(d) the willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the Franchise or the Revocable License;

(e) the adequacy of the terms and conditions of the proposed Franchise or Revocable License agreement to protect the public interest, consistent with applicable law; and

(f) any other factors or considerations that the City has a lawful right to consider and that are deemed pertinent by the City.

Section 138-132. Procedure for Consideration of and Action on Applications.

(a) The City may make such investigations and take or authorize the taking of such other steps as the City deems necessary or appropriate to consider and act on applications for Franchises and Revocable Licenses and determine whether a Franchise or Revocable License should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose.

(b) Consistent with applicable law, the City may develop and implement policies and requirements to ensure that the Streets have sufficient capacity to reasonably accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for a Franchise or Revocable License, the City may consider an applicant's proposals for addressing capacity needs and compliance with City policies and requirements.

(c) Consistent with applicable law, upon completion of the steps deemed appropriate by the City, the City may grant or deny the Franchise or Revocable License, and may specify the conditions under which the Franchise or Revocable License is granted. If the application is denied, a written determination shall be prepared which shall include the reasons for denial.

Section 138-133. Agreement Required.

If an application is complete and the applicant otherwise complies with applicable law, ordinances, resolutions, rules, regulations and other directives of the City, including the provisions of this Ordinance, the Mayor shall enter into negotiations with the Applicant to determine whether such applicant and the City are able to reach agreement on the terms of the proposed Franchise or Revocable License in accordance with Section 138-134 and 138-135 of this Article. The proposed agreement, the application, and such other information as the Mayor determines is appropriate or may request shall be forwarded to the City Council for its review and consideration. The City may reject any application which is incomplete or otherwise fails to comply with applicable law, ordinances, resolutions, rules, regulations and other directives of the City and any federal, state or local authority having jurisdiction.

Section 138-134. Terms and Conditions of Franchise.

(1) The terms and conditions applicable to any Franchise granted pursuant to this Article shall be set forth in the separate ordinance granting the Franchise and/or in a separate written agreement. A Franchise granted pursuant to this Article shall not become effective until said separate ordinance becomes effective and any separate

agreement is executed by both parties. Such separate ordinance or written agreement, among other things, shall address the following subjects:

(a) the term of the Franchise, which shall not exceed **two (2) years** with the option of the City to renew for two (2) additional one (1) year terms;

(b) the Franchise area and the Telecommunications Services to be offered;

(c) the compensation to be paid to the City

(d) the circumstances upon which the Franchise may be terminated or cancelled;

(e) the mechanisms, such as performance bonds, security funds or letters of credit, which shall be required to ensure the performance of the Franchisee's obligations under the Franchise;

(f) the City's right to inspect the facilities located in the Right-of-Way and records of the Franchisee in order to ensure compliance with this Article and the Franchise;

(g) insurance and indemnification requirements applicable to the Franchisee;

(h) the obligation of the Franchisee to maintain complete and accurate books of account and records of those matters pertinent to its obligations under the Franchise, and the City's inspection rights with respect thereto;

(i) Provisions to ensure quality workmanship and construction methods;

(j) provisions to ensure that the Franchisee will comply with all applicable City, state and federal laws, regulations, rules and policies;

(k) provisions to ensure adequate oversight of the Franchisee by the City;

(l) provisions to monitor changes in control of the Franchisee and require written notice prior to the assignment or other transfer of the Franchise, or where required, consent of, the City;

(m) remedies available to the City to protect the City's interest in the event of the Franchisee's failure to comply with terms and conditions of the Franchise;

(n) provisions to ensure that the Franchisee will obtain all necessary licenses and permits from, and comply with, all laws, regulations, rules and policies of any governmental body having jurisdiction over the franchisee, including the Federal Communications Commission;

(o) provisions to ensure that the Franchisee will protect the property of the City and the delivery of public services from damage or interruption of operations resulting from the construction, operation, maintenance, repair or removal of improvements related to the Franchise;

(p) provisions designed to minimize the extent to which the public use of the Streets of the City are disrupted in connection with the construction of improvements relating to the Franchise, including compliance with any coordinated construction schedules as may be established by the Commissioner of the Department of Public Works; and

(q) such other provisions as the City determines are necessary or appropriate in furtherance of this Article and to effectively manage the Public Right-of-Way, consistent with applicable law.

Section 138-135 Terms and Conditions of Revocable License

(1) The terms and conditions applicable to any Revocable License granted pursuant to this Ordinance shall be set forth in the separate ordinance granting the Revocable License and/or in a separate written agreement. A Revocable License granted pursuant to this Ordinance shall not become effective until the separate ordinance granting the License becomes effective and any separate written agreement is executed by both parties. Such separate ordinance and/or written agreement shall address the same subjects listed in Section 138-129 of this Ordinance subject to the following limitations:

(a) The Revocable License shall be for an initial term not to exceed five (5) years from the date that the ordinance granting the Revocable License becomes effective with the option of the City to renew not to exceed two (2) additional one (1) years;

(b) The Revocable License shall be revocable at any time by the City for cause; and

(c) The Revocable License, together with all Revocable Licenses previously granted to the applicant or Affiliated Persons, shall not authorize the occupation and use of more than 500 linear feet of specifically identified Streets, unless the use or occupation of the Streets does not involve the offering or provision of Telecommunications Services to any Person in the City.

(2) In the event an application for a Revocable License would cause a Telecommunications Provider to exceed or fail to comply with the limits specified in clause (iii) of this 138-127 (b)(1) and Section 138-135 (c) then such Telecommunications Provider must apply for a Franchise in accordance with the provisions of this Article, and the use of specifically identified Streets pursuant to all previously granted Revocable Licenses shall thereafter be pursuant to and in accordance with any such Franchise that may be granted.

Section 138-136. Renewal Applications.

(a) A Franchisee or Licensee that desires to renew its Franchise or License under this Article shall, not less than six (6) months nor more than twelve (12) months before expiration of the current Franchise or License, file an application with the City for renewal of its Franchise. Any information required pursuant to the specific agreement between the City and the Franchisee or Licensee.

Section 138-137 Renewal Determinations

(a) Upon receiving an application for renewal, the Mayor may solicit comments from the relevant City departments and the public at large by undertaking the following:

1. Notifying the commissioner of the Department of Public Works and any other relevant City department that the application has been filed. The departments may provide written comments regarding the past performance of the Franchisee or Licensee.

2. Presenting the matter for public comment before the City Utilities Committee.

(b) Within 120 days after receiving a complete application for renewal in accordance with Section 138-136, infra, the Mayor shall issue a written recommendation to City Council recommending the grant or denial of the renewal application in whole or in part. If the renewal application is denied, the written determination shall include the reasons for nonrenewal. These reasons may involve the same as those considered in granting the original Franchise or License, in addition to the applicant's compliance with the requirements of this chapter, and other chapters referenced herein, and with the terms of its Franchise or Revocable License. Comments from the public or from other City departments as described in Section (a) above may serve as evidence of the Franchisee or Licensee's compliance or noncompliance.

Section 138-138. Obligation to Cure as a Condition of Renewal.

No Franchise or Revocable License shall be renewed until any ongoing violations or defaults in the Franchisee's or Licensee's performance of the Franchise or License, or of the requirements of this chapter or of other chapters referenced herein, have been cured, or until a plan detailing the corrective action to be taken by the Franchisee has been approved by the Mayor.

Section 138-139 Surety, Security Fund, and Bonding Requirements.

Each Franchise and Revocable License Agreement shall contain surety, security fund, insurance, and bonding requirements that have been determined by the Risk Manager to be sufficient to protect the City from occurrences and omissions which

may occur during the construction and maintenance activities conducted by the Franchisee or Licensee in the Streets.

Sections 138-140 through 138-160. Reserved.

DIVISION 3
GENERAL PROVISIONS

Section 138-161. Severability.

Nothing contained in this Ordinance shall be construed or operate to be more stringent than the conditions or requirements imposed by the Georgia Department of Transportation for utilities and similar service providers with facilities in the State Rights-of-Way. If any section, subsection, sentence, clause, phrase or other portion of this Ordinance is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

Section 138-162. Coordination and Interpretation.

In the coordination and interpretation of this Ordinance, the provisions of this Ordinance shall prevail over any conflicting provisions in the Franchise agreement. In the coordination, interpretation, or enforcement of this Ordinance, whenever the singular, plural, masculine, feminine or neuter is employed, such references shall be deemed interchangeable whenever necessary to preserve the form and intent of this Ordinance.

Section 138-163. Amendments to Ordinance.

Any Franchises or Revocable Licenses issued pursuant to this Ordinance shall be subject to all amendments to this Ordinance effected during the term of the Franchise or Revocable License.

Sections 138-164 through 138-185. Reserved.

SECTION 3

To the extent permitted by law, the City may determine to apply all or certain provisions of this Ordinance to agreements, Franchises, and Licenses existing on the effective date of this Ordinance. This Ordinance shall apply to all Telecommunications Providers, Persons seeking to use the Streets in the manner described in Section 138-127 herein, and Franchisees, Permittees, and Licensees after its adoption.

SECTION 4

That Chapter 138, Articles VI and VII of the Code of Ordinances shall remain the same.

SECTION 5

This Ordinance shall become effective upon its adoption.

A true copy,

Deputy Clerk

ADOPTED as amended **by Council** March 5, 2001
RETURNED WITHOUT SIGNATURE OF THE MAYOR
APPROVED as per City Charter Section 2-403 March 14, 2001

RCS# 2703
3/05/01
8:16 PM

Atlanta City Council

Regular Session

00-O-1307 Amend Ch. 138 regarding rights-of-way & construction, telecommuns. services, etc
ADOPT SUB/AMEND

YEAS:	10
NAYS:	1
ABSTENTIONS:	0
NOT VOTING:	2
EXCUSED:	2
ABSENT	1

Y McCarty	E Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	NV Martin	Y Emmons
Y Bond	Y Morris	B Maddox	E Alexander
Y Winslow	Y Muller	N Boazman	NV Pitts

25)

00-O-1307

(Do Not Write Above This Line)

AN ORDINANCE
BY

AN ORDINANCE TO AMEND CHAPTER 138, STREETS SIDEWALKS AND OTHER PLACES, ARTICLES I, II, III, IV AND V, SO AS TO INCLUDE DEFINITIONS OF NEW TERMS WHERE APPLICABLE; TO REORGANIZE SECTIONS AFFECTING THE PUBLIC RIGHTS-OF-WAY; TO CONSOLIDATE, WHERE APPROPRIATE, VARIOUS SECTIONS PERTAINING TO ENCROACHMENTS, CONSTRUCTION AND EXCAVATIONS IN THE PUBLIC RIGHTS-OF-WAY, BUS SHELTERS, PUBLIC VENDING DEVICES AND TELEPHONES; TO PROVIDE FOR THE GRANTING OF ONE OR MORE NON-EXCLUSIVE FRANCHISES FOR TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF ATLANTA AND FOR OTHER PURPOSES.

3/5/01 - Substitute Brought Forward by Council & then Amended by roll call votes

SUBSTITUTE AS AMENDED

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☑ PERSONAL PAPER REFER

ADOPTED BY COUNCIL MAR 05 2001

Date Referred	8/7/00
Referred To:	City Utilities
Date Referred	
Referred To:	
Date Referred	
Referred To:	

First Reading

Committee
Date
Chair
Referred to

Committee	City Utilities
Date	8-15-00
Chair	
Action: Fav, Adv, Hold (see rev. side)	
Other:	
Members	
Refer To	

Committee	City Utilities
Date	2-27-01
Chair	Clair Mullen
Action: Fav, Adv, Hold (see rev. side)	
Other:	NB Recommend
Members	
Refer To	

Committee	City Utilities
Date	2/13-01
Chair	Clair Mullen
Action: Fav, Adv, Hold (see rev. side)	NB Recommend ON substitute ON conditions
Other:	
Members	
Refer To	

Committee	
Date	
Chair	
Action: Fav, Adv, Hold (see rev. side)	
Other:	
Members	
Refer To	

FINAL COUNCIL ACTION

☑ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

CERTIFIED MAR 5 2001

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED MAR 05 2001

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

MAR 14 2001

WITHOUT SIGNATURE BY OPERATION OF LAW