

## Rights-of-Way Maintenance Policy

### Purpose.

The purpose of this policy is to promote and protect the health, safety and welfare of the City and its citizens, and improve aesthetic value of the community by requiring routine sidewalk and landscaping maintenance and preventing visual blight. This policy establishes public and private responsibilities for maintenance and repair of public sidewalks, curb and gutter, trees and landscaping located within public rights-of-way.

### Definitions.

- A. "Abutting property" means all property having or sharing a property line with any portion of a sidewalk, road, or public right-of-way.
- B. "Sidewalk" means an improved surface constructed for public use by pedestrians.
- C. "Public right-of-way" means a right-of-way held by the city for the benefit of the public.
- D. "Road" means a public thoroughfare that provides for the movement of vehicles and/or is the principal means of access to abutting properties.
- E. "Planting Strip" means a narrow strip of land that includes grass, shrub, trees, or landscape material between edge of the carriageway (roadway) or curb and the sidewalk

### Sidewalk construction standards.

All sidewalk improvements, construction, repair, and replacement shall conform to approved City standards.

### Sidewalk maintenance standards.

Sidewalks and adjacent areas shall be maintained by abutting property owners in the following manner:

- A. No motorized vehicles, trailers, stockpiled materials, or objects shall be parked, placed, or stored on the curb, planting strip, or sidewalk.
- B. The full width of the sidewalk along the entire length of the abutting property shall be kept clear of snow, ice, dirt, debris, leaf accumulations, and any other obstacles or obstructions that would hinder or interfere with safe and easy pedestrian use.

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- C. Plant material such as grass or weeds shall be promptly removed from cracks, voids or openings in the sidewalk surface.
- D. No vehicles shall be parked to block the use of sidewalk by pedestrians.

**Duty to reconstruct or repair sidewalks, curb and gutter.**

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- A. The city shall be responsible for repairs or reconstruction of sidewalks unless such repair or reconstruction is caused by the neglect or abuse of the abutting property owner, in which case the abutting property owner shall be responsible to pay the costs thereof.
- B. Neglect or abuse includes but is not limited to driving or allowing heavy vehicles on the sidewalk. The city shall be responsible for maintaining concrete curb and gutter and raising, repairing and replacing granite curbs unless the repair work is necessitated by neglect or abuse by abutting property owner.

**Duty to maintain landscaping in public right-of-way.**

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All landscaped and open space areas in the public right-of-way (i.e., typically between the curb or pavement edge and back of sidewalk) shall be maintained by the abutting property owner and shall be:

- A. Kept free of litter, debris, intrusive vegetation, weeds and obstructions.
- B. Maintained in a clean, neat, orderly fashion.
- C. Maintained consistent with landscape standards and other approved landscape plans, if applicable.

**Trees within Private Property**

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A. All trees within private property shall be maintained by abutting property owner so that all trees, plants, shrubs, and vegetation are continually trimmed and do not intrude into or overhang any portion of (1) the sidewalk to a height of seven feet above the sidewalk surface, and (2) the road to a height of 14 feet above the road surface. Tree maintenance, trimming, and removal is governed by the City's Tree Ordinance found in Chapter III of Article 14 of the City Code for Brookhaven, Georgia.

B. All trees within private property shall be maintained so that trees, plants, shrubs, and vegetation are continually trimmed and (1) do not obstruct or obscure any traffic control device, and (2) do not intrude into a three-foot radius around any fire hydrant above a height of six inches from the ground surface.

Tree maintenance, trimming, and removal is governed by the City's Tree Ordinance found in Chapter III of Article 14 of the City Code for Brookhaven, Georgia.

C. Georgia Power and other Utility Companies have their own tree trimming and clearing standards, which may be in addition to the standards articulated here, and details may be found in Georgia Power website.

#### **Trees within Public Rights-of-Way**

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A. The City will remove dead and/or hazardous trees from the public rights-of-way that are reported to the City and confirmed to be dead/deceased or hazardous by the City Arborist. The City will remove fallen trees within public rights-of-way only. Any portion of a fallen tree that extends onto the private property is the responsibility of the property owner to remove. The City may remove or prune vegetation if it causes a line of site obstruction, however the City cannot guarantee the aesthetic of the remaining vegetation. The City will notify the property owner if the obstruction exists and provide the opportunity for the property owner to correct the problem before the City acts.

B. The City does not remove healthy-nonhazardous trees from the public rights-of-way. Abutting Property Owner can remove trees at their own expense. A Rights-of-way Encroachment Permit and/or a Tree Removal Permit may be required. The City does not remove vines or shrubs nor does the City mow grass within public rights-of-way.

C. As part of any road widening, resurfacing, traffic calming, sidewalk construction and drainage improvement projects, the City will remove any landscape material, trees, shrubs within public rights-of-way. City will not replace or compensate for removal of such materials within public right-of-way.

#### **Other Structures within Public Rights-of-Way**

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A. As part of any road widening, resurfacing, traffic calming, sidewalk construction and drainage improvement projects, the City will notify the abutting property owner to remove any structures such as irrigation system, ornamental mail boxes, walls and steps within public rights-of-way. If the abutting property owner failed to remove such items, the City will remove them and place them in the abutting private property. All standard mail boxes will be removed and re-installed at the City's expense.

B. The City will notify the abutting property owner if any malfunctioning and leaking irrigation system is found and provide reasonable time to correct. If the irrigation system is not corrected within a time frame provided, the City will remove the irrigation system and cap the lines at the property line.

#### **Enforcement.**

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In the event, that an abutting property owner fails to comply with the requirements of this policy, the city may, at its discretion, act to correct the problem and recover the costs of doing so using the following procedures:

A. Written notice shall be given to the abutting property owner describing the property involved and the condition to be remedied, requiring property owner within a reasonable time but not less than five days to take such action as may be necessary or as may be specified to correct the condition, and advising that failure to do so will result in adoption of a resolution by the city council requiring immediate correction of the condition.

B. If the condition described in the notice is not corrected within the time limit set by the notice, the city council may adopt a resolution containing the same material provisions as set forth in the notice and may require immediate correction of the condition. If the condition described in the resolution is not corrected within the time limit set by the resolution, the city may take any action required or necessary to correct the condition.

C. If the city takes any corrective action listed above, all costs of such action shall be charged to the abutting property owner identified in the resolution and shall become a lien against the property which may be enforced and foreclosed in the same manner as liens for labor and material. Costs shall include but not be limited to labor and material for performance of the work and any repair, administrative and supervisory time, attorneys' fees and costs, and disposal fees. If costs are not paid in full within 45 days of billing, a penalty of one percent per month shall be added to the outstanding balance until fully paid.

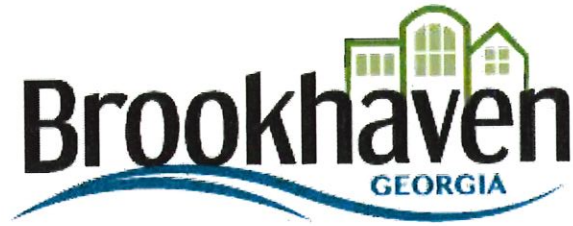
#### **Utility Agency Responsibility**

Utility Agencies (DeKalb Watershed Management, Comcast, Google Fiber, AT&T, Atlanta Gas, Georgia Power, etc.) are responsible for maintaining their pertinent utilities. Agencies shall follow City right-of-way permit ordinances and policies and obtain permits.

**Home Owner Responsibility:**

Home Owners are responsible for maintaining their driveways, driveway pipes where applicable, grass strip between sidewalk and curb and mail boxes. Any improvements Home Owners perform within the public rights-of-way shall be approved by City Public Works Department.

Home Owners are responsible for contacting utility companies when there are issues regarding the work done by utility companies within their properties or in the easements within their properties.

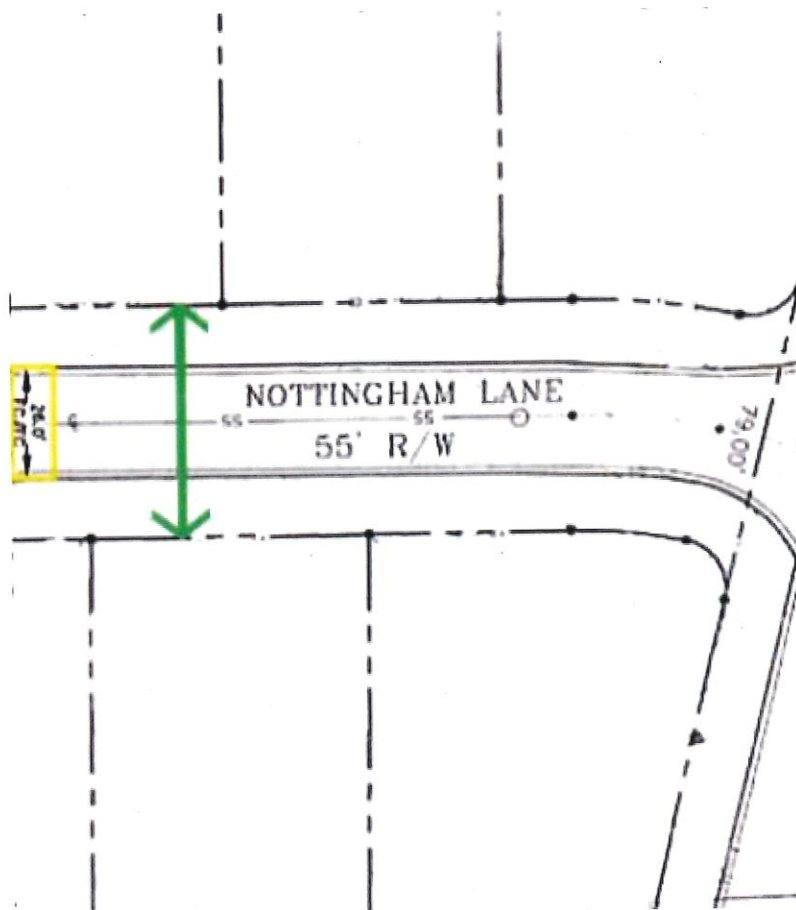


# Public Works

## Right-of-Way Maintenance Policy

Brookhaven has adopted a policy to provide for the continued maintenance and upkeep of City right-of-ways.

The policy establishes a framework that clearly defines what the right-of-way is, as well as the responsibilities of property owners adjacent to the right-of-way and those of the City. The document also outlines the enforcement procedures for property owners who fail to abide by the stipulations set forth in the policy.



Municipal right-of-way is defined as the area on, below, or around a roadway that the government holds for the benefit of the public. It is in this area that sidewalk, curbing and utility infrastructure exists or could exist in the future. Any construction and/or



landscaping installation within the right-of-way must conform to the specifications set forth in the Brookhaven Code of Ordinances and the newly adopted city policy.

As the illustration indicates, the public right-of-way includes the road as well as a buffer on either side of the road that varies in width. Some roads may have a right-of-way as wide as 120' while others can be as narrow as 40' in width.

It is in this area that abutting property owners are limited in what they can install in the right-of-way and what activities they can undertake; however, this does not negate the responsibilities property owners have when it comes to maintaining their own respective right-of-ways and ensuring that these areas stay clean, well groomed, and free of obstructions.

Some properties in Brookhaven have right-of-way outside of a fenced in perimeter or beyond a wooded area which has not been maintained by the property owner. These areas are not exempt from the stipulations of this policy and property owners are required to maintain these areas as well.

Right-of-way responsibilities as defined by the policy include but are not limited to landscaping maintenance, grass cutting and tree maintenance in a manner consistent with Brookhaven code. Property owners must also refrain from the installation of permanent structures within the right-of-way such as irrigation systems, fences and walls, or any object that can obscure line of sight.

"Establishing and enforcing a comprehensive right-of-way policy is essential to ensure that the City of Brookhaven is, and continues to be, a beautiful and aesthetically pleasing place to live." says Brookhaven City manager Christian Sigman.

Sigman says there is important relationship between right-of-way and infrastructure improvements, "Responsible and vigilant management of the City's right-of-ways is necessary to ensure that we are able to continue undertaking critical infrastructure projects such as road paving, sidewalks, stormwater maintenance, and utility work."

Properties which do not comply with the policy and code could be subjected to citations and fines.

## Frequently Asked Questions

[Show All Answers](#)[Hide All Answers](#)

**How can I contact a utility company working in the right-of-way along my property?**

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**Who do I contact if utility work has created damage on my property?**

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**Can the city provide compensation or force a utility company to compensate for damages to my property?**

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**Can the city enforce utility company property restoration and repairs?**

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**What if I have landscaping or an irrigation system in the right-of-way?**

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**Can the city prohibit utility work in the right-of-way?**

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**Are companies required to obtain permits from the city for utility work?**

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**Can residents view permits granted for utility work?**

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**How will I know if utility work will be done in the right-of-way along my property?**

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**Are companies required to obtain permits from the city for utility work?**

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## **Supporting Documents**

 [Right-of-Way Maintenance Policy \(112 KB\)](#)

## **Contact Information**

**Economic Development - Shirlynn Brownell:**

- She had continued efforts to make sure broker and development community knew the City was there, and what sites and buildings were available. She had met with leasing agents with Northeast Plaza and Town Brookhaven and she would continue marketing efforts and keep those in those areas was in the loop. She had attended the Georgia Economic and Developers Association where Deputy Director provided an update on development in the State.
- She was working on the website.
- She was staying in touch with Hawks team about the practice facility
- The ribbon cutting for the practice facility would be in October. She would find out more details. Council Member Mattison asked that the County's CEO and commissioners be invited when there was the grand opening.

Council Member Mattison asked for an update on Development Authority (DA). Ms. Brownell reported she was going back and forth with Chairman Luke Anderson for next DA meeting. She was working with legal team on an incentive policy. The DA would be involved in the website development process. Ms. Brownell reported that in October the Money 2020 event would be in Vegas and Brookhaven's regional partners who would be attending, had invited her to the show. It was important for Brookhaven to be there as well. City Manager Sigman addressed the importance of having relationship with firms such as Sysnet and other partners that had invited the City to attend. He thought it would be a fruitful trip and a great opportunity to raise the City's profile.

**Community Development - Patrice Ruffin reported:**

- The update on the Overlay rewrite was being drafted and the next round of meetings would be in early September.
- The Zoning rewrite meetings would be in September.
- Gary Cornell, the professor at Georgia Tech University, had contracted the City about his studio class working with Brookhaven. The Georgia Tech Planning Studio class would kick off on Monday with a brief visit, and then the class would go to Buford Highway for a walking tour with Peachtree Greenway group. Mr. Cornell would be at a Council meeting in September to introduce himself. It was a broad project related to Buford Highway and the Greenway. She would provide an outline.

**Finance Department - Steve Chapman:**

At the time of year, the staff had finished up the audit report with external auditors and now working on FY 2018 budget. He was looking at business processes, making sure accounts were coded property. He was doing desk audits on revenues to make sure revenues were coming in on time and coded properly and looking at balance sheets and budgets. It was time to prepare adjustments to 2017 to carry over to 2018. He explained in FY 2017, capital improvement funds were created. The budget came before those capital funds were in place, so at next meeting Council would see the reconciliation so could move forward with 2018. He explained an example, referring to the 7:00 p.m. agenda. The New Business Items #3 and #4; have public works items, in the exhibits, to transfer funds from General Fund to Capital Improvement Funds. Once funds were set up, would not leave funding until completed or Council acted. The City was going from infancy from accounting to actual project accounting budget. Per best practices, the City should be doing this. It was a big step forward and would see entire process unfold in next couple of weeks.

Council Member commended Mr. Chapman for the way he and staff were handling the accounting of the City. He thanked Ms. Hansen for her good comments and reports.

*Discussion*

**E) UPCOMING AGENDA ITEMS**

1. **Resolution (ID # 2815):** City of Brookhaven Right-Of-Way Maintenance Policy - Public Works Director Hari Karikaran

Mr. Sigman commented that as the City matured, several policies were being developed that were common and standard for relationship of the built infrastructure and the neighbors and partners adjacent to the infrastructure. One common policy was the right of way maintenance. He recognized Public Works Director Hari Karikaran to discuss the right of way policy. This was an operating policy and did not require Council's approval. Staff



was presenting and there would be heavy dose of education to start the implementation of the policy.

Mr. Karikaran stated the policy had been sent to Council June 19 in a memo, and there were not any comments, so this was the same policy.

He began the presentation which is available in the record:

- Why do we need a policy: Currently there was no clear policy established for the City? The Right of Way would be defined. The policy would educate citizens on their responsibility.
- Purpose of the policy: Promote and protect the health, safety and welfare of the Citizens of Brookhaven, provide clean, clear and safe sidewalk for pedestrians, maintain well-kept landscape buffers and thereby prevent visual blight, etc.
- Highlights of the policy: Property owners are responsible for removing any temporary obstructions (i.e. vehicles, trailers, stockpiled materials, etc.), removing snow, ice dirt/leaf accumulation from sidewalk, removing plant materials such as grass or weeds on sidewalks, repairing sidewalk if it was damaged by neglect or abuse by the property owner, and trimming all trees within private property that grows into the public right of way.

Mr. Karikaran continued to speak about the highlights of the policy (presentation is available in the record). He reviewed the property owners' responsibilities. He addressed City of Brookhaven's responsibilities: removing dead and/or hazardous trees from public right of way, based on recommendation from City arborist, removing fallen trees up to the right of way line, repairing sidewalks as a routine maintenance, and reviewing and approving encroachment permits for any work within public right of way. He reviewed what the City of Brookhaven was not responsible for: removing healthy trees from public right of way, removing trees within private property, trimming trees located on private properties that have overgrown into public right of way, repairing any malfunctioning or leaking irrigation system located within the public right of way, repairing or installing private driveways, and repairing mailboxes.

Mr. Karikaren addressed the City of Brookhaven Capital Projects (street widening & resurfacing, sidewalk construction and traffic calming measures) and explained that the construction crew would notify the property owner of any encroachments that need to be removed.

He further explained:

- If the property owner doesn't respond in a reasonable time, City will remove the encroachments and would set them within the private property.
- Irrigation systems would be terminated at the right of way line and would not be relocated.
- Mailboxes would be removed and re-installed at city's expense.
- Any ornamental shrubbery would be removed and would not be replaced.
- Trees within the public right of way would be removed and would not be compensated.
- Trees would be trimmed and the city would not guarantee their survival, but City would attempt to minimize the trimming for their survival.

Pictures were shown of samples of encroachment.

Questions and discussion followed.

Council Member Park asked about vacant lots being potential roads and the right of ways. Mr. Karikaren explained the City would take care of those areas. The right of way was maintained and there was a list of places the City would maintain including common properties, city-owned properties, and there was some no man's land.

Council Member Jones commented on how important it was to have communication. She spoke about the upcoming Walk to School Day to be held that week and there were overgrown areas along sidewalks on Ashford Dunwoody Road and near the Montgomery walkway. There was a lot of confusion about the obligations of property in the right of ways. People were not clear on what their responsibility was about

sidewalks. She wanted to see great communication to get the word out to people. She added how the City could correspond with homeowners through Brookhaven Connect. Mr. Sigman addressed the City's process and scope of services and work load regarding the City's responsibility and homeowner's responsibility about upkeep of the right of way. Questions and discussion continued about the encroachment in the right of ways including shrubbery, fire hydrants, fences. Council Member Gebbia referred to the need for communication. He addressed how the City's Communication Department could contact HOAs also, and have repetitive messages. Mr. Brannon provided details of repetitive ways to communicate to the community. The communication would be in different ways.

Mr. Sigman reported that a Traffic Calming was coming in September. Street Lighting would be later and policies affecting the City's infrastructures.

Council Member Gebbia commented on how the City should give advance warnings until residents were familiar with the policy. He named the example, of when the City started the Police Department, that it was stressed the City Police gave warnings before implementing any fines. Mr. Sigman explained how after education period, he envisioned introduction of some type of a lien program in place - i.e. grass. Staff was vetting with City Attorney and would bring back as a work session item next month. This was a learning experience and people did not know responsibility of right of way. Per questioning, Mr. Karikaran reported the City had not completed visual inspection of sidewalks. Mr. Sigman explained there was not an established program to inspect the sidewalks. We just spent three years trying to assess the storm water but had not inspected sidewalks. Questions and discussion continued about responsibilities of right of way maintenance and installation of sprinkler systems near the right of way.

Council Member Mattison commented how the City should lead by example - i.e. Fernwood Park. The City should make sure doing good job in our own house before go and enforce regulations on others. The City should have contractors as partners.

Council Member Mattison asked if the City had a policy where the City could fix issues if can't find the owner? He asked if the City could fix and place lien on property. Mr. Sigman stated the City did not have a policy or mechanism in place. He explained how whether by code enforcement, the City would notify property owner, and 10 days after that, could give citation. The program staff was developing would provide process for City doing work. The city we could put lien on property. We currently do not have a mechanism. Smyrna and Roswell were doing this. Council Member Mattison asked how would the City deal with the existing violations once the policy was implemented? Mr. Sigman stated most of properties were fine. The City did have some problem ones. There would not be as many as think. We would not have asked people to remove items that had been there for ten years, i.e. rocks and trees. However, if those items are interfering with sidewalks, would ask to remove. Mr. Karikaran noted most of owners maintain already. The City should treat everyone the same. Mayor Ernst addressed how those that own frontage along a road that was back side of house. That would be bigger shock or hurdle, such as those that have a fence, but over the fence was their land which they had not maintained before. Council Member Jones asked that those be notified with printed communication specific to those homeowners and certain communities. Communications Director Burke Brennan stated he would explore a direct mail campaign and cost associated as an option. Mr. Sigman would try as many mechanisms they could to get the message out.

Council Member Park referred to some properties owned by DeKalb County and asked how the City would deal with them. Mr. Sigman stated there was no exemptions. The City would get to the appropriate channels. They would not embarrass them publicly. Mayor Ernst asked how about MARTA. No properties were exempt.

There were no more questions.

## **F) OTHER AGENDA ITEMS**

### **1. Impact Fee Discussion - Assistant Community Development Director Linda Abaray**

Mr. Sigman stated staff was not making any recommendations but the presentation was an informational briefing. It had been brought up casually by Council and staff was presenting background information. Staff