



AGENDA
COUNCIL MEETING
4040 S. BERKELEY LAKE RD.
BERKELEY LAKE, GEORGIA 30096
MARCH 20, 2025

7:00 PM Work Session
8:00 PM Formal Session

Citizens are encouraged to offer comments on issues of concern as agenda items are reached and at the end of the meeting for all other issues. Please limit citizen comments to 2 minutes. Longer citizen comments are welcome in writing and will be added to the official record of this meeting.

WORK SESSION

CALL TO ORDER

AGENDA

PUBLIC HEARING

CONSENT AGENDA

- a) Minutes of February 20, 2025, Council Meeting
- b) Minutes of February 20, 2025, Council Work Session
- c) Financial Statements of January 2025 – Unaudited

OLD BUSINESS

NEW BUSINESS

- a) Appointment – Planning & Zoning Commission
- b) O-25-256 -- 2024 Budget Amendment
- c) O-25-257 – Amendment to Chapter 70, Utility Accommodation

EXECUTIVE SESSION *(if needed)*

CITIZEN COMMENTS

ADJOURNMENT

Requests for reasonable accommodations required by individuals to fully participate in any open meeting, program, or activity of the City of Berkeley Lake government should be made at least five days prior to the event by contacting the ADA Coordinator at 770-368-9484.



**COUNCIL WORK SESSION
4040 SOUTH BERKELEY LAKE ROAD
BERKELEY LAKE, GEORGIA 30096
DRAFT MINUTES
FEBRUARY 20, 2025**

ATTENDANCE

Mayor: Lois Salter

Council Members: Rodney Hammond, Scott Lee, Chip McDaniel and Rebecca Spitler

City Officials: Leigh Threadgill - City Administrator, Dick Carothers – City Attorney

Members of the Public: 2

Members of the Press: 0

WORK SESSION

Salter reviewed the agenda with the council and solicited questions regarding the items for consideration.

The work session was adjourned.

Submitted by:

Leigh Threadgill, City Clerk



COUNCIL MEETING
4040 SOUTH BERKELEY LAKE ROAD
BERKELEY LAKE, GEORGIA 30096
DRAFT MINUTES
FEBRUARY 20, 2025

ATTENDANCE

Mayor: Lois Salter

Council Members: Rodney Hammond, Scott Lee, Chip McDaniel and Rebecca Spitler

City Officials: Leigh Threadgill - City Administrator, Dick Carothers – City Attorney

Members of the Public: 3

Members of the Press: 0

CALL TO ORDER

Salter called the meeting to order at 8:00 PM. A quorum of council members was in attendance.

AGENDA

Salter solicited a motion regarding the agenda.

Hammond made a motion to accept the agenda as submitted. McDaniel seconded the motion. All council members were in favor and the motion passed.

PUBLIC HEARING

a) Intent to Opt Out of Statewide Homestead Exemption

Salter solicited comments.

There were no comments.

CONSENT AGENDA

Salter noted the following as items on the consent agenda and solicited a motion:

- a) Minutes of January 9, 2025, Council Meeting
- b) Minutes January 16, 2025, Council Work Session
- c) Minutes of January 16, 2025, Council Meeting

d) Financial Statements of December 2024 – Unaudited

Lee made a motion to approve all items on the consent agenda. Spitler seconded the motion. All were in favor and the motion passed.

OLD BUSINESS

There was no old business to discuss.

NEW BUSINESS

a) R-25-2: Resolution to Opt Out of Statewide Homestead Exemption

Threadgill: Following three required public hearings, properly advertised, the council must pass a resolution to opt out of the statewide homestead exemption established by House Bill 581. The required public hearings were held on January 9 at 6 PM, January 16 at 8 PM and tonight, February 20, at 8 PM. If the council approves the resolution to opt out, staff asks that it further authorize the city clerk to transmit the required documentation to the Secretary of State's office by the March 1, 2025, deadline.

McDaniel made a motion to approve R-25-2, a resolution to opt out of the statewide homestead exemption and authorize the city clerk to certify and transmit the required documentation to the Secretary of State's office on or before March 1, 2025. Hammond seconded the motion. All council members were in favor and the motion passed.

b) Appointment of Council Member to serve the unexpired term of Bob Smith

Salter: Following the recent passing of our dear Bob Smith, a city council member extraordinaire, a vacancy has been created on the city council. According to the city charter, a vacancy must be filled by council appointment until such time that an election can be held for the vacated seat. Bob Smith's term was set to expire on December 31, 2027. A special election will be held for the unexpired term in conjunction with the general election scheduled for November 4, 2025.

Spitler made a motion to appoint Barbara Geier to serve the unexpired term of Bob Smith. Lee seconded the motion. All council members were in favor and the motion passed.

Carothers swore in Barbara Geier to serve as the appointed Council Member to replace Bob Smith until the special election to fill Smith's unexpired term.

c) Appointment – Berkeley Lake Conservancy

Salter noted that Sue Swanson, who was recently reappointed to the Berkeley Lake Conservancy, resigned. Raina Raflo has been identified as her replacement and, with the advice and consent of the council, is nominated for appointment tonight.

Lee made a motion to approve the appointment of Raina Raflo to fill the unexpired term of Sue Swanson. McDaniel seconded the motion. All were in favor and the motion passed.

PUBLIC COMMENTS

There were no public comments.

ADJOURNMENT

There being no further business to discuss, Geier moved to adjourn. Spitler seconded the motion. All were in favor and the motion passed.

Salter adjourned the meeting at 8:09 PM.

Submitted by:

Leigh Threadgill, City Clerk

City of Berkeley Lake

Budget vs. Actuals: Budget_FY25_P&L - FY25 P&L

January 2025

	TOTAL			
	ACTUAL	BUDGET	OVER BUDGET	% OF BUDGET
Income				
100 100 General	108,246.27	1,272,301.00	-1,164,054.73	8.51 %
320 320 SPLOST Income	41,427.59	1,895,652.00	-1,854,224.41	2.19 %
Total Income	\$149,673.86	\$3,167,953.00	\$ -3,018,279.14	4.72 %
GROSS PROFIT	\$149,673.86	\$3,167,953.00	\$ -3,018,279.14	4.72 %
Expenses				
1 Gen Govt	41,164.97	604,943.00	-563,778.03	6.80 %
2 Judicial		9,439.00	-9,439.00	0.00 %
230 ARP Act Expenses 230		0.00	0.00	
3 Public Safety	7,972.64	171,968.00	-163,995.36	4.64 %
4 Public Works	8,174.13	170,240.00	-162,065.87	4.80 %
6 Culture and Recreation	361.35	21,990.00	-21,628.65	1.64 %
7 Housing and Development	1,797.00	238,578.00	-236,781.00	0.75 %
9000.61.1100 Xfer Out - Reserve Fund		55,142.00	-55,142.00	
SPLOST Expenses	6,163.75	1,895,653.00	-1,889,489.25	0.33 %
Total Expenses	\$65,633.84	\$3,167,953.00	\$ -3,102,319.16	2.07 %
NET OPERATING INCOME	\$84,040.02	\$0.00	\$84,040.02	0.00%
NET INCOME	\$84,040.02	\$0.00	\$84,040.02	0.00%

City of Berkeley Lake

Income & Expense

January 2025

	TOTAL
Income	
100 100 General	108,246.27
320 320 SPLOST Income	41,427.59
Total Income	\$149,673.86
GROSS PROFIT	\$149,673.86
Expenses	
1 Gen Govt	41,164.97
2 Judicial	
3 Public Safety	7,972.64
4 Public Works	8,174.13
6 Culture and Recreation	361.35
7 Housing and Development	1,797.00
SPLOST Expenses	6,163.75
Total Expenses	\$65,633.84
NET OPERATING INCOME	\$84,040.02
NET INCOME	\$84,040.02

City of Berkeley Lake

Balance Sheet

As of January 31, 2025

	TOTAL
ASSETS	
Current Assets	
Bank Accounts	
Debt Service Fund	0.00
General Fund	4,766,648.17
SPLOST Fund	1,388,091.59
Suspense 1.11.1000	0.00
Total Bank Accounts	\$6,154,739.76
Accounts Receivable	
Accounts Rec 1.11.1900.1	25,042.65
Total Accounts Receivable	\$25,042.65
Other Current Assets	
1.11.27 Grant Receivable	0.00
Accounts Rec - SPLOST 1.11.2000	90,877.66
AccountsRec-OtherTax1.11.1900.2	0.00
Franchise Tax Rec 1.11.1550	196,195.30
Interest Receivable 1.11.1400	0.00
Prepaid Expense 1.11.3600	0.00
Prepaid items 1.11.3800	0.00
Taxes Receivable 1.11.1600	22,084.39
Undeposited Funds 1.11.1114	482.00
Total Other Current Assets	\$309,639.35
Total Current Assets	\$6,489,421.76
Fixed Assets	
Building & Improvements 1.11.7400	1,770,036.08
Computer Equipment 1.11.6700	48,172.61
Furniture & Fixtures 8.11.7700	71,493.47
Land 8.11.7100	9,392,320.74
Machinery & Equipment 1.11.6500	173,026.24
Total Fixed Assets	\$11,455,049.14
Other Assets	
Accum amort - bond cost	0.00
Amt avail 4 debt svc 9.11.9100	0.00
Bond issuance cost	0.00
Loan Receivable - Facilities	0.00
Loan Receivable - Paving	0.00
To be prov 4 debt 1.11.7500	0.00
Total Other Assets	\$0.00
TOTAL ASSETS	\$17,944,470.90

City of Berkeley Lake

Balance Sheet

As of January 31, 2025

	TOTAL
LIABILITIES AND EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable 1.12.1100	36,988.08
Operating AP	0.00
SPL2005 Admin Facil- City H-AP*	0.00
SPLOST account - Suntrust-AP*	0.00
Total Accounts Payable	\$36,988.08
Credit Cards	
Anderson Credit Card (8186)	28.16
BOZEMAN, MARTY (0241)	0.00
Hiller Credit Card (8402)	87.01
Hunter Credit Card (0891)	264.21
Threadgill Credit Card (3322)	573.65
Wilhite Credit Card (1132)	0.00
Total Credit Cards	\$953.03
Other Current Liabilities	
*Sales Tax Payable	0.00
1.12.28 Bonds payable - current	0.00
Accounts Payable Accruals-L*	0.00
Accounts payable-L 1.12.1100.2	0.00
Accrued Expenses 1.12.1150	0.00
Accrued Interest Payable	0.00
Accrued Salaries 1.12.1200	0.00
Accrued SPLOST Expenses 2.12.1250	0.00
Deferred revenue 1.12.2500	25,205.59
Direct Deposit Payable	-0.01
MyGov	-999.00
Payroll Liabilities	66.10
PR Tax Payable - Fed 1.12.1300	0.00
PR Tax Payable - State 1.12.1310	0.00
PTO Accrual	14,369.47
Regulatory Fees Payable	14,825.84
Retainage Payable	0.00
Total Other Current Liabilities	\$53,467.99
Total Current Liabilities	\$91,409.10

City of Berkeley Lake

Balance Sheet

As of January 31, 2025

	TOTAL
Long-Term Liabilities	
Gen Oblig Bond Payable 1.12.3000	0.00
GOB Payable - 2009 1.12.3000.2	0.00
GOB Payable - 2011 1.12.3000.3	0.00
GOB Payable - 2012 1.12.3000.4	0.00
SPLOST Loan Payable - Paving	0.00
SPLOST Loan Payable Facilities	0.00
Total Long-Term Liabilities	\$0.00
Total Liabilities	\$91,409.10
Equity	
Fund Bal Unrsvd 1.13.4220	4,759,256.17
Investmt in fixedassets 1.13.4K	11,327,229.85
Opening Bal Equity	0.00
Reserve for prepaids 1.13.4125	7,169.04
Reserved for Debt Service	0.00
Restricted for Debt Svc 1.13.4105	0.00
Restricted4CapitalProj 1.13.4155	1,385,015.34
Retained Earnings 1.13.3000	290,351.38
Net Income	84,040.02
Total Equity	\$17,853,061.80
TOTAL LIABILITIES AND EQUITY	\$17,944,470.90

ORDINANCE

AN ORDINANCE TO AMEND THE BUDGET FOR THE YEAR 2024; TO REPEAL CONFLICTING ORDINANCES; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

Be it ordained by the Mayor and the City Council of the City of Berkeley Lake that the 2024 Budget shall be amended as follows:

<u>Revenues</u>	
General	1,486,670
American Rescue Plan Act	329,257
SPLOST	<u>677,725</u>
Total Revenues	\$2,493,652
<u>Expenditures</u>	
General Government	418,727
Judicial	9,149
Public Safety	140,340
Public Works	196,167
Culture & Recreation	20,226
Housing & Development	90,513
Additions to General Reserves	611,548
SPLOST – Public Works	672,375
SPLOST – Admin Facilities	5,350
SPLOST – Public Safety	0
SPLOST – Addition to Reserves	0
American Rescue Plan Act	<u>329,257</u>
Total Expenditures	\$2,493,652

All ordinances and parts of ordinances in conflict herewith are repealed to the extent of any such conflict. This ordinance shall be effective upon adoption by the Council of the City of Berkeley Lake.

So ordained, this 10th day of April 2025.

ATTEST:

Lois D. Salter, Mayor

Leigh Threadgill, City Clerk

First Read: March 20, 2025
Second Read/Hearing/Adoption: April 10, 2025

ORDINANCE NUMBER O-25-257

AN ORDINANCE TO AMEND CHAPTER 70, ARTICLE II, OF THE OFFICIAL CODE OF THE CITY OF BERKELEY LAKE, GA; TO ESTABLISH REQUIREMENTS FOR THE USE OF PUBLIC AND PRIVATE UTILITIES WITHIN THE RIGHTS-OF-WAY; TO ADMINISTER AND REGULATE THE USE OF PUBLIC ROADS, HIGHWAYS, AND RIGHTS OF WAY MAINTAINED BY THE CITY; TO PROVIDE FOR DUE COMPENSATION FOR USE OF CITY PUBLIC ROADS, HIGHWAYS, AND RIGHTS OF WAY; TO CREATE LIABILITY ON THE HOLDER OF RIGHT OF WAY LICENSES (PERMITS?); TO PROVIDE AUTHORITY TO THE CITY TO REQUIRE RELOCATION; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

ARTICLE II. UTILITY ACCOMMODATION POLICY

Sec. 70-6. Declaration of findings and purpose, scope, definitions.

(a) ~~(a)~~ — *Intent and purpose.* The City of Berkeley Lake (the "city") is vitally concerned with the use, construction within, and occupancy of all rights-of-way in the city as such rights-of-way are a valuable and limited resource which must be utilized to promote the public health, safety, welfare, economic development of the city and to protect public work infrastructure.

~~(a)(b)~~ *Authority.* ~~Therefore, the city, under the authority of the Laws and Constitution of the State of Georgia, including but not limited to Article 9, Section 1, paragraphs 2 and 3 of the Georgia Constitution, O.C.G.A. § 36-35-3 and O.C.G.A. § 32-4-92(10), has adopted this ordinance for the purpose of regulating public and private entities which use the city rights-of-way Pursuant to O.C.G.A. §32-4-92(a)(10) the city may grant permits and establish reasonable regulations for the installation, construction, maintenance, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, facilities, or appliances of any utility in, on, along, over, or under any part of its municipal street system and of a county road system lying within its municipal limits. Further, 47 U.S.C. §253(c) provides that the city has authority to manage its public rights of way.~~

(bc) *Scope.* The provisions of this article shall apply to all utilities and facilities occupying the rights-of-way as provided herein.

(ed) *Definitions.* For the purposes of this article, the following terms, phrases, words, and their derivations have the meanings set forth herein. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "sections" are, unless otherwise specified, references to sections in this article. Defined terms remain defined terms whether or not capitalized.

Broadband Services means a wired or wireless terrestrial service that consists of the capability to transmit at a rate of not less than 25 megabits per second in the downstream direction and at least 3 megabits per second in the upstream direction to end users in combination with such service provides:

(i) Access to the internet; or

(ii) Computer processing, information storage, or protocol conversion.

City means the City of Berkeley Lake, Georgia;

Codified ordinances means the Codified Ordinances of the City of Berkeley Lake, Georgia;

Construct means, but shall not be limited to, dig, bore, tunnel, trench, excavate, obstruct, install or remove signs, or facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved or improved surface that is any part of the right-of-way;

Construction means, but shall not be limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing or removing signs or facilities, other than landscaping or ornamental plantings, in, on, above, within, over, below, under, or through any part of the rights-of-way. Construction shall also include the act of opening, boring and/or cutting into the surface of any part of the right-of-way;

Emergency means a ~~sudden or unforeseen occurrence involving condition that poses~~ a clear and immediate danger to life, health, or safety of a person, or of significant damage or loss of rear or personal. property or interruption of utility services that require immediate attention;

Facility or facilities means any tangible thing, including but not limited to pipes, mains, conduits, cables, wires, poles, towers, traffic and other signals, and other equipment, appurtenances, appliances and future technology of any utility in, on, along, over, or under any part of the rights-of-way within the city;

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

FCC means the Federal Communications Commission or any successor thereto;

Permit means an authorization which grants permission to conduct specific regulated activities on, in, over, under or within any public right-of-way, and which may be subject to conditions specified in a written agreement with the city or in a related provision of this code of ordinances;

Right(s)-of-way means the surface and space in, on, above, within, over, below, under or through any real property in which the city has an interest in law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, or any other place, area, or real property owned by or under the legal or equitable control of the city, now or hereafter, that consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing or replacing facilities. The term "rights-of-way" shall not include buildings, parks, bridges, rivers, tunnels, viaducts, conduits or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a permit or by law. The terms "rights-of-way" shall not include private easements or public property, except as set forth in this definition or to the extent the use or occupation of public property is specifically granted in a written approval of registration;

Service(s) means the offering of any service by a utility for a fee or rate directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision of any service by a utility between two or more points for a proprietary purpose to a class of users other than the general public;

Service agreement means a valid license agreement, service agreement, franchise agreement, or operating agreement issued by the city or state pursuant to law and accepted by a utility or entered into by and between the city and a utility, which allows such utility to operate or provide service within the geographic limits of the city;

Street or streets means the surface of, as well as the spaces above and below, any and all the streets, alleys, avenues, roads, bridges, ~~and tunnels and public places~~ of the city within the ~~corporate geographic~~ limits of the city, as the same now exist or may be hereafter extended or altered, and any location thereon, thereover or thereunder, and any portion thereof;

~~*Transfer* means the disposal by the utility, directly or indirectly, by gift, assignment, sale, merger, consolidation, or otherwise, of more than 50 percent at one time of the ownership or controlling interest in the facilities, or of more than 50 percent cumulatively over the term of a written approval of registration of such interests to a corporation, partnership, limited partnership, trust, or association, or person or group of persons acting in concert;~~

~~*Unused facilities* means facilities located in the rights-of-way which have remained unused for 12 months and for which the utility is unable to provide the city with a plan detailing the procedure by which the utility intends to begin actively using such facilities within the next 12 months, or that it has a potential purchaser or user of the facilities who will be actively using the facilities within the next 12 months, or, that the availability of such facilities is required by the utility to adequately and efficiently operate its facilities;~~

Utility or utilities means all privately, publicly, or cooperatively owned systems for producing, transmitting, or distributing communication, broadband services, data, information, telecommunication, cable television, video services, power, electricity, light, heat, gas, oil, crude products, water/sewer, steam, fire and police signals, traffic control devices, and street lighting systems, and housing or conduit for any of the foregoing, which directly or indirectly serve the public or any part thereof. The term "utility" may also be used to refer to the owner, operator, utility, service, contractor or subcontractor, or any agent thereof, of any above-described utility or utility facility.

(Ord. No. O-190-15, § 1, 9-17-2015)

~~Sec. 70-7. Utility registration.~~

- ~~(a) *Registration required.* Each utility who occupies, uses or has facilities in the rights-of-way at the time of passage of this ordinance, including by lease, sublease or assignment, to operate facilities located in the rights-of-way, unless specifically exempted by state or federal law or this code, shall file a registration statement with the city within 90 days of the effective date of this Ordinance.~~
- ~~(b) *Registration procedure.* The registration information provided to the city shall be on a form approved by the city and include, but not be limited to:~~
- ~~(1) The name, legal status (i.e. partnership, corporation, etc.), street address, email address, and telephone and facsimile numbers of the utility filing the Registration Statement (the "registrant"). If the registrant is not the owner of the facility in the right-of-way, the registration shall include the name, street address, email address if applicable, and telephone and facsimile numbers of the owner;~~
 - ~~(2) The name, street address, email address if applicable and telephone and facsimile numbers of one or more facilities representative(s). Current information regarding how to contact the facilities representative(s) in an emergency shall be provided at the time of filing a registration and shall be updated as necessary to assure accurate contact information is available to the city at all times;~~
 - ~~(3) A copy, if requested, of the utility's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements.~~
 - ~~(4) A copy, if requested, of the service agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the registration.~~
- ~~(c) *Incomplete registration.* If a registration is incomplete, the city administrator shall notify the registrant and shall provide a reasonable period of time in which to complete the registration. If a registration is complete, the city administrator shall so notify the utility in writing.~~

~~(d) Acceptance of the registration shall not convey title in the rights-of-way. Acceptance of the registration is only the nonexclusive, limited right to occupy rights-of-way in the city for the limited purposes stated in the acceptance. Acceptance of the registration does not excuse a utility from obtaining permits required by city ordinances nor from obtaining appropriate access or pole attachment agreements before using the facilities of others, including the city. Acceptance of the registration does not excuse a utility from notifying the city of construction as required herein.~~

~~(e) Facilities in place without registration. Beginning one year after the effective date of this article, any facilities or part of a facility found in a right-of-way for which registration is required but has not been obtained unless specifically exempted by law, and for which no valid service agreement exists with the city, may be deemed to be a nuisance and an unauthorized use of the rights-of-way. The city may exercise any remedies or rights it has at law or in equity, including, but not limited to abating the nuisance; taking possession of the facilities; evicting the utility from the right-of-way; prosecuting the violator; and/or any other remedy provided by city ordinance or otherwise allowed in law or in equity.~~

~~{Ord. No. O-190-15, § 1, 9-17-2015}~~

Sec. 70-87. Construction permits Required.

- (a) *Permit required.* It shall be unlawful for any utility to excavate or to construct, install, maintain, renew, remove or relocate facilities in, on, along, over or under the public roads of the city without a utility permit from the city in accordance with the terms of this article.
- (b) *Permit procedure.* Utility permits shall be obtained from the city administrator (or such other person as the city administrator may designate) upon application made on forms prescribed by the city administrator. The written application shall include the following:
- (1) The name and address of the utility;
 - (2) The nature, extent, and location of any work proposed to be done, along with satisfactory plans as attachments showing in detail the location of the proposed facility or operations as described in the permit application. The plans shall show the size or capacity of facilities to be installed; their relationship to street features such as right-of-way lines, pavement edge, structures, etc., horizontal and vertical clearance to critical elements of the roadway and any other information necessary to evaluate the impact on the street and its operation;
 - (3) The name and physical address of the person or firm who is to do such work;
 - (4) The name, street address, email address if applicable and telephone and facsimile numbers of one or more facilities representative(s);
 - (5) The projected dates for the work to be started and finished;
 - (6) An indemnity bond or other acceptable security in an amount to be set by the city to pay any damages to any part of the city road system or other city property or to any city employee or member of the public caused by activity or work of the utility performed under authority of the permit issued;
 - (7) A copy, if requested, of the registrant's certificate of authority (or other acceptable evidence of authority to operate) from the Georgia Public Service Commission and/or the FCC and any other similar approvals, permits, or agreements; and
 - (8) A copy, if requested, of the service agreement, if applicable or other legal instrument that authorizes the utility to use or occupy the right-of-way for the purpose described in the application.
- (c) *Permit fees.* Fees shall be determined by the city administrator, subject to the approval by resolution of the city council. A fee schedule shall be available at the offices of the city administrator and the city clerk and open for public inspection.

- (d) *Issuance of permit.* If the city administrator determines the applicant has satisfied the following requirements, the city administrator may issue a permit.
- (1) Whether issuing of the approval will be consistent with this article; and
 - (2) Whether applicant has submitted a complete application and has secured all certificates and other authorizations required by law, if applicable, in order to construct facilities in the manner proposed by the applicant; and
 - (3) The impact on safety, visual quality of the streets, traffic flow, and other users of the right-of-way and the difficulty and length of time of the project, construction or maintenance.
- (e) *Emergency situations.*
- (1) Each utility shall, as soon as reasonably practicable, notify the city administrator of any event regarding its facilities which it considers to be an emergency. The utility may proceed to take whatever actions are necessary in order to respond to the emergency. A utility who engages in an emergency excavation shall take all reasonable precautions to avoid or minimize damage to any existing facilities.
 - (2) In the event that the city becomes aware of an emergency regarding utility facilities, the city may attempt to contact the affected utility or facilities representative. The city may take whatever action it deems necessary in order to respond to the emergency, including cut or move any of the wires, cables, amplifiers, appliances, or other parts of the facilities. The city shall not incur any liability to the utility, for such emergency actions, and the cost of such shall be paid by each utility affected by the emergency.
- (f) *Effective period of permit.*
- (1) Each permit shall have a set commencement and expiration date based on information provided in the applicant's permit application.
 - (2) The permit shall remain in place until construction is completed or until its expiration date unless the utility is in default. The city administrator may give written notice of default to a utility if it is determined that a utility has:
 - a. Violated any provision or requirement of the issuance or acceptance of a permit application or any law of the city, state, or federal government;
 - b. Attempted to evade any provision or requirement of this article;
 - c. Practiced any fraud or deceit upon the city; or
 - d. Made a material misrepresentation or omission of fact in its permit application.
- (g) *Cancellation for cause.* If a utility fails to cure a default within 20 working days after such notice is provided to the utility by the city, then such default shall be a material breach and city may exercise any remedies or rights it has at law or in equity to terminate the permit. If the city administrator decides there is cause or reason to terminate, the following procedure shall be followed:
- (1) City shall serve a utility with a written notice of the reason or cause for proposed termination and shall allow a utility a minimum of 15 calendar days to cure its breach.
 - (2) If the utility fails to cure within 15 calendar days, the city may declare the permit terminated.
- (h) *Expiration of permit.* If work ~~is not begun~~has not commenced within six months of the date of issuance, the permit will automatically expire.

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-8. Insurance and Bonding Requirements

- (a) Any person seeking to obtain a right of way permit shall provide proof of insurance or self-insurance to the city administrator. Such insurance shall cover all work done by such person upon, under, along, and over the public roads and highways and rights of way located within the city and shall be maintained during all periods such work is being done.
- (b) If deemed necessary, the city may require any person seeking to obtain a right of way permit to provide a surety bond before issuance of the permit. Such bond shall cover all work done by such person upon, under, along, and over the public roads and highways and rights of way located within the city and shall be maintained during all periods such work is being done.
- (c) In situations where the city requires the person to provide a surety bond, the person shall deposit with the city administrator a surety bond in an amount determined by the city administrator to be sufficient to ensure satisfactory completion of the work from a surety company authorized to do business in Georgia and fulfillment of the warranty provided for herein and in a form approved by the city attorney. Said bond shall guarantee completion to the satisfaction of the city of all excavation and street restoration work required by this chapter and by the conditions of the permit within the time limits set on the permit. Said bond shall further guarantee that all excavation and street restoration work shall be free from settling and defects in workmanship or materials for a period of two years after the date said work is completed and accepted by the city. The bond shall be conditioned to protect and save harmless the city and the city council from all claims and damages for cleaning or repairing any damage by the person and will be used to reimburse the city for any cost incurred to clean or repair city roads or rights of way, to re-ditch or repair existing ditch infrastructure or for other damage caused as a result of the actions of the person after the issuance of the right of way permit.
- (d) In instances where the city has required a surety bond under paragraph (b) of this section in an amount greater than ??????? the person may opt to secure their right of way permit by providing an irrevocable bank letter of credit attesting solvency to the city in the amount of ????????
- (e) Such bond or irrevocable letter of credit shall protect the city against any damage caused by such person or firm, tendering the surety bond or letter of credit, or any agent, employee or contractor or said person or firm and will be used to reimburse the city for any cost incurred to clean or repair city roads or rights of way, to re-ditch or repair existing ditch structure or for other damage caused as a result of the actions of the person after the issuance of right of way permit. The person responsible for operations under the right of way permit will be given notice of the damage and allowed 72 hours to restore the road and right of way to a safe and operable condition as determined by the city marshal and the city administrator. All repairs, material used and final releasing condition shall be approved and accepted by the city marshal and the city administrator.
- (f) The bond or letter of credit may be released by the municipal governing authority of the city upon notification of completion by the person or firm obtaining the right of way permit and only upon final inspection of the sites and all affected right of ways and city roads. The bond or letter of credit may be retained against future or continuing operations by the person in the city.
- (g) A surety bond shall be issued by a surety acceptable to the city, and shall contain the following endorsement: "This bond may not be canceled or allowed to lapse until thirty (30) days after receipt by the city, by certified mail, return receipt requested, of a written notice from the issuer of the bond of the intent to cancel or not to renew."
- (h) The municipal governing authority may require verification of continuing coverage as needed.

Sec. 70-9. Required minimum standards.

- (a) *Utility accommodation manual adopted.* ~~The 2009 Utility Accommodation Policy and Standards manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, except Appendix B (permit forms and supporting documents), promulgated by the State of Georgia Department of Transportation, as may be amended from time to time is hereby adopted by reference and incorporated in the article as if fully set forth herein, subject to the amendments and modification contained in this article.~~ The Georgia Department of Transportation (“GDOT”) 2016 Utility Accommodation Policy and Standards Manual, including all references contained therein to codes, rules, regulations, schedules, forms and appendix items, promulgated by GDOT, as may be amended from time to time is hereby adopted by reference and incorporated in this article as if fully set forth herein, subject to the amendments and modification contained in this article. A copy of the manual shall be maintained at the offices of the city administrator or his designee and open for public inspection. Any conflicts between the provisions of this ordinance and the manual shall be resolved in favor of the manual. References to state personnel, agencies, and fees shall be interpreted, where required, as meaning the City of Berkeley Lake municipal equivalents.
- (b) *Protection of traffic and roadway.* Unless specifically in the permit, no utility may occupy the city rights-of-way unless sufficient space is available so that the free flow and safety of traffic and other capacity considerations are not unduly impaired and the installation does not prevent the city from reasonably maintaining the streets, structures, traffic control devices and other appurtenant facilities, and further provided that maintenance and operations of the facilities do not jeopardize the traffic, street structure, other users of the right-of-way or the right-of-way itself or otherwise cause issues related to life, health, or safety of a person, or of significant damage or loss of real or personal property.
- (c) *Grading.* If the grades or lines of any street within the city right-of-way are changed at any time by the city during the term of the permit and this change involves an area in which the utility's facilities are located, then the utility shall, at its own cost and expense and upon the request of the city upon reasonable notice, protect or promptly alter or relocate the facilities, or any part thereof, so as to conform with such new grades or lines. In the event the utility refuses or neglects to so protect, alter, or relocate all or part of the facilities, the city shall have the right to break through, remove, alter, or relocate all or any part of the facilities without any liability to the utility and the utility shall pay to the city the costs incurred in connection with such breaking through, removal, alteration, or relocation.
- (d) *Installation of poles and other wireholding structures and relocation.* Unless otherwise provided in a valid service agreement, no placement of any pole or wireholding structure of the utility is to be considered a vested interest in the right-of-way, and such poles or structures are to be removed, relocated underground, or modified by the utility at its own expense whenever the city determines that the public convenience would be enhanced thereby. The facilities shall be so located and installed as to cause minimum interference with the rights and convenience of property owners. ~~Conduit, poles, wires, cables and related facilities shall be reasonably shared by users, and reasonable shared access shall be negotiated among users. No additional poles or structures may be added in the rights-of-way for the sole purpose of accommodating a utility facility. Existing poles or structures may be replaced as necessary as long as the replacement pole or structure is not more than five feet greater in height.~~
- (e) *Notice of intent to excavate or demolish.* ~~As provided in O.C.G.A. § 25-9-6 (the Georgia Utility Facility Protection Act) and other applicable state law currently in place or as amended, no utility shall commence, perform, or engage in blasting or in excavating with mechanized excavating facilities unless and until the utility planning the blasting or excavating has given 48 hours' notice by submitting a locate request to the utility protection center, beginning the next working day after such notice is provided, excluding hours during days other than working days.~~ No utility shall commence, perform, or engage in blasting or in excavating with mechanized excavating facilities unless and until the utility planning the blasting or excavating has given forty-eight (48) hours' notice by submitting a locate request to the One Call Center, beginning the next working day after such notice is provided, excluding hours during days other than working days.

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-10. Restoration of property.

- (a) Each utility shall be responsible for the cost of repairing any facilities in the rights-of-way and adjoining property or other facilities which it or its facilities damage.
- (b) A utility shall be liable, at its own cost and expense, to replace, restore or repair, any street, facilities or property or structure thereon, thereunder, thereover or adjacent thereto that may become disturbed or damaged as a result of the construction or installation, operation, upgrade, repair or removal of facilities to a condition as good as or better than its condition before the work performed by the utility that caused such disturbance or damage. If the utility does not commence such replacement or repair after 20 ~~working~~ calendar days following written notice from the city, the city or the owner of the affected structure or property may make such replacement or repair and the utility shall pay the reasonable and actual cost of the same.

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-11. Inspection.

- (a) The utility shall make the construction site available to the city administrator and to all others as authorized by law for inspection at all reasonable times during the execution and upon completion of the construction.
- (b) At any time, including the time of inspection, the city administrator may order the immediate cessation of any work which poses a serious threat to the health, safety, or welfare of the public, violates any law, or which violates the terms and conditions of the permit and/or this article or issue an order to correct work which does not conform to the permit and/or applicable standards, conditions or codes.
- (c) When the construction under any permit is completed, the utility shall notify the city.

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-12. Other approvals, permits and agreements.

- (a) *Additional permits required.* The utility shall obtain all construction, building or other permits or approvals as according to city ordinance, state or federal law. In addition, a permittee shall comply with all requirements of laws, shall complete work in a way as to not cause any unnecessary or unauthorized obstructions of sidewalks, streets, waterways or railways, and is responsible for all work done in the rights-of-way regardless of who performs the work. No rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an emergency as outlined in Section 70-8(e).

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-13. Penalties.

- (a) ~~(a)~~ — Every utility convicted of a violation of any provision of this article shall be punished by a fine not exceeding \$1,000.00 per violation. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or

permits. This shall include the right to stop work which is in violation of this article, or other applicable provisions of the city's code and state law.

(b) A utility constructing within the rights of way without permission or a permit is considered criminal trespassing. This covers not only buildings but also land, vehicles and watercraft. Generally, unauthorized entry is considered criminal trespass, which is charged as a misdemeanor, punishable in accordance with applicable law.

(Ord. No. O-190-15, § 1, 9-17-2015)

Sec. 70-14. Aesthetic Standards.

(a) The city finds it is in the best interest of the city and its residents and businesses to establish aesthetic requirements and other specifications and reasonable conditions regarding placement of facilities in the rights of way. These requirements, specifications and conditions are adopted in order to protect the public health, safety and welfare of the residents and businesses of the city and to reasonably manage and protect the rights of way and its uses in the city. All standards in this section are based upon the written determinations of the city so long as such determinations are in compliance with federal and state laws, rules, and regulations.

(b) The objective of this section is to ensure use of the rights of way: (i) is consistent with the design, appearance and other features of nearby land uses; (ii) protects the integrity of historic, cultural and scenic resources; and (iii) does not harm residents' quality of life.

(c) This section applies to all requests to locate facilities in the rights of way and ongoing use of the rights of way for such facilities.

(d) Placement or modification of facilities in the right of way shall comply with this section at the time the permit for installation or modification is approved and as amended from time to time. Permittees are required to comply with city code and applicable law and regulations.

(e) *Facilities Standards.*

1. Facilities must be compatible in size, mass, and color to similar facilities in the same zoning area, with a goal of minimizing the physical and visual impact on the area.
2. Facilities in the R-100 district shall be visually and architecturally integrated with the residential character of the area and shall not interfere with prominent vistas or significant public view corridors.
3. Facilities must be located in alignment with existing trees and/or facilities.
4. Facilities must maintain the integrity and character of the neighborhoods and corridors in which the facilities are located.

(f) *Camouflaging.* Facilities must be designed using camouflaging techniques that make them as unobtrusive as possible if:

1. It is not possible or desirable to match the design and color of facilities with the similar facilities in the same zoning area as required in Section 70-15(a); or
2. Existing facilities in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the city.

(g) *Concealment.* Facilities shall incorporate specific concealment elements to minimize visual impacts.

(h) Installation and modification of standards. Installation of new facilities in, on, along, over, or under the rights of way or modification of existing facilities in, on, along, over, or under the rights of way shall

1. Minimize risks to public safety;
2. Ensure that placement of facilities on existing structure is within the tolerance of those structures;
3. Ensure that installations and modifications are subject to periodic review to minimize the intrusion on the right of way;
4. Ensure that the city bears no risk or liability as a result of the installations or modifications; and
5. Ensure that the use of the rights of way does not inconvenience the public, interfere with the primary uses of the rights of way, or hinder the ability of the city or other government entities to improve, modify, relocate, abandon, or vacate the right of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right of way.

(i) Plans for use. No facilities shall be placed in, on, along, over, or under the public rights of way unless: (i) there are immediate plans to use the proposed facility; or (ii) there is a contract with another party that has immediate plans to use the proposed facility.

(j) Contact Information. Every facility placed in the rights of way shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provide a local or toll-free telephone number to contact the facility owner's operations center.

Sec. 70-15. Fiber Installations Fees and Broadband Service Compensation.

(a) Permits for fiber installations. In accordance with O.C.G.A. §46-5-1(b)(19)(B) there will be a one hundred dollars (\$100) permit fee for any new permit issues for fiber installations.

(b) Compensation for Broadband Services. In accordance with O.C.G.A. § 46-5-1(b)(19)(a), any telephone companies that provide broadband services to any location within the geographic limits of the city, payment at the rate of five cents per linear foot annually shall be considered due compensation, and for telephone companies that do not provide any broadband services to any location within the geographic limits of the city, payment at the rate of nineteen cents per linear foot annually shall be considered the payment of due compensation.

Sec. 70-~~14~~16. Other provisions.

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

(b) *Reservation of regulatory and police powers.* ~~The city by issuing a written approval of registration under this article, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the city under the Constitution and Laws of the United States, State of Georgia and the City Charter, and under the provisions of the city's codified ordinances to regulate the use of the rights of way. The utility by applying for and being issued a written permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be in full force and effect and subject to the exercise thereof by the city at any time. A utility is deemed to acknowledge that its interests are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws enacted by the city pursuant to such powers. In particular, all utilities shall comply with city zoning and other land use requirements pertaining to the placement and specifications of facilities.~~
The city by issuing a permit under this ordinance, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and

rights, which it has now or may be hereafter vested in the city under the Constitution and Laws of the United States, State of Georgia, or the City Charter, or under the provisions of the codified ordinances to regulate the use of the rights of way. The utility by applying for and being issued a written permit, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as are or the same may be from time to time vested in or reserved to the city, shall be full force and effect and subject to the exercise thereof by the city at any time. A utility is deemed to acknowledge that its interests are subject to the regulatory and police powers of the city to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general laws enacted by the city pursuant to such powers. All utilities shall comply with city zoning and other land use requirements pertaining to the placement and specifications of facilities. .

- (c) *Compliance.* No person shall be relieved of its obligation to comply with any of the provisions of this article by reason of any failure of city to enforce compliance.
- (d) *Appeal of administrative decisions.* All appeals provided for by this article and any notification to the city required by this article shall be in writing and sent via certified mail to the city administrator as specified in this article.
- (e) *Article headings.* Article headings are for convenience only and shall not be used to interpret any portion of this article.

(Ord. No. O-190-15, § 1, 9-17-2015)