

LEGISLATIVE #

190129A

1 **WHEREAS**, the City desires to accommodate the demand for utility infrastructure and
2 communications facilities, while also protecting the safety, aesthetics, and economic vitality
3 inherent in the public rights-of-way, by providing reasonable regulations for the placement and
4 maintenance of utility infrastructure and communication facilities within the public rights-of-
5 way in accordance with applicable law, including Section 337.401, Florida Statutes, as amended,
6 the provisions of the Federal Telecommunications Act of 1996, and other applicable federal and
7 state law; and

8 **WHEREAS**, on March 1, 2018, the City Commission adopted Ordinance No. 170786 and
9 substantially revised the City’s regulations that apply to use of public rights-of-way by utilities,
10 including communications facilities and small wireless facilities; and

11 **WHEREAS**, on June 25, 2019, the Governor of the State of Florida approved Senate Bill 1000,
12 which further limits the authority of local governments to regulate its public rights-of-way
13 regarding use by providers of communications services; and

14 **WHEREAS**, at least ten days’ notice has been given once by publication in a newspaper of
15 general circulation notifying the public of this proposed ordinance and of public hearings in the
16 City Hall Auditorium located on the first floor of City Hall in the City of Gainesville; and

17 **WHEREAS**, public hearings were held pursuant to the notice described above at which hearings
18 the parties in interest and all others had an opportunity to be and were, in fact, heard.

19 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE,**

20 **FLORIDA:**

1 **SECTION 1.** Article VI of Chapter 23 of the City of Gainesville Code of Ordinances is amended
2 as follows. Except as amended herein, the remainder of Chapter 23 remains in full force and
3 effect.

4 **ARTICLE VI. PUBLIC RIGHTS-OF-WAY USE BY UTILITIES**

5
6 **Section 23-109. Definitions.**

7 Throughout this article, the following words and phrases shall have the meanings indicated
8 unless the text in which used clearly indicates otherwise. Any word or phrase used in this
9 article that is not defined in this article shall have: 1) the meaning provided in Chapters 202 or
10 337, Florida Statutes, as amended; or 2) if not provided in Chapters 202 or 337, Florida Statutes,
11 the common dictionary meaning most appropriate to the context in which such word or phrase
12 is used.

13 **Abandonment** or **abandoned** means the cessation of all uses of a utility or facility for a period
14 of 180 or more consecutive calendar days. However, this term shall not include the cessation
15 of use of a communications facility located within a physical structure where the physical
16 structure continues to be used for some purpose or use accessory to the communications
17 facility. By way of example, cessation of all use of a cable within a conduit, where the conduit
18 continues to be used for some purpose or use accessory to the communications facility, shall
19 not constitute abandonment of a communications facility. A wireless infrastructure provider’s
20 failure to have a wireless service provider provide service through a small wireless facility
21 collocated on a utility pole within nine months after the application is approved in accordance
22 with Section 337.401(7), Florida Statutes, shall constitute abandonment. The terms
23 abandonment or abandoned are not intended to include a dropped line from a potential or
24 existing customer in the event the providers reasonably anticipate future use of the dropped
25 line.

26 **Antenna** means communications equipment that transmits or receives electromagnetic radio
27 frequency signals used in providing wireless service.

28 **Applicable codes** means uniform building, fire, electrical, plumbing, or mechanical codes
29 adopted by a recognized national code organization or local amendments to those codes
30 enacted solely to address threats of destruction of property or injury to persons, and includes
31 the National Electric Safety Code and the 2017 edition of the Florida Department of
32 Transportation Utility Accommodation Manual ~~or local codes or ordinances adopted to~~
33 ~~implement Section 337.401(7), Florida Statutes.~~

34 **Applicant** means any person who submits an application to the city for any permit provided for
35 in this article.

36 **As-built plans** means a set of drawings in a format as specified by the city submitted by the
37 applicant upon completion of a project, which drawings reflect all changes to original plans
38 made during the construction process and show the exact dimensions, geometry, and location

1 of all elements of the work completed under the permit.

2 **City** means as indicated by the context used, either Gainesville, Florida, as a geographic
3 location, or Gainesville, Florida, a Florida municipal corporation, as a legal entity.

4 **City utility pole** means a utility pole, as that term is defined in this article, owned by the city
5 that is located within a public right-of-way; however, the term does not include: 1) utility poles
6 owned, operated, maintained, or repaired by Gainesville Regional Utilities (GRU); 2) utility poles
7 used to support GRU electric distribution facilities, including but not limited to any transmission
8 lines or GRU street light poles; or 3) private utility poles. For illustration purposes only, city
9 utility poles may include city-owned traffic poles or street signs.

10 **Collocate** or **collocation** means to install, mount, maintain, modify, operate, or replace one or
11 more wireless facilities on, under, within, or adjacent to a wireless support structure or utility
12 pole. The term does not include the installation of a new utility pole or wireless support
13 structure in the public rights-of-way.

14 **Communications facility** means any facility or tangible thing that may be used to provide
15 communications services. Multiple cables, conduits, strands, or fibers located within the same
16 conduit shall be considered one communications facility.

17 **Communications services** means the transmission, conveyance, or routing of voice, data, audio,
18 video, or any other information or signals, including video services, to a point, or between or
19 among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other
20 medium or method now in existence or hereafter devised, regardless of the protocol used for
21 such transmission or conveyance. The term includes such transmission, conveyance, or routing
22 in which computer processing applications are used to act on the form, code, or protocol of the
23 content for purposes of transmission, conveyance, or routing without regard to whether such
24 service is referred to as voice-over-internet-protocol services or is classified by the Federal
25 Communications Commission as enhanced or value-added. Notwithstanding the foregoing, the
26 term does not include:

27 A. Information services.

28 B. Installation or maintenance of wiring or equipment on a customer's premises.

29 C. The sale or rental of tangible personal property.

30 D. The sale of advertising, including, but not limited to, directory advertising.

31 E. Bad check charges.

32 F. Late payment charges.

33 G. Billing and collection services.

34 H. Internet access service, as defined in Section 1105(5) of the Internet Tax Freedom Act, 47
35 U.S.C. Section 151 note, as amended by Pub. L. No. 110-108, electronic mail service,
36 electronic bulletin board service, or similar online computer services.

37 **Communications services provider** means any person providing communications services
38 through the placement or maintenance of a communications facility in public rights-of-way,

1 including wireline telecommunication providers and wireless service providers.

2 **Communications services tax** means the local tax authorized to be levied and collected by
3 counties and municipalities upon communications services providers for communications
4 services, pursuant to Section 202.19, Florida Statutes, as amended.

5 **Consolidated permit application** means a single permit application that would otherwise
6 require individual permit applications for the collocation of between two and 30 small wireless
7 facilities within the public rights-of-way in accordance with this article.

8 **County** means, as indicated by the context, either Alachua County, Florida, as a geographic
9 location, or Alachua County, Florida, a charter county and political subdivision of the State of
10 Florida, as a legal entity.

11 **Day(s)** means, for purposes of computing any period of time expressed in day(s) in this article, a
12 period of time that: 1) does not include the day of the act, event, or default from which the
13 designated period of time begins to run; and 2) does include the last day of the period so
14 computed, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run
15 until the end of the next day which is neither a Saturday, Sunday, or legal holiday.

16 **Florida Building Code** means the Florida Building Code promulgated under Chapter 553, Florida
17 Statutes, and includes any city amendments thereto as both may be amended from time to
18 time.

19 **Graffiti** means any inscriptions, word, figure, painting, or other defacement that is written,
20 marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any
21 utility or communications facility, whether or not authorized by the owner or permittee. A wrap
22 shall not be considered graffiti.

23 **Law** means any local, state or federal legislative, judicial or administrative order, certificate,
24 decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other
25 requirements, as amended, now in effect or subsequently enacted or issued including, but not
26 limited to, the Communications Act of 1934, 47 USC 151 et seq. as amended, all orders, rules,
27 tariffs, guidelines and regulations issued by the Federal Communications Commission or the
28 governing state authority pursuant thereto, Section 337.401, Florida Statutes, as amended, and
29 all state statutes and regulations issued by state agencies pursuant thereto.

30 **Micro wireless facility** means a small wireless facility having dimensions no larger than 24
31 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no
32 longer than 11 inches.

33 **Pass-through provider** means any person who places or maintains a communications facility in
34 the public rights-of-way and who does not remit communication service taxes imposed by the
35 city pursuant to Chapter 202, Florida Statutes, as amended. A pass-through provider can also be
36 a wireless infrastructure provider.

37 **Permittee** means any applicant that has received a permit under this article and thereby
38 lawfully owns, operates, or maintains a utility in the public rights-of-way.

39 **Person** means any natural person, corporation, business association, or other business entity,

1 including but not limited to a partnership, sole proprietorship, political subdivision, public or
2 private agency of any kind, utility, successor, or assign of any of the foregoing or any other legal
3 entity.

4 **Place or maintain or placement or maintenance or placing or maintaining** means to erect,
5 construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, relocate, or
6 alter a utility. A person who owns or exercises physical control to maintain or repair is included
7 within the definition of the above terms. The following is not included within the definition of
8 the above terms: 1) a person providing service only through resale or only through use of a
9 third party's utility; and 2) the transmission and receipt of radio frequency signals through the
10 airspace of the public rights-of-way.

11 **Public rights-of-way or rights-of-way** means land devoted to or required for use as a
12 transportation facility in which the city owns in fee or has a right-of-way easement, and which
13 the city has jurisdiction and control and may lawfully grant access pursuant to applicable law,
14 and includes the space above, at, or below the surface of such right-of-way. For the purposes of
15 this definition, transportation facility means any means for the transportation of people or
16 property from place to place which is constructed, operated, or maintained in whole or in part
17 from public funds. The terms public rights-of-way or rights-of-way shall not include:

- 18 A. County, state, or federal rights-of-way, unless the city has been properly delegated
19 authority to issue permits for structures within those rights-of-way.
- 20 B. Utility easements or other forms of real property interest that are not part of dedicated
21 public rights-of-way.
- 22 C. Property owned by any person other than the city, except as otherwise provided herein.
- 23 D. Service entrances or driveways leading from the road or street onto adjacent property.
- 24 E. Except as described above, any real or personal property of the city, including city parks,
25 buildings, fixtures, poles, conduits, facilities, or other structures or improvements,
26 regardless of whether they are situated in the public rights-of-way.

27 **Shroud** means a covering or enclosure of equipment associated with a small wireless facility,
28 other than the antenna.

29 **Small wireless facility** means a wireless facility that meets the following qualifications:

- 30 A. Each antenna associated with the facility is located inside an enclosure of no more than six
31 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna
32 and all of its exposed elements could fit within an enclosure of no more than six cubic feet
33 in volume; and
- 34 B. All other wireless equipment associated with the facility is cumulatively no more than 28
35 cubic feet in volume. The following types of associated ancillary equipment are not included
36 in the calculation of equipment volume: electric meters; concealment elements;
37 telecommunications demarcation boxes; ground-based enclosures; grounding equipment;
38 power transfer switches; cutoff switches; vertical cable runs for the connection of power
39 and other services; and utility poles or other support structures.

1 **State** means, as indicated by the context used, either Florida, as a geographic location, or the
2 State of Florida, as a legal entity.

3 **Utility** or **utilities** means any facilities, structures, or equipment used for any transmission of
4 voice, telegraph, data, or other communications services lines or wireless facilities, pole lines,
5 poles, ditches, drainage, storm water, sewers, electric, water, heat, gas, steam, or pipelines.

6 **Utility pole** means a pole or similar structure with a height of greater than 15 feet and that is
7 used in whole or in part to provide communications services or for electric distribution, lighting,
8 traffic control, signage, or similar function. The term includes the vertical support structure for
9 traffic lights but does not include a horizontal structure to which signal lights or other traffic
10 control devices are attached.

11 **Wireless facility** means equipment at a fixed location which enables wireless communications
12 between user equipment and a communications network, including radio transceivers,
13 antennas, wires, coaxial, or fiber-optic cable or other cables, regular and backup power
14 supplies, and comparable equipment, regardless of technological configuration, and equipment
15 associated with wireless communications. This term includes small wireless facilities. This term
16 does not include:

- 17 A. The structure or improvements on, under, within, or adjacent to the structure on which the
18 equipment is collocated;
- 19 B. Wireline backhaul facilities; or
- 20 C. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is
21 otherwise not immediately adjacent to or directly associated with a particular antenna.

22 **Wireless infrastructure provider** means a person who has been certified under Chapter 364,
23 Florida Statutes, by state or federal law to provide telecommunications services in the state or
24 under Chapter 610, Florida Statutes, to provide cable or video services in the state, or such
25 person's affiliate, and who builds or installs wireless communication transmission equipment,
26 wireless facilities, or wireless support structures but is not a wireless services provider.

27 **Wireless services** means any services provided using licensed or unlicensed spectrum, whether
28 at a fixed location or mobile, using wireless facilities.

29 **Wireless services provider** means a person who provides wireless services. A wireless services
30 provider is a type of communications services provider.

31 **Wireless support structure** means a freestanding structure, such as a monopole or self-
32 supporting tower, or another existing or proposed structure designed to support or capable of
33 supporting wireless facilities. The term does not include a utility pole, pedestal, or other
34 support structure for ground-based equipment not mounted on a utility pole and less than five
35 feet in height.

36 **Wireline facilities** means a wireline aerial or below-grade facility used to provide
37 communications services. The term includes backhaul facilities associated with a wireless
38 facility and coaxial or fiber-optic cable that is between wireless structures or utility poles or that
39 is otherwise not immediately adjacent to or directly associated with a particular antenna of a

1 wireless facility.

2 **Wrap** means an aesthetic covering approved by the city depicting art or scenic imagery.

3

4 **Section 23-110. Purpose.**

5 The city recognizes that the public rights-of-way are a unique and physically limited resource
6 requiring proper and thoughtful management to maximize safety, aesthetics, and economic
7 vitality for the public, and these factors must be reasonably balanced in any decision to use or
8 manage the public rights-of-way. The intent of this article is to accommodate the demand for
9 utility infrastructure and communications facilities, while also protecting the safety, aesthetics,
10 and economic vitality inherent in the public rights-of-way, by providing reasonable regulations
11 for the placement and maintenance of utility infrastructure and communication facilities within
12 the public rights-of-way in accordance with applicable law, including Section 337.401, Florida
13 Statutes, as amended, the provisions of the Federal Telecommunications Act of 1996, and other
14 applicable federal and state law.

15

16 **Section 23-111. Applicability.**

17 It ~~shall be~~ is unlawful for any person to place, install, locate, relocate, construct, maintain,
18 repair, operate, or remove any utilities under, on, over, across, or within the public rights-of-
19 way without: 1) first obtaining a written permit from the city in accordance with this article,
20 unless exempted from this requirement by Section 23-116; and 2) maintaining compliance with
21 this article for the entire duration that any permitted utility remains under, on, over, across, or
22 within a public rights-of-way.

23 This article ~~shall apply~~ applies to all utilities existing in the public rights-of-way prior to the
24 effective date of this article, and the owners or agents of such utilities ~~shall~~ have one year from
25 the effective date of this article to comply with the terms of this article or be in violation
26 thereof, with the exception of any provision of this article regarding the location or design of
27 the utility. Notwithstanding the foregoing, this article ~~shall~~ does not apply to the City of
28 Gainesville or Gainesville Regional Utilities (GRU), except to the extent that the city or GRU is
29 acting as a communications services provider.

30

31 **Section 23-112. Authority to Implement Article.**

32 The City Manager is authorized to implement this article and is authorized to develop, if
33 deemed necessary by the City Manager, a Public Rights-of-Way Use Manual that provides
34 implementing regulations, including engineering requirements, policies, or procedures that
35 ~~shall~~ must be followed in applying for and issuing permits under this article. The Public Rights-
36 of-Way Use Manual ~~shall~~ must be adopted by the City Commission.

37

38 **Section 23-113. Registration.**

39 Any person that owns, operates, or maintains a utility under, on, over, across, or within a public
40 rights-of-way, or that must submit an application for a permit under this article to place, install,
41 locate, relocate, construct, maintain, repair, operate, or remove any utilities under, on, over,

1 across, or within the public rights-of-way shall register with the city by submitting all of the
2 following information on a form provided by the city. Such persons shall at all times maintain
3 current and valid information with the city and shall provide any updated information to the
4 city within ~~30~~ 90 calendar days of any change. Registration ~~shall establish~~ establishes neither a
5 right to place or maintain nor a priority to place or maintain any utilities or associated
6 structures or facilities within the public rights-of-way.

- 7 A. The name under which the registrant transacts business in the city and, if different, in the
8 State of Florida.
- 9 B. The address and telephone number of the registrant's principle place of business in the
10 State of Florida and any branch office located in the city or, if none, the name, address, and
11 telephone number of the registrant's national headquarters and its registered agent in the
12 State of Florida.
- 13 C. The name, address, electronic mail address, and telephone number of the registrant's
14 primary contact person and, if different, the person to contact in case of an emergency.
- 15 D. Plans and maps describing all utilities and associated structures or facilities that are owned
16 or used by the registrant and that are existing in the public rights-of-way at the time of
17 registration, not including any information that has previously been provided to the city.
18 Information shall include the location of such utilities, facilities, or structures with maps and
19 geographical information systems or Global Positioning System (GPS) coordinates, and shall
20 be provided in digitized format showing the two-dimensional location of the facilities based
21 on the city's geographical database data or other format acceptable to the city. This
22 provision does not apply to communications services providers.
- 23 E. A copy of the registrant's current certificate of authorization, public convenience and
24 necessity, or other applicable certifications or licenses issued by the Florida Public Service
25 Commission, the Florida Department of State, the Federal Communications Commission, or
26 other federal authority.
- 27 F. The registrant's federal employer identification number.
- 28 G. A statement of whether the registrant is a pass-through provider as defined in this article.
- 29 ~~F.H. Evidence that the registrant complies with all applicable conditions, including but not~~
30 ~~limited to the insurance coverage required under this article and all conditions provided in~~
31 ~~Section 23-114.~~

32
33 **Section 23-114. General Conditions.**

34 The following general conditions ~~shall~~ apply to all persons who receive a permit under this
35 article, and such persons shall comply with the conditions of this section for the entire
36 duration that a permitted utility remains under, on, over, across, or within a public rights-of-
37 way.

- 38 A. *Registration.* Current and valid registration information ~~shall~~ must be provided and
39 maintained in accordance with Section 23-113, and updated information ~~shall~~ must be
40 provided to the city within ~~30~~ 90 calendar days of any change.

- 1 B. *As-built plans.* No later than 60 calendar days after completion of any work permitted
2 under this article, the permittee shall at no cost to the city provide complete as-built plans,
3 including but not limited to horizontal and typical vertical profiles. In addition, the
4 permittee shall provide any other information the City Manager or designee deems
5 reasonably necessary, including information showing the location of utilities, facilities or
6 structures such as maps, geographical information systems or Global Positioning System
7 (GPS) coordinates, plats, construction documents, and drawings. The permittee shall
8 provide such~~Such plans shall be provided~~ in digitized format showing the two-dimensional
9 location of the utilities based on the city's geographical database data or other format
10 acceptable to the city.
- 11 C. *Restoration of public rights-of-way.* Immediately after the completion of any permitted
12 work or phase thereof, permittees shall at its own expense restore the public rights-of-way
13 to as good a condition as existed immediately prior to commencement of work. Restoration
14 ~~shall~~ must be completed in accordance with applicable city standards. If such restoration is
15 not performed in a reasonable and satisfactory manner within 30 calendar days after the
16 completion of work, the city may after written notice to the permittee cause the restoration
17 to be made with the total cost being charged to and paid for by the permittee upon
18 demand, and the city may charge the costs against any security the permittee provided in
19 accordance with this article. For ~~one year~~ 18 months following completion of any work
20 permitted under this article section, the permittee shall guarantee its restoration work and
21 shall correct at its sole expense any restoration work that does not satisfy the requirements
22 of this article.
- 23 D. *Damage to property or public road.* Permittees shall not in any way displace, damage, or
24 destroy any utilities, facilities, or other property within the public rights-of-way, and shall be
25 liable for the costs of such damage. In addition, permittees shall be responsible for any
26 damage resulting from the issuance of the permit, including damage to any public road in
27 accordance with Section 337.402, Florida Statutes. After sufficient written notice and
28 opportunity to cure and in accordance with applicable law, the city may cause any
29 necessary work to be done to remedy the damage with the total cost being charged to and
30 paid for by the permittee upon demand, and the city may charge the costs against any
31 security the permittee provided in accordance with this article.
- 32 E. *Interference caused by utility.* Permittees shall, at no cost to the city and in accordance with
33 Sections 337.403 and 337.404, Florida Statutes, move or remove any utility at the request
34 of the city if the city finds that the utility interferes with any work the city performs within,
35 on, over, or under any public right-of-way or interferes in any way with the convenient,
36 safe, or continuous use or maintenance of same. After sufficient written notice and
37 opportunity to cure and in accordance with applicable law, the city may cause any
38 necessary work to be done to remedy the interference with the total cost being charged to
39 and paid for by the permittee upon demand, and the city may charge the costs against any
40 security the permittee provided in accordance with this article.
- 41 F. *Temporary relocations of facilities for other users of public rights-of-way.* No later than 30
42 calendar days after receiving written notice from any other permittee that has received a

1 permit from the city to use the public rights-of-way, permittees shall temporarily move or
2 relocate its utilities to allow for the permitted use. Any expense shall be paid by the
3 permittee requesting the temporary relocation, and the permittee receiving the request
4 shall have the authority to require such payment in advance.

5 G. *Conversion from aboveground to underground.* If the city has adopted an undergrounding
6 requirement that prohibits aboveground utilities or structures in public rights-of-way or
7 requires the conversion of such utilities or facilities to underground, any permittees of
8 aboveground utilities or structures shall, at its sole expense, convert to underground or
9 relocate as may be allowable and permitted under this article. For small wireless facility
10 collocations previously permitted under this article on aboveground utility infrastructure,
11 the city must either: 1) allow the existing small wireless facilities to remain in place subject
12 to any applicable pole attachment agreement; or 2) require the applicable wireless
13 infrastructure provider or wireless services provider to replace the associated pole within 50
14 feet of the prior location in accordance with the requirements of this article.

15 H. *Due care.* Permittees shall exercise due care and follow all safety practices required by
16 applicable law or accepted industry practices in performing work in or occupying the public
17 rights-of-way, including the use of suitable barricades, flags, lights, flares, or other devices
18 as are required by the Manual on Uniform Traffic Control Devices (FDOT) or any
19 requirements of the city to protect the public. Permittees shall not endanger the life or
20 property of other persons, or place or maintain its utilities in any manner that interferes
21 with, displaces, damages, destroys, or prohibits access to any other utilities.

22 I. *Maintenance.* Permittees shall maintain any utility permitted under this article in a safe,
23 neat, and clean condition, including but not limited to a condition reasonably free of grease,
24 rust, corrosion, excessive dirt, faded or damaged paint, or graffiti.

25 J. *Hazardous conditions.* If the city at any time reasonably determines that a utility has caused
26 a condition that is hazardous or harmful to the public health, safety, or welfare, the
27 permittee of such utility, at its own expense and without liability to or recourse against the
28 city, shall remedy all such conditions after being provided reasonable notice. If the city at
29 any time reasonably determines that an emergency situation exists and the permittee is not
30 immediately available or is unable to immediately provide the necessary remedy, then the
31 city ~~shall have the right to~~ may remedy the situation with the total cost being charged to
32 and paid for by the permittee upon demand, and the city may charge the costs against any
33 security the permittee provided in accordance with this article.

34 K. *Compliance with law.* Permittees shall at all times be in full compliance with and abide by
35 all applicable provisions of federal, state, or local laws, codes, and regulations, including but
36 not limited to Chapter 333, Florida Statutes, and all federal regulations pertaining to airport
37 airspace protections, as well as all applicable historic preservation zoning regulations.

38 L. *Right of inspection.* The city ~~shall have the right to~~ may inspect any work or utilities as it
39 finds necessary to ensure compliance with this article or any applicable law or regulation.

40 M. *Police powers.* Any public rights-of-way use by utilities and any permit issued under this
41 article ~~shall be~~ is subject to the city's lawful exercise of its police power, and applicants and

1 permittees shall comply with any requirements or policies adopted by the City Manager,
2 including but not limited to any provisions included in a Public Rights-of-Way Use Manual
3 referenced in this article and any other conditions that the City Manager or designee finds
4 reasonably necessary to protect the public health, safety, and welfare.

5 N. *No property right.* Permits issued under this article do not create any property right or
6 other vested interest, or in any way limit the city’s authority to otherwise manage or vacate
7 any portion of the public rights-of-way. In addition, the city reserves the right to place and
8 maintain, and permit to be placed or maintained, any utility, facility, or improvement that
9 the city deems necessary or proper in any public rights-of-way.

10 O. *Indemnification.* Permittees shall, at its sole cost and expense, indemnify, hold harmless,
11 and defend the city and its officers, employees, and agents from all liabilities, damages,
12 losses, claims, suits, causes of action, and costs or expenses of any kind or nature, including
13 but not limited to reasonable attorneys’ fees, for personal injury, death, property damage,
14 or any other losses that arise from or are in any way connected with the construction,
15 maintenance, occupation, placement, repair, relocation, removal, or operation of the
16 permittee’s utilities or facilities, whether any act or omission complained of is authorized,
17 allowed, or prohibited by this article or any permit issued hereunder, except to the extent
18 that such claims are caused by the ~~sole~~ negligence or willful conduct of the city.

19 1. The permittee shall undertake, at its sole expense, the defense of any such claims, even
20 if the claim is groundless, false, or fraudulent, and the permittee shall assume and
21 defend not only itself but also the city, provided the city shall retain the right to
22 participate by its own counsel and to select counsel of its own choosing.

23 2. This indemnification obligation is not limited in any way by a limitation of the amount or
24 type of damages or compensation payable by or for the permittee under workers’
25 compensation, disability, or other employee benefit acts, or the acceptance of insurance
26 certificates required under this article, or the terms, applicability, or limitations of any
27 insurance held by the permittee. The city does not waive any rights against the
28 permittee that it may have by reason of this indemnification because of the city’s
29 acceptance of permittee’s insurance policies required under this article, and this
30 indemnification shall apply to all damages and claims for damages of any kind suffered
31 regardless of whether such insurance policies shall have been determined to be
32 applicable to any such damages or claims for damages.

33 3. Nothing contained in this provision shall be interpreted as a waiver of the city’s
34 sovereign immunity as provided in Section 768.28, Florida Statutes, or as denying the
35 city or permittee any remedy or defense available at law.

36 4. These indemnification requirements shall survive and be in full force and effect after
37 any termination or cancellation of any registration or permit.

38 P. *Insurance.* Permittees shall provide, pay for, and maintain satisfactory to the city the types
39 of insurance policies and coverage limits described here. Policies shall be issued by
40 companies authorized to do business in the State of Florida and shall have an A.M. Best,
41 latest edition, financial strength rating of at least A+ and financial size category of at least

1 VIII. All policies ~~shall~~must name the city as an additional insured with respect to all
2 activities under this article. The required coverage must be evidenced by properly executed
3 certificates of insurance, which shall be manually signed by the authorized representative of
4 the insurance company and provided to the city at least annually. At least 30 calendar days'
5 advance written notice ~~shall~~must be given to the city of any cancellation, intent not to
6 renew, or reduction in the policy coverage, which notice ~~shall~~must be sent by registered or
7 certified mail. The city may, in its sole discretion and only under extraordinary
8 circumstances, allow a permittee to be self-insured for one or more lines of insurance
9 coverage. A permittee's insurance coverage and limits ~~shall~~must include at least the
10 following, and the city reserves the right to reasonably increase or decrease the following
11 policy limits upon providing each permittee with at least 30 calendar days' written notice:

- 12 1. *Comprehensive general liability.* Commercial general liability insurance including
13 premises/operations; independent contractors; contractual liability;
14 products/completed operations; XCU coverage; and personal injury and property
15 damage coverage for limits of no less than \$3,000,000 per occurrence combined single
16 limit and \$5,000,000 in the aggregate.
- 17 2. *Commercial automobile liability.* Commercial automobile liability coverage for all
18 owned, non-owned, and hired vehicles for limits of no less than \$1,000,000 per
19 occurrence combined single limit.
- 20 3. *Worker's compensation and employer's liability.* Worker's compensation in an amount
21 not less than the statutory limit and employer's liability insurance with limits of not less
22 than \$1,000,000.
- 23 4. *Commercial excess or umbrella liability.* Commercial excess or umbrella liability
24 coverage may be used in combination with primary coverage to achieve the required
25 limits of liability.

26 Q. ~~Security for performance and compliance.~~ Within 30 calendar days after completing any
27 work permitted under this article, permittees shall restore the public rights-of-way to as
28 good a condition as existed immediately prior to commencement of the permitted work.
29 Restoration must be completed in accordance with applicable city standards. For 18
30 months following permittee's completion of any work permitted under this article, the
31 permittee shall guarantee its restoration work and shall correct at its sole expense any
32 restoration work that does not satisfy the requirements of this article.

33 For 18 months following a permittee's completion of any work permitted under this article,
34 the permittee ~~Permittees~~ shall provide security enforceable by and payable to the city, in
35 any combination of the types provided below, to secure performance and compliance with
36 ~~all~~ the requirements, duties, and obligations imposed by this section ~~article~~. Security ~~shall~~
37 must be provided in an amount established by the City Manager or designee that is
38 reasonably proportional to ~~both the linear mileage and number of utilities and facilities,~~ the
39 city-verified total cost of construction for the permitted work within the public rights-of-
40 way, but shall in no case be less than \$10,000 or more than \$50,000. Security shall be
41 ~~maintained at all times during the use or occupancy of the public rights-of-way and at least~~

1 until the later of: 1) the effective date of transfer, sale, or assignment by the permittee of all
2 of its utilities and facilities in the public rights-of-way and provided the successor or assign
3 has provided the city with equivalent security; or 2) 12 months after the permittee's
4 removal or abandonment of all of its utilities and facilities in the public rights-of-way. In the
5 event a permittee fails to perform any requirement, duty, or obligation imposed by this
6 section ~~article~~, the city may recover from the security, jointly and severally, any damages or
7 loss suffered by the city as a result, including but not limited to the full amount of any
8 compensation or costs related to the construction or restoration of the public rights-of-way,
9 ~~the removal, relocation, or abandonment of any utilities or facilities in the public rights-of-~~
10 ~~way, and any damages arising from issuance of a permit under this article including~~
11 ~~reasonable attorneys' fees.~~ Should the city draw upon the security, the permittee shall
12 within 30 calendar days of written notice from the city restore the security to full required
13 amount.

14 1. *Surety bond.* A surety bond executed by a surety company authorized to do business in
15 the United States ~~State of Florida~~ with a minimum rating of A-VII as rated by A.M. Best
16 Company, Inc, provided that a claim against the surety bond may be made by electronic
17 means. The surety bond ~~shall~~ must be approved by the City Attorney as to form and
18 legality, and ~~shall~~ must provide the following: "This bond may not be canceled, or
19 allowed to lapse, until 60 calendar days after receipt by the City of Gainesville, by
20 certified mail, return receipt requested, of a written notice from the issuer of the bond
21 of intent to cancel or not to renew."

22 2. *Letter of credit.* An irrevocable and unconditional letter of credit issued by a company
23 authorized to do business in the United States, provided that a claim against the letter
24 of credit may be made by electronic means ~~Florida bank, in a form and by a financial~~
25 ~~institution acceptable to the City Attorney.~~

26 3. ~~*Cash deposit.* A cash deposit with the city, held in an account where interest earned on~~
27 ~~the cash deposit shall be for the account and to the credit of the person making such~~
28 ~~deposit.~~

29 R. *Transfers.* If a permittee transfers or assigns its registration or permit incident to a sale or
30 other transfer of assets, the transferee or assignee shall be obligated to comply with the
31 terms of this article. Written notice of any transfer, sale, or assignment ~~shall~~ must be
32 provided to the city within 30 calendar days of the effective closing date of the transfer,
33 sale, or assignment. For the transfer of registration and permitting to be effective, the
34 transferee or assignee shall comply with all requirements under this article.

35 S. *Abandonment.* Upon abandonment of a utility within the public rights-of-way, the
36 permittee or owner of the utility shall notify the city within 90 calendar days. In addition,
37 the city may provide notice of abandonment of a utility in the public rights-of-way to the
38 permittee or owner via certified mail at the address provided on the registration. If, within
39 30 calendar days after the date the city provided notice, the permittee or owner does not
40 respond to such notice and provide information to demonstrate that the utility is not
41 abandoned, the utility ~~shall~~ will be deemed abandoned. The city may require that the
42 permittee or owner of an abandoned utility remove all or any portion of the same, or the

1 city may determine that such non-removal will be in the best interest of the public health,
2 safety, and welfare. If the permittee fails to remove all or any portion of an abandoned
3 utility as directed by the city within a reasonable time period as may be required by the city,
4 the city may perform such removal and charge the costs against any security provided in
5 accordance with this article. In the event that the city does not direct the removal of the
6 abandoned utility by the permittee or owner, then such permittee or owner ~~shall~~will be
7 deemed to consent to the alteration or removal of all or any portion of the utility as
8 directed by the city or to the transfer of ownership of the abandoned utility to the city,
9 without further obligation on the part of the city.

10
11 **Section 23-115. Compensation.**

- 12 A. *Permit fees.* Permit applications ~~shall~~must include any applicable permit fees set forth in
13 Appendix A, adopted by the City Commission. However, the city has elected not to require
14 permit fees from communications services providers that remit communications services
15 taxes pursuant to Chapter 202, Florida Statutes, for communications services provided
16 within the city.
- 17 B. *Small wireless facility collocation.* The rate to collocate a small wireless facility on a city
18 utility pole ~~shall be~~ is \$150 per pole annually.
- 19 C. *Pass-through providers.* Pass-through providers shall annually pay to the city \$500.00 per
20 linear mile or portion thereof of any communications facility that is placed or maintained in
21 the public rights-of-way. Pass-through providers shall annually submit to the city a
22 notarized statement identifying the total number of such linear miles, and upon request by
23 the city shall provide reasonable access to maps of pass-through facilities located in the
24 public rights-of-way. Such payment shall be made prior to the city issuing permits and
25 annually thereafter. The amounts charged pursuant to this section ~~shall~~must be based on
26 the linear miles of public rights-of-way where a communications facility is placed, not based
27 on a summation of the lengths of individual cables, conduits, strands, or fibers. The city
28 shall discontinue charging such amounts to a person that has ceased to be a pass-through
29 provider, and any annual amounts charged ~~shall~~must be reduced for a prorated portion of
30 any 12-month period during which the person remits communication services taxes
31 imposed by the city pursuant to Chapter 202, Florida Statutes.
- 32 D. *General use charges.* The city shall require the maximum compensation allowed under
33 applicable law for use and occupancy of the public rights-of-way, which ~~shall be~~ is in
34 addition to any compensation or fees for attaching or collocating small wireless facilities on
35 city utility poles or otherwise using infrastructure or property owned by the city.

36
37 **Section 23-116. Permit Application and Review Procedure.**

- 38 A. *Permit required.* It ~~shall be~~ is unlawful for any person to place, install, locate, relocate,
39 construct, maintain, repair, operate, or remove any utilities under, on, over, across, or
40 within the public rights-of-way without first obtaining a written permit from the city in
41 accordance with this article, with certain exemptions as described below in this subsection.
42 Permits issued shall: 1) apply only to the areas of the public rights-of-way specifically

1 identified in the permit; 2) include and be subject to all conditions provided in Section 23-
2 114; and 3) remain effective for at least one year, but may be extended by the City
3 Manager or designee for good cause or if the permittee remains in compliance with this
4 article.

5 1. *Emergency conditions.* In the case of an emergency condition that affects the public
6 health, safety, or welfare, including an unplanned service interruption, an owner or
7 agent of a utility existing in the public rights-of-way may take immediate action to
8 remedy the emergency and shall, ~~as soon as practicable,~~ within 30 calendar days
9 provide notice and information to the city ~~and submit any permit application required~~
10 ~~by this article for detailing the work performed.~~ The city may require an after-the-fact
11 permit for work that would otherwise have required a permit under this article.

12 2. *Routine maintenance.* A person ~~shall be allowed to~~ may perform routine maintenance
13 on a utility existing in the public rights-of-way without a new permit for such work,
14 provided the work does not involve any excavation, closure of a sidewalk, or closure of a
15 vehicle or parking lane. However, such person shall provide to the city reasonable
16 advance written notice identifying the areas where the maintenance will occur, scope of
17 work, and the dates and duration of the work to be performed.

18 3. *Facility replacement.* A person ~~shall be allowed to~~ may replace a facility existing in the
19 public rights-of-way without a new permit for such work, provided: 1) the replacement
20 facility is substantially similar or of the same or smaller size; and 2) the work does not
21 involve any excavation, closure of a sidewalk, or closure of a vehicle or parking lane.
22 However, such person shall provide to the city reasonable advance written notice
23 identifying the areas where the work will occur, scope of work, and the dates and
24 duration of the work to be performed.

25 4. *Micro wireless facilities.* A communications services provider that has been permitted
26 under this article to occupy the public rights-of-way and that is remitting
27 communications service taxes imposed by the city pursuant to Chapter 202, Florida
28 Statutes, may without a new permit for such work install, place, maintain, or replace a
29 micro wireless facility that is suspended on cables strung between existing utility poles
30 in compliance with this article.

31 B. *Voluntary pre-submittal conference.* Prior to submitting a permit application, the applicant
32 is encouraged to schedule a pre-submittal conference with the city to coordinate submittal
33 and compliance with this article. This provision is not mandatory.

34 C. *Permit application.* Applicants shall submit a complete permit application or complete
35 consolidated permit application on forms or in a format as may be required by the city. A
36 consolidated permit application is a single permit application for the collocation of up to 30
37 small wireless facilities within the public rights-of-way in accordance with this article.
38 Applications ~~shall~~ must include the following:

39 1. *Registration.* Current and valid registration information ~~shall~~ must be provided and
40 maintained in accordance with Section 23-113, and updated information ~~shall~~ must be
41 provided to the city within ~~30~~ 90 calendar days of any change.

- 1 2. *Communications services statement.* A statement describing whether the applicant
2 provides or intends to provide communications services within the city; whether the
3 applicant is a pass-through provider or intends to have its communications facilities pass
4 through the city; and whether the applicant leases or intends to lease its facilities to
5 others who will be providing communications services within the city.
- 6 3. *Collocation agreement.* Applications for small wireless facility collocations on a city
7 utility pole ~~shall~~must include an executed collocation agreement, on a form provided by
8 the city. Applications for small wireless facility collocations on any utility pole other
9 than a city utility pole ~~shall~~must include a copy of a valid agreement for such
10 collocation. In lieu of the entire agreement, the applicant may provide the first page
11 and the signature page of such agreement or a notarized letter of authorization from
12 the owner of the utility pole, providing adequate identifying information and indicating
13 the applicant is authorized to collocate.
- 14 4. *Compensation.* Applications ~~shall~~must include all applicable compensation as provided
15 in Section 23-115.
- 16 5. *Engineering and construction plans.* Applications ~~shall~~must include the following:
- 17 a. The proposed dates, times, and locations for utility installation or work, including a
18 description of the type, size, and number of proposed utilities or facilities.
- 19 b. A description of the manner in which the utility will be installed or modified,
20 including anticipated construction methods or techniques, and an engineering plan
21 with drawings, photographs, and cross-section schematics prepared by a licensed
22 engineer or person exempt from licensing under Section 471.003, Florida Statutes,
23 that is consistent with the city’s Engineering Design Manual and Public Rights-of-
24 Way Use Manual, and that includes: 1) the type and location of proposed utilities,
25 including the approximate size and linear mileage of utilities, facilities and
26 equipment; 2) the type of installation or work proposed for the subject utilities; 3)
27 maps showing the routing of new construction or any work that involves any
28 alteration to the public right-of-way; 4) maps showing the locations of any known
29 utilities located above, on, or below the subject public rights-of-way located within
30 50 feet of all work proposed; 5) maps showing the subject utility with distances in
31 relation to utilities, facilities, pavement, sidewalks, driveways, ramps, trees, or other
32 structures located within ~~25~~ 50 feet of all work proposed in the public rights-of-way;
33 and 6) engineering certification attesting that the proposed location of the utility
34 work is structurally sufficient and otherwise appropriate for the proposed work. The
35 city, at its sole discretion, may require the applicant to have the engineering and
36 construction plans certified by an independent licensed engineer or person exempt
37 from licensing under Section 471.003, Florida Statutes, as selected by the city.
- 38 c. Any trees or landscaping that may be impacted by the work proposed, which shall
39 be regulated under applicable provisions of the city’s Code of Ordinances.
- 40 d. Maintenance of traffic or temporary sidewalk closure plan for any disruption of the
41 public rights-of-way.

1 e. A restoration plan and good faith estimate of the cost to restore the public rights-of-
2 way to the condition it was in prior to proposed work.

3 6. *Compliance with review criteria.* Applications ~~shall~~must include evidence
4 demonstrating compliance with the review criteria provided in Section 23-117, which
5 may include information the City Manager or designee finds reasonably necessary to
6 demonstrate the application's compliance with such review criteria, including but not
7 limited to a survey showing that the area is within the public rights-of-way and that the
8 city has the appropriate authority to issue a permit under this article.

9 D. *Permit review procedure.* An application for a permit ~~shall~~must be reviewed as follows.
10 The City Manager or designee may separately address small wireless facility collocation
11 requests that were submitted under a consolidated permit application for which incomplete
12 information has been received or which are denied.

13 1. *Notice of application deficiency.* Within 14 calendar days after the date of filing an
14 application, unless mutually extended by the city and applicant, the City Manager or
15 designee shall determine whether the application is complete. If an application is
16 deemed incomplete, the City Manager or designee shall notify the applicant by
17 electronic mail and specifically identify the missing information. An application ~~shall~~will
18 be deemed complete if the City Manager or designee fails to notify the applicant
19 otherwise within 14 calendar days after the date of filing an application.

20 2. *Small wireless facilities – request for alternative location.* Within 14 calendar days after
21 the date of filing an application to collocate a small wireless facility on a city utility pole,
22 the City Manager or designee may request that the proposed location of the small
23 wireless facility be moved to another location and be placed on an alternative city utility
24 pole. The city and applicant may negotiate the alternative location for 30 calendar days
25 after the date of the request. At the conclusion of this negotiation period, if the
26 alternative location is accepted by the applicant, the applicant shall notify the city of
27 such acceptance and the application ~~shall~~will be deemed granted as it relates to any
28 new location for which there is agreement and all other locations in the application. If
29 an agreement is not reached, the applicant shall notify the city of such non-agreement
30 and the city ~~must~~shall grant or deny the original application within 90 calendar days
31 after the date the application was filed. All notices ~~shall~~must be in writing provided by
32 electronic mail.

33 3. *Application review period.* Within 60 calendar days after the date of filing an
34 application, unless mutually extended by the city and the applicant, the City Manager or
35 designee shall approve or deny the application, and a complete application is deemed
36 approved if the city fails to approve or deny the application within this timeframe.

37 4. *Notice of approval or denial.* The City Manager or designee shall approve an application
38 unless it is incomplete or it does not comply with the requirements of this article, and
39 notice of approval ~~shall~~must be provided to the applicant by electronic mail. If an
40 application is denied, the City Manager or designee shall notify the applicant by
41 electronic mail on the day the application is denied with specification as to the basis of

1 denial, including the specific code provisions on which the denial is based. The applicant
2 may cure the deficiencies identified and resubmit the application within 30 calendar
3 days after notice of the denial is sent to the applicant. The City Manager or designee
4 shall approve or deny the revised application within 30 calendar days after receipt or
5 the application is deemed approved. The review of a revised application is ~~Any~~
6 ~~subsequent review shall be~~ limited to the deficiencies cited in the denial.
7

8 **Section 23-117. Review Criteria.**

9 The City Manager or designee shall approve an application for a permit under this article unless
10 the application is incomplete or does not meet the criteria of this section. To minimize
11 disruptions and disturbance in the public rights-of-way, the City Manager or designee may
12 require an applicant to alter the proposed work schedule and coordinate any proposed work
13 with other work, construction, installation, or repairs in the subject public rights-of-way that
14 may be occurring or scheduled to occur within a reasonable amount of time.

15 A. *General provisions.* All applications ~~shall~~ must meet the following criteria:

- 16 1. ~~Shall~~ Must not materially interfere with the safe operation of traffic control equipment.
- 17 2. ~~Shall~~ Must not materially interfere with sight lines or clear zones for transportation,
18 pedestrians, or public safety purposes, as provided in the city's Public Works Design
19 Manual.
- 20 3. ~~Shall~~ Must not materially interfere with compliance with the Americans with Disabilities
21 Act, or similar federal or state standards regarding pedestrian access or movement.
- 22 4. ~~Shall~~ Must not materially fail to comply with the ~~2010~~ 2017 edition of the Florida
23 Department of Transportation Utility Accommodation Manual.
- 24 5. ~~Shall~~ Must comply with applicable provisions of the Florida Building Code.
- 25 6. ~~Shall~~ Must comply with applicable federal, state, and city regulations pertaining to
26 airport airspace protections.
- 27 7. ~~Shall~~ Must comply with applicable historic preservation zoning regulations.
- 28 8. ~~Shall~~ Must comply with the requirements and conditions of this article, including but
29 not limited to: 1) the registration requirements under Section 23-113; and 2)
30 documentation agreeing to and providing the general permit conditions in Section 23-
31 114, including indemnity, insurance, and security ~~for performance and compliance.~~
- 32 9. *Power to restrict area.* With the exception of small wireless facility collocation as
33 provided in this section and to the extent consistent with applicable law, the City
34 Manager or designee ~~shall have the power to~~ may limit or prohibit the placement of
35 new or additional utilities within the public rights-of-way in order to safeguard the
36 public health, safety, and welfare, including but not limited to each of the following
37 situations:
 - 38 a. When there is insufficient space to accommodate a request.

- 1 b. To protect existing utilities in the public rights-of-way.
- 2 c. To allow for city plans for public improvements or development projects determined
- 3 by the city to be in the public interest.
- 4 B. *Undergrounding*. All installations of new utilities or facilities permitted under this article
- 5 ~~shall must~~ be installed underground in accordance with the criteria in this subsection.
- 6 However, the undergrounding requirements of this subsection shall not apply to has the
- 7 following two limited exemptions whereby the installation of new utilities or facilities
- 8 permitted under this article may be completed on aboveground utility infrastructure that at
- 9 the time of application already exists in the public rights-of-way: 1) the addition of wireline
- 10 facilities; and 2) small wireless facility collocation as provided in this section, including the
- 11 installation of a new utility pole when the applicant demonstrates that it is not reasonably
- 12 able to provide wireless service by collocating on an existing aboveground utility pole or
- 13 wireless support structure. small wireless facility collocation as provided in this section or to
- 14 the addition of wireline facilities on aboveground utility infrastructure that at the time of
- 15 application already exists in the public rights-of-way.
- 16 1. All work ~~shall must~~ be in accordance with applicable city policies and engineering
- 17 standards, including the Public Works Design Manual, any city Public Rights-of-Way Use
- 18 Manual, and any city Dig-Once Policy.
- 19 2. Utilities ~~shall must~~ be collocated underground in exiting conduit when applicable or, if
- 20 unavailable, space ~~shall must~~ be made available in any new conduit for other applicants
- 21 consistent with federal requirements.
- 22 3. All work ~~shall must~~ be in accordance with all applicable standards and requirements of
- 23 the following:
- 24 a. The Florida Department of Transportation Utilities Accommodation Guide.
- 25 b. The State of Florida Manual of Uniform Minimum Standards for Design Construction
- 26 and Maintenance for Streets and Highways.
- 27 c. The Trench Safety Act, Chapter 553, Florida Statutes.
- 28 d. The Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida
- 29 Statutes.
- 30 e. The National Electrical Code or the ANSI National Electric Safety Code.
- 31 f. The “Safety Rules for the Installation and Maintenance of Electrical Supply and
- 32 Communication Lines” established by the Department of Commerce, Bureau of
- 33 Standards of the United States.
- 34 g. Appropriate participation in the applicable notification system for subsurface
- 35 installations, such as Sunshine State One-Call or any successor alert and warning
- 36 system.
- 37 C. *Small wireless facility collocation*. Provided the application meets the criteria provided in
- 38 subsections A, B, and C, small wireless facilities may be collocated as follows: 1) on city

1 utility poles, as that term is defined in this article, or city wireless support structures that at
2 the time of application already exist in the public rights-of-way; 2) on existing utility poles
3 that are not city utility poles, such as utility poles owned by Gainesville Regional Utilities
4 (GRU) or privately-owned utility poles, provided that such collocation is at the sole
5 discretion of and has the permission of the utility pole owner; and 3) on an installation of a
6 new utility pole when the applicant demonstrates that it is not reasonably able to provide
7 wireless service by collocating on an existing aboveground utility pole or wireless support
8 structure, provided the new utility pole meets the substantive requirements of the make-
9 ready work provisions below. ~~Small wireless facilities shall be allowed to collocate on city
10 utility poles, as that term is defined in this article, or city wireless support structures that at
11 the time of application already exist in the public rights-of-way, provided the application
12 meets the criteria in this subsection. In addition, small wireless facilities may be collocated
13 on existing utility poles that are not city utility poles, such as utility poles owned by
14 Gainesville Regional Utilities (GRU) or privately-owned utility poles, provided that such
15 collocation is at the sole discretion of and has the permission of the owner of the non-city
16 utility pole and provided that the application meets the criteria in this subsection. Any
17 utility pole that requires pole replacement to support collocation under the make-ready
18 provisions of this subsection shall be considered an existing utility pole for purposes of this
19 subsection.~~

- 20 1. *Design standards.* Small wireless facilities ~~shall~~must meet the following standards:
- 21 a. Collocation ~~shall only be~~ is allowed on utility poles with a height of greater than 15
22 feet, and ~~shall may~~ not be allowed on any horizontal structure to which signal lights
23 or other traffic control devices are attached.
 - 24 b. Small wireless facilities and all associated equipment ~~shall may~~ not be installed at
25 ground level but ~~shall must~~ be installed either underground or at least eight feet
26 above the ground-level of the supporting pole or structure.
 - 27 c. A small wireless facility, including any attached antennas, ~~shall may~~ not extend in
28 height greater than 10 feet above the utility pole or structure upon which it is to be
29 collocated.
 - 30 d. A slim design ~~shall must~~ be used wherein the top mounted antenna does not exceed
31 the diameter of the supporting pole or structure at the level of the antenna
32 attachment by more than three inches on any edge, and any side-mounted
33 enclosures do not extend more than 30 inches beyond the exterior dimensions of
34 the supporting pole or structure measured from the edge of the pole or structure to
35 the outermost surface of the side-mounted enclosure.
 - 36 e. Small wireless facilities and all associated equipment ~~shall must~~ be: 1) located within
37 the utility pole or wireless support structure; or 2) covered with a shroud that
38 conforms to the pole or structure’s design, texture, and color.
 - 39 f. No signage may be located on small wireless facilities unless provided for in the sign
40 regulations in the city’s Land Development Code, which allows for public safety-
41 based information such as emergency contact information.

1 g. Small wireless facilities ~~shall~~must have no lights or illumination, unless required by
2 federal, state, or local law. This provision ~~shall~~does not apply to lights that are
3 otherwise associated with a supporting utility pole and that exist separately from
4 the small wireless facility, including street lights.

5 2. *Make-ready work.*

6 a. For a city utility pole, the city shall provide a good faith estimate for any make-ready
7 work necessary to enable the pole to support the requested collocation, including
8 necessary pole replacement, within 60 calendar days after receipt of a complete
9 application. Make-ready work, including any pole replacement, ~~shall~~must be
10 completed within 60 calendar days after written acceptance of the good faith
11 estimate by the applicant. Alternatively, the city may require the applicant to
12 provide a make-ready estimate at the applicant's expense for the work necessary to
13 support the small wireless facility, including pole replacement, and perform the
14 make-ready work. The city shall not condition or restrict the manner in which the
15 applicant obtains, develops, or provides the estimate or conducts the make-ready
16 work subject to usual construction restoration standards for work in the public right-
17 of-way.

18 b. If pole replacement is required to support collocation, the scope of the make-ready
19 estimate ~~shall~~must be limited to the design, fabrication, and installation of a utility
20 pole that is substantially similar in color and composition. Any replacement pole
21 required ~~shall~~may be no taller than the tallest existing utility pole located in the
22 same public right-of-way within 500 feet of the replaced pole; if there are no existing
23 utility poles located within 500 feet, then the replacement pole ~~shall~~may be no
24 taller than 50 feet. If the original utility pole was the property of the city, then the
25 replaced or altered utility pole ~~shall~~must remain the property of the city.

26 c. All make-ready work ~~shall~~must be in accordance with applicable city policies and
27 engineering standards, including the Public Works Design Manual, any city Public
28 Rights-of-Way Use Manual, and any city One-Touch Make-Ready Policy or Dig-Once
29 Policy, as permitted by law.

30
31 **Section 23-118. Appeals.**

32 A. Final decisions of the City Manager or designee denying, revoking, or suspending any permit
33 under this article may be appealed by filing a written notice of appeal, together with the
34 applicable fee established by the City Commission, within 25 calendar days of the date of
35 the City Manager or designee's written decision. The applicant shall file the notice of
36 appeal ~~shall be filed~~ with the City Manager, with a copy to the City Attorney, and shall state
37 the decision that is being appealed, the grounds for appeal, and a brief summary of the
38 relief that is sought. Any appeal not timely filed ~~shall~~will be waived.

39 B. The city and the appellant shall mutually agree on a mediator. The matter ~~shall~~must be set
40 for mediation ~~a public hearing~~ within ~~45~~30 calendar days of the date of the notice of
41 appeal, unless extended by mutual agreement of the parties. The City Manager or designee

1 shall notify any party who has filed a written request for such notification of the date when
2 the matter will be presented to the mediator.

3 C. The parties shall provide the mediator with any materials considered relevant to the City
4 Manager or designee's decision, and the mediator may seek additional relevant
5 information. The mediator shall make a decision using the appeal criteria for administrative
6 decisions provided in Section 30-3.57 of the City of Gainesville Code of Ordinances. The
7 decision of the mediator ~~shall~~must be rendered in writing no later than ~~20~~ 10 calendar days
8 after the conclusion of the hearing, and ~~shall~~must be an order recommending that the City
9 Manager or designee's decision be affirmed, reversed, or modified.

10 D. The City Manager or designee shall consider the decision of the mediator and shall make a
11 final decision in writing no later than ~~10~~ five calendar days after the date of the written
12 order of the mediator. The decision of the City Manager or designee ~~shall~~will be final and
13 may be subject to judicial review as provided in law.
14

15 **Section 23-119. Enforcement.**

16 A. *Generally.* Any person who violates any provision of this article ~~shall be~~ is subject to
17 punishment as provided in Section 1-9 of this Code of Ordinances.

18 B. *Permit revocation.*

19 1. The City Manager may revoke a permit issued under this article and the right to own,
20 operate, or maintain a utility under, on, over, across, or within a public rights-of-way, for
21 the following reasons:

22 a. A federal or state authority denies or revokes a permittee's applicable certification
23 or license, including a certificate of authorization, public convenience and necessity,
24 or other applicable certifications or licenses issued by the Florida Public Service
25 Commission, the Florida Department of State, the Federal Communications
26 Commission, or other federal authority.

27 b. The permittee's utility has caused a condition that is hazardous or harmful to the
28 public health, safety, or welfare and the permittee has failed to remedy the danger
29 promptly after receipt of written notice.

30 c. Substantive and material violations of any of the provisions of this article, including
31 but not limited to:

32 i. An evasion or attempt to evade any provision of this article, an attempt at any
33 fraud or deceit upon the city, or any material misrepresentation of fact.

34 ii. The repeated failure to provide any updated registration information to the city.

35 iii. The failure to maintain the required indemnification, insurance, or security.

36 iv. The failure to properly restore the public rights-of-way.

37 v. The failure to properly remedy damage or interference, or the failure to relocate
38 or remove utilities pursuant to this article and applicable law.

- 1 vi. Conducting work in the public rights-of-way without a permit.
- 2 2. Prior to permit revocation, the city shall make a written demand upon the permittee to
- 3 remedy such violation, ~~which shall~~ and state that the continued violation may be cause
- 4 for permit revocation. The City Manager or designee may place additional or revised
- 5 conditions on the permittee.
- 6 3. Within 30 calendar days of the city’s written notification, the permittee shall remedy the
- 7 violation or submit to the City Manager or designee a plan for correction. The
- 8 permittee’s failure to remedy the violation or to submit a correction plan acceptable to
- 9 the City Manager or designee or to implement an approved plan ~~shall will~~ be cause for
- 10 permit revocation. A final determination to revoke a permit may be appealed in
- 11 accordance with this article.
- 12 4. If a permit is revoked, the permittee shall: 1) reimburse the city for the city’s reasonable
- 13 costs, including restoration costs and administrative costs; and 2) in accordance with
- 14 this article and as otherwise may be provided in state law, notify the city of the
- 15 assumption or anticipated assumption by another permittee of ownership of the
- 16 permittee’s utilities in the public rights-of-way, or provide the city with an acceptable
- 17 plan for disposition of its utilities in the public rights-of-way. If a permittee fails to
- 18 comply with this subsection, the utilities ~~shall will~~ be deemed abandoned and the city
- 19 may exercise any remedies or rights it has under this article or at law.
- 20 C. *Force majeure*. In the event a person’s performance of or compliance with any of the
- 21 provisions of this article is prevented by a cause or event not within the person’s control,
- 22 such inability to perform or comply ~~shall will~~ be deemed excused and no penalties or
- 23 sanctions ~~shall may~~ be imposed as a result thereof; provided, however, that such person
- 24 uses all practicable means to expeditiously cure or correct any such inability to perform or
- 25 comply. For purposes of this article, causes or events not within a person’s control ~~shall~~
- 26 include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires,
- 27 and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage,
- 28 strikes and restraints imposed by order of a governmental agency or court. Causes or events
- 29 within a person’s control, and thus not falling within this provision, ~~shall~~ include, without
- 30 limitation, financial inability to perform or comply, economic hardship, and misfeasance,
- 31 malfeasance or nonfeasance by any of the person’s directors, officers, employees,
- 32 contractors, or agents.

33

34

35 **SECTION 2.** The following portion of Appendix A of the Code of Ordinances, relating to fees,

36 rates, and charges is amended. Except as amended herein, the remainder of Appendix A

37 remains in full force and effect.

1 APPENDIX A - SCHEDULE OF FEES, RATES AND CHARGES

2

3 RIGHT-OF-WAY (PUBLIC) OBSTRUCTION PERMITS (Chapter 23, Article V):

4 Permit Fees-

5 (1) Base review and processing125.00

6

7 (2) Per each bore / trench / segment for infrastructure (from and to each UJB, pedestal,
8 valve, manhole, inlet, etc.)

9 a. Under roadway 50.00

10 b. Perpendicular to roadway 30.00

11

12 (3) Per each roadway cut location 250.00

13

14 (4) Per each 500 linear feet of underground infrastructure 35.00

15

16 (5) Per each 100 Sq. ft. sidewalk construction / demolition / replacements 25.00

17

18 (6) MOT sidewalk / multi-use path closure 100.00 per month

19

20 (7) MOT within roadway

21 a. Full road closure (requires detours) 2000.00 per month

22 b. Single lane closure (requires flaggers or similar to maintain the flow of traffic)
23 250.00 per month

24

25 (8) Permit time extension (maximum 3 months per request as approved by the Public
26 Works Department, limit 2 extensions prior to a new permit being required and applied
27 for) 62.50

28

29 (9) Penalty for work without a permit:

30 a. First offense... double the total application fee (base fee plus all other applicable
31 fees)

32 b. Second offense*...double the total application fee + 500.00

33 c. Third offense**...double the total application fee + 1500.00

34

35 * Within a one-year period from the first offense.

36

37 **Within a three-year period from the second offense and no additional permits issued to
38 offending company/group/corporation for a period of two years from time of third offense.
39 This permit shall only be issued to allow for the complete removal of unpermitted work and to
40 return the ROW to as good a condition prior to the unpermitted work beginning and Public
41 Works Department acceptance.

42

43 RIGHT-OF-WAY (PUBLIC) USE BY UTILITIES (Chapter 23, Article VI):

1
2 (1) Permit Fees (communications services providers that remit communications services taxes
3 pursuant to Chapter 202, Florida Statutes, for communications services provided within the
4 city are exempt from paying permit fees)-

- 5
6 a. Base review and processing125.00
7
8 b. Per each bore / trench / segment for infrastructure (from and to each UJB, pedestal,
9 valve, manhole, inlet, etc.)
10 1. Under roadway 50.00
11 2. Perpendicular to roadway 30.00
12
13 c. Per each roadway cut location 250.00
14
15 d. Per each 500 linear feet of underground infrastructure 35.00
16
17 e. Per each 100 Sq. ft. sidewalk construction / demolition / replacements 25.00
18
19 f. MOT sidewalk / multi-use path closure 100.00 per month
20
21 g. MOT within roadway
22 1. Full road closure (requires detours) 2000.00 per month
23 2. Single lane closure (requires flaggers or similar to maintain the flow of traffic)
24 250.00 per month
25
26 h. Permit time extension (maximum 3 months per request as approved by the Public
27 Works Department, limit 2 extensions prior to a new permit being required and applied
28 for) 62.50
29
30 i. Penalty for work without a permit:
31 1. First offense... double the total application fee (base fee plus all other applicable
32 fees)
33 2. Second offense*...double the total application fee + 500.00
34 3. Third offense**...double the total application fee + 1500.00

35
36 * Within a one-year period from the first offense.

37
38 **Within a three-year period from the second offense and no additional permits issued to
39 offending company/group/corporation for a period of two years from time of third offense.
40 This permit shall only be issued to allow for the complete removal of unpermitted work and to
41 return the ROW to as good a condition prior to the unpermitted work beginning and Public
42 Works Department acceptance.
43
44

1
2 **SECTION 3.** It is the intent of the City Commission that the provisions of Sections 1 and 2 of this
3 ordinance will become and be made a part of the Code of Ordinances of the City of Gainesville,
4 Florida, and that the sections and paragraphs of the Code of Ordinances may be renumbered or
5 relettered in order to accomplish such intent.

6 **SECTION 4.** If any word, phrase, clause, paragraph, section, or provision of this ordinance or
7 the application hereof to any person or circumstance is held invalid or unconstitutional, such
8 finding will not affect the other provisions or applications of this ordinance that can be given
9 effect without the invalid or unconstitutional provision or application, and to this end the
10 provisions of this ordinance are declared severable.

11 **SECTION 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of such
12 conflict hereby repealed.

13 **SECTION 6.** This ordinance will become effective immediately upon adoption.

14

15 **PASSED AND ADOPTED** this ____ day of _____, 2020.

16

17

18

19

20

21

22

23

24

25

26

27

28

29

LAUREN POE
MAYOR

Attest:

Approved as to form and legality:

OMICHELE GAINEY
CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

- 1 This ordinance passed on first reading this _____ day of _____, 2020.
- 2 This ordinance passed on second reading this _____ day of _____, 2020.