

LEGISLATIVE #

170786A

ORDINANCE NO. 170786

An ordinance of the City of Gainesville, Florida, amending Chapter 23 – *Streets, Sidewalks and Other Public Places* in the City of Gainesville Code of Ordinances relating to regulations that apply to temporary obstructions of public rights-of-way and to regulations that apply to use of public rights-of-way by utilities, including communications facilities and small wireless facilities; by deleting Chapter 23, Article III – *Encroachments and Obstructions*; by deleting Chapter 23, Article VI – *Registration Requirements for Use of Public Rights-of-Way by Communications Services Providers and Other Wireline Users of Rights-of-Way*; by renumbering the articles of Chapter 23; by adding a new Article V – *Public Rights-of-Way Obstructions*; by adding a new Article VI – *Public Rights-of-Way Use by Utilities*; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, the City’s public rights-of-way are a unique and physically limited resource requiring proper and thoughtful management to maximize safety, aesthetics, and economic vitality for the City’s citizens, and these factors must be reasonably balanced in any decision to use or manage the public rights-of-way; and

WHEREAS, the communications industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit increased data and voice communications; and

WHEREAS, the City has received requests to place wireless communications facilities and wireless support structures within the public rights-of-way; and

WHEREAS, Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of utilities and communication facilities within the public rights-of-way; and

WHEREAS, the City Commission determines that it is in the best interest of its citizens, businesses, and visitors to enact sufficient regulations to protect the public health, safety, and

1 welfare by exercising the City's authority over the placement and maintenance of utilities and
 2 communications facilities in accordance with applicable law; and

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

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

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

15 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE,**
 16 **FLORIDA:**

17 **SECTION 1.** Article III of Chapter 23 of the City of Gainesville Code of Ordinances is deleted
 18 in its entirety as follows.

19 **~~ARTICLE III. ENCROACHMENTS AND OBSTRUCTIONS~~**

20 **~~Sec. 23-36. Definitions.~~**

21 ~~*Emergency maintenance* means work on a utility infrastructure necessitated by an~~
 22 ~~unforeseen blockage, severing, dislocation, or other similar event that interrupts service.~~

23 ~~*Obstruct* means to impede, block, hinder, stifle, retard, restrain, interfere, or~~
 24 ~~intermeddle with movement of vehicular or pedestrian traffic.~~

1 ~~Right-of-way means public ways, public highways, streets, alleys, sidewalks,~~
2 ~~thoroughfares, medians, or walkways over which the city has jurisdiction.~~

3 ~~Site plan means a graphic depiction of the work location and proposed project. The~~
4 ~~level of detail required will be commensurate with the nature and extent of the work, subject~~
5 ~~to acceptance by the public works director or designee.~~

6 **~~Sec. 23-37. Permits.~~**

7 ~~Any person, corporation, public agency, or other entity not exempt from this section~~
8 ~~that obstructs any right of way in the City of Gainesville, or whose actions temporarily will~~
9 ~~obstruct the general movement of vehicular or pedestrian traffic, must first obtain a permit~~
10 ~~from the public works department.~~

11 **~~Sec. 23-38. Permit requirements.~~**

12 ~~Except as made exempt by section 23-40 below, the public works department shall~~
13 ~~issue permits for temporary right-of-way obstructions no later than five business days after~~
14 ~~receiving a completed application, provided the following requirements are met:~~

15 (1) ~~— The applicant shall submit a site plan and maintenance of traffic (MOT)~~
16 ~~plan in compliance with the requirements of The Federal Highway~~
17 ~~Administration and The Florida Department of Transportation. The site plan~~
18 ~~shall indicate the exact location of the right-of-way to be obstructed, the~~
19 ~~estimated duration of the obstruction, the safety measures that will be~~
20 ~~used to protect the public health and safety, and the reason for the~~
21 ~~obstruction. Where excavations and/or repairs are made in any hard-~~
22 ~~surfaced or brick paved streets, all excavations may be done by the city at~~
23 ~~its discretion, at the sole cost and expense of the applicant.~~

24 (2) ~~— The applicant must fully and completely comply with F.S. Ch. 556 as may be~~
25 ~~amended from time to time.~~

26 (3) ~~— The applicant must provide the phone number for an emergency contact~~
27 ~~who will be available 24 hours a day, if the work is anticipated to last longer~~
28 ~~than one day.~~

29 (4) ~~— The public works director may establish conditions in the permit to protect~~
30 ~~public health and/or safety.~~

31 (5) ~~— Before issuing a permit, the public works director shall inform the city~~
32 ~~police department and city fire rescue department of the proposed~~
33 ~~obstruction. The public works director shall deny the permit if either of~~
34 ~~those agencies determines the obstruction will be a danger to public health~~
35 ~~and/or safety.~~

36 (6) ~~— If the obstruction is within or upon the right-of-way, or over and upon~~
37 ~~public infrastructure, or if any excavation is made within the right of way,~~
38 ~~then the applicant shall post a cash deposit with the finance director or,~~
39 ~~surety bond or letter of credit in favor of the city, and agree to restore the~~

1 right of way to the same or better condition that existed when the permit
 2 was issued, and to pay for any damage to public property and/or for trash
 3 and debris removal to be performed by the applicant. The public works
 4 director shall determine the deposit amount, based upon the nature and
 5 extent of the work to be performed within the right of way. An applicant
 6 who intends to apply for multiple permits in a calendar year may post with
 7 the city a cash deposit, surety bond, or letter of credit in an amount
 8 acceptable to the public works department, sufficient to adequately cover
 9 the estimated obstructions and excavations to be performed during that
 10 calendar year. The deposit shall be used by the city only in the event the
 11 applicant fails to repair damage and/or remove trash and debris resulting
 12 from the activity. The city shall return the deposit no later than ten days
 13 after notice to the city of job completion unless there is damage to city
 14 property or other costs incurred by the city such as but not limited to
 15 relining the right of way to the same or better condition that existed when
 16 the permit was issued. This requirement does not apply to public agencies.

17 ~~(7) If metered parking spaces will be obstructed, the applicant shall pay a fee,~~
 18 ~~at the time of application, that the public works director determines will~~
 19 ~~compensate the city for the lost parking revenue, unless the city is~~
 20 ~~otherwise prohibited by law from levying such a fee. This requirement does~~
 21 ~~not apply to public agencies.~~

22 ~~(8) The permit shall become null and void, upon notice to the applicant, if the~~
 23 ~~applicant fails to abide by any of the above requirements or violates any~~
 24 ~~conditions of the permit.~~

25 ~~(9) The permit may be revoked by the city if there is no activity performed by~~
 26 ~~the applicant at the location specified in the site plan for seven consecutive~~
 27 ~~days upon providing the applicant with written notice. Such notice shall be~~
 28 ~~provided no later than 24 hours after the seventh day of inactivity.~~

29 ~~(10) The applicant, excluding public agencies, shall provide proof of insurance~~
 30 ~~coverage, as outlined below, paid for by the applicant:~~

31 a. ~~Commercial general liability insurance in the amount of at least~~
 32 ~~\$500,000.00 per occurrence for bodily injury and property damage~~
 33 ~~for construction activities on city property. The policy must name~~
 34 ~~the City of Gainesville as additional insured, and an endorsement~~
 35 ~~must be issued as part of the policy reflecting this requirement.~~

36 b. ~~Policies must be issued by companies authorized to do business in~~
 37 ~~the State of Florida and must be rated at least A and have a size~~
 38 ~~category rating of VI or higher as per Best's Key Rating Guide, latest~~
 39 ~~edition.~~

1 ~~c. The applicant must give the city no less than 30 days written notice~~
 2 ~~prior to any cancellation, nonrenewal, or any material change in a~~
 3 ~~continuing policy.~~

4 ~~d. The city's risk management director is authorized to lower the~~
 5 ~~amount of general liability insurance required, if the applicant can~~
 6 ~~show that the above amount is excessive for the particular activity.~~

7 **~~Sec. 23-39. Additional regulation of cranes, hoists, and other mechanical apparatus.~~**

8 ~~(1) The use of cranes, hoists, and other mechanical apparatus within the right-~~
 9 ~~of-way are subject to the following additional conditions and restrictions, in~~
 10 ~~addition to the other requirements of this section:~~

11 ~~a. The maximum duration for such apparatus to operate or be~~
 12 ~~maintained in a right-of-way shall be 15 days, except as authorized~~
 13 ~~by the city permit.~~

14 ~~b. Full tracked vehicles, including but not limited to bulldozers and~~
 15 ~~skidsteers, shall not be off-loaded, on-loaded, walked, or operated~~
 16 ~~in a paved city right-of-way.~~

17 ~~c. Fixed tower cranes shall be permitted in the right-of-way, subject to~~
 18 ~~the following conditions:~~

19 ~~i. Approval by the public works director, upon finding that no~~
 20 ~~suitable alternative exists;~~

21 ~~ii. Submission of sufficient plans and specifications to ensure~~
 22 ~~that both the crane and its foundation are adequate, subject~~
 23 ~~to approval by the public works director.~~

24 **~~Sec. 23-40. Exemptions.~~**

25 ~~The requirements of Sections 23-37, 23-38, and 23-39 shall not apply to:~~

26 ~~(1) Parades, filming, news racks, sidewalk cafes, special events, and any other~~
 27 ~~person, corporation, public agency, or other entity that obstructs a right-of-~~
 28 ~~way pursuant to another city permit that authorizes the obstruction within~~
 29 ~~the right-of-way;~~

30 ~~(2) Right-of-way obstructions anticipated to last for less than one hour;~~

31 ~~(3) Right-of-way obstructions made by any person, corporation, public agency,~~
 32 ~~or other entity in response to a natural disaster, man-made disaster, or~~
 33 ~~similar emergency.~~

34 ~~(4) Right-of-way obstructions made by any public or private utility company~~
 35 ~~performing emergency maintenance. Utility companies exempted under~~
 36 ~~this subsection shall adhere to all federal, state, and local safety~~
 37 ~~requirements imposed by law in addition to industry standards and shall~~
 38 ~~notify the public works department in the event an emergency~~

1 maintenance project lasts longer than a 24-hour period. The public works
2 department shall be notified in the event the emergency work results in a
3 disruption of pavement, sidewalks, hardscape, or planted landscaping.

4 ~~(5) Right of way obstructions made by the city, its agents, or contractors~~
5 ~~performing work on behalf of the city, unless the public works department~~
6 ~~notifies the city's agent or contractor that a written permit is required due~~
7 ~~to past performance. The public works department shall be notified in the~~
8 ~~event of a disruption of pavement, sidewalks, hardscape, or planted~~
9 ~~landscaping.~~

10 **Sec. 23-41. Obstructing streets, generally; digging holes, etc.**

11 It shall be unlawful for any person to place or construct any fence or building or other
12 obstruction upon or over, or otherwise obstruct, all or any part of any street, avenue, alley,
13 lane or sidewalk, or other public ground of the city, or to dig any hole in any street, sidewalk
14 or other public highway or grounds of the city, without the permit from the public works
15 department.

16 **Sec. 23-42. Large tree limbs, stumps, industrial wastes, etc.**

17 Large tree limbs, tree butts, stumps, logs, plaster, earth, construction debris, industrial
18 waste or other matter in bulk shall not be classed as trash and no person shall place or cause
19 the same to be placed in the streets of the city or along the parkways adjacent to the street.

20 **Sec. 23-43. Abatement and removal required.**

21 All encroachments or obstructions on any public street of the city are hereby declared
22 to be nuisances and shall be abated and removed in accordance with law.

23 **Sec. 23-44. Penalties.**

24 Any person who violates any provision of this article shall be subject to punishment as
25 provided in Section 1-9 of this Code.

26

27 **SECTION 2.** Article VI of Chapter 23 of the City of Gainesville Code of Ordinances is deleted
28 in its entirety as follows.

29 **ARTICLE VI. — REGISTRATION REQUIREMENTS FOR USE OF PUBLIC RIGHTS OF WAY BY**
30 **COMMUNICATIONS SERVICES PROVIDERS AND OTHER WIRELINE USERS OF RIGHTS OF WAY**

31 **Section 23-104. — Definitions.**

32 For the purpose of this section, the following terms, phrases, words and derivations
33 shall have the meanings given herein. When not inconsistent with the context, words used in
34 the present tense include the future tense, words in the plural number include the singular
35 number, and words in the singular number include the plural number. The words "shall" and
36 "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any

1 permit that might be granted hereunder shall be given the meaning set forth in the
 2 Communications Act of 1934, 47 USC 151 et seq., as amended (collectively the
 3 "Communications Act"), and, if not defined therein, as defined by the Advanced Wireless
 4 Infrastructure Deployment Act, Section 337.401(7), Florida Statutes, and, if not defined therein,
 5 be construed to mean the common and ordinary meaning.

6 ~~*Abandon or abandonment* means the permanent cessation of all uses of a~~
 7 ~~communications facility, wireless facility or wireless support structure; provided that this term~~
 8 ~~shall not include cessation of all use of a facility within a physical structure where the physical~~
 9 ~~structure continues to be used. By way of example, and not limitation, cessation of all use of a~~
 10 ~~cable within a conduit, where the conduit continues to be used, shall not be an "abandonment"~~
 11 ~~of a facility in the public rights-of-way.~~

12 ~~*City Manager* means the City of Gainesville, FL, City Manager or his/her designee.~~

13 ~~*Communications service* means, without limitation, the transmission, conveyance or~~
 14 ~~routing of voice, data, audio, video, or any other information or signals to a point, or between~~
 15 ~~or among points, by and through electronic, radio, satellite, cable optical, microwave, or other~~
 16 ~~medium or method now in existence or hereafter devised, including Wireless Services,~~
 17 ~~regardless of the protocol used for such transmission or conveyance, open video system, cable~~
 18 ~~service.~~

19 ~~*Communications service provider* means any person making available or providing~~
 20 ~~communications services, as defined herein, or a wireless infrastructure provider.~~

21 ~~*Communications facilities, facilities or systems* means any facility, equipment or~~
 22 ~~property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets,~~
 23 ~~handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances,~~
 24 ~~wireless facilities, wireless support structure, wireline backhaul facilities, located, to be located,~~
 25 ~~used, or intended to be used, in the public rights-of-way of the City.~~

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

34 ~~*General Manager* means the General Manager of Gainesville Regional Utilities, or his or~~
 35 ~~her designee.~~

36 ~~*Place or maintain or placement or maintenance or placing or maintaining* means to~~
 37 ~~erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or~~
 38 ~~relocate. A communications services provider that owns or exercises physical control over~~
 39 ~~communications facilities in public rights-of-way, such as the physical control to maintain and~~
 40 ~~repair, is "placing or maintaining" the facilities. To the extent required by applicable law, a~~

1 party providing service only through resale or only through use of a third party's unbundled
 2 network elements is not "placing or maintaining" the communications facilities through which
 3 such service is provided. The transmission and receipt of radio frequency signals through the
 4 airspace of the public rights of way is not placing or maintaining facilities in the public rights of
 5 way.

6 *PSC* means the Florida public service commission.

7 *Public rights of way* means the surface, the airspace above the surface and the area
 8 below the surface of any public street, alley, viaduct, elevated roadway, bridge, public
 9 easement, or any other public way for which the City is the authority that has jurisdiction and
 10 control and may lawfully grant access to such property pursuant to applicable law. The term
 11 "public rights of way" shall not include any real or personal City property except as described
 12 above and shall not include City buildings, fixtures, or other structures or improvements,
 13 regardless of whether they are situated in the public rights of way.

14 *Registrant or facility owner* means a communications service provider or other person
 15 which seeks to use or occupy the public rights of way that has registered with the City in
 16 accordance with the provisions of this article.

17 *Registration and register* means the process described in section 23-105 whereby a
 18 communications service provider provides certain information to the City.

19 *Utility pole* means a pole or similar structure that is used in whole or in part to support
 20 communications facilities or for electric distribution, lighting, traffic control, signage, or similar
 21 function. The term includes the vertical support structure for traffic lights but does not include
 22 a horizontal structure to which signal lights or other traffic control devices are attached and
 23 does not include a pole or similar structure 15 feet in height or less unless the City issues a
 24 permit for the construction of such pole. The term does not include a utility pole owned by
 25 Gainesville Regional Utilities, a utility pole used to support City-owned or operated electric
 26 distribution facilities, or any other utility pole exempt from such term pursuant to Section
 27 337.401, *Florida Statutes*.

28 *Wireless support structure* means a freestanding structure, such as a monopole or self-
 29 supporting tower, or another existing or proposed structure designed to support or capable of
 30 supporting communications facilities. The term does not include a utility pole.

31 **Section 23-105. — Registration**

32 (a) — Any person, entity or communications service provider that desires to place or
 33 maintain a communications facility in the City shall be required to first register with the City in
 34 accordance with the terms of this article. Upon an effective registration, the registrant shall
 35 obtain a right of way use permit prior to performing any work in the City's rights of way.

36 (b) — Any person, entity or communications service provider desiring to use the public
 37 right of way shall file a registration with the City which shall include, as applicable, the
 38 following information:

39 (1) — Identity of the applicant and name, address and telephone number of
 40 applicant's primary contact person in connection with the registration;

1 ~~_____ (2) _____ A statement of whether the applicant presently serves any~~
 2 ~~communications services customers at retail within the jurisdictional limits of the City at the~~
 3 ~~time of registration; whether the applicant intends to have its communications facilities pass~~
 4 ~~through the City; or whether the applicant simply intends to lease its facilities to others who~~
 5 ~~will be providing communications service to retail customers within the jurisdictional limits of~~
 6 ~~the City. This information will allow the City to follow up, with the registrant, at the time the~~
 7 ~~registrant begins to make physical use of the public rights of way, and allow the City to~~
 8 ~~determine whether a linear mile charge is applicable in accordance with the City Code;~~

9 ~~_____ (3) _____ Evidence of the insurance coverage required under this article and~~
 10 ~~acknowledgment that registrant has received and reviewed a copy of this article;~~

11 ~~_____ (4) _____ A copy of any applicable federal and/or state certification, license or~~
 12 ~~certificate of franchise authorizing the applicant to provide communications services;~~

13 ~~_____ (5) _____ A security fund in accordance with this article.~~

14 ~~_____ (c) _____ The City will review the information submitted by the applicant. Such review will~~
 15 ~~be by the City Manager. If the applicant submits information in accordance with subsection 23-~~
 16 ~~105(b), the registration shall be effective and the City shall notify the applicant of the~~
 17 ~~effectiveness of registration in writing. The City shall notify the applicant of the non-~~
 18 ~~effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so~~
 19 ~~reply to an applicant within 45 days after receipt of registration information from the applicant~~
 20 ~~or within such time frame as required by applicable law. Upon notification of the non-~~
 21 ~~effectiveness of the registration, nothing herein shall preclude the applicant from filing a~~
 22 ~~subsequent application addressing the basis for the non-effectiveness. If the applicant disputes~~
 23 ~~the determination of non-effectiveness for the particular application submitted, the applicant~~
 24 ~~may file an appeal of the City Manager's determination as set forth within this Ordinance.~~
 25 ~~Failure to comply with the appeals article for the particular application found to be non-~~
 26 ~~effective shall be sufficient grounds for the City to reject that particular application in the~~
 27 ~~future. A registrant may cancel a registration upon written notice to the City noticing that it will~~
 28 ~~no longer maintain facilities in the public rights of way and will no longer need to obtain~~
 29 ~~permits to perform work in public rights of way. Within 30 days of any change in the~~
 30 ~~information required to be submitted pursuant to subsection 23-105(b), a registrant shall~~
 31 ~~provide updated information to the City.~~

32 ~~_____ (d) _____ A registration shall not convey title, equitable or legal, in the public right of way.~~
 33 ~~Registrants may only occupy public rights of way for communications facilities. Registration~~
 34 ~~does not excuse a communications provider from obtaining an appropriate approval, access or~~
 35 ~~pole attachment agreement before locating its facilities on the City's or another person's~~
 36 ~~facilities. The City Commission hereby authorizes the City Manager or General Manager to~~
 37 ~~review, to process and to grant or to deny applications for access to the public rights of way or~~
 38 ~~to City utility poles consistent with the time frames and procedures set forth in applicable law~~
 39 ~~and Ordinances of the City. Registration does not excuse a communications services provider~~
 40 ~~or registrant from complying with all applicable City ordinances, including this article.~~

41 ~~_____ (e) _____ Unless specifically prohibited by applicable law, each application for registration~~

1 or transfer shall be accompanied by an application fee in the amount established by the City
 2 Commission. The fee amount shall approximate the City's costs and expenses incurred in
 3 connection with approving the registration or transfer. If the application fee is insufficient to
 4 cover all costs or expenses incurred by the City in connection with processing the registration,
 5 the applicant shall reimburse the City for any such costs and expenses in excess of the
 6 application fee. Fee amounts may be amended from time to time, by resolution of the City
 7 Commission, for the purpose of complying with this provision.

8 ~~_____ (f) _____~~ Registration with the City shall be nonexclusive. Registration does not establish
 9 any priority for the use of the public right-of-way by a registrant or any other registrants.
 10 Registrations are expressly subject to any future amendment to or replacement of this article
 11 and further subject to any additional City ordinances, as well as any state or federal laws that
 12 may be enacted during the term of the registration.

13 ~~_____ (g) _____~~ A registrant shall renew its registration with the City by April 1 of even numbered
 14 years in accordance with the registration requirements in this article, except that a registrant
 15 that initially registers during the even numbered year when renewal would be due or the odd
 16 numbered year immediately preceding such even numbered year shall not be required to
 17 renew until the next even numbered year. If no information in the then existing registration has
 18 changed, the renewal may state that no information has changed. Failure to renew a
 19 registration may, at the City's discretion, result in the City restricting the issuance of additional
 20 permits, and any other remedies available to the City, until the communications services
 21 provider has complied with the registration requirements of this article.

22 **Section 23-106. _____ Compensation.**

23 (a) _____ A registrant that places or maintains communications facilities in the public
 24 rights-of-way shall be required to pay compensation to the City for access to the public rights-
 25 of-way as required by applicable law and ordinances of the City. _____ Compensation for access to
 26 the public rights-of-way shall be in addition to any compensation or fees for attaching or
 27 collocating communications facilities on City utility poles or otherwise using infrastructure or
 28 property owned by the City. The City Commission hereby authorizes the City Manager to
 29 impose the maximum fee allowed under applicable law for collocation or use of City property.
 30 Compensation for access to the public rights-of-way shall be in addition to any fees or
 31 compensation pursuant to pole attachment agreements or other agreements between a
 32 registrant, and the City, which agreement shall be subject to the approval of the City
 33 Commission.

34 (b) _____ A registrant pass-through provider that places or maintains communications
 35 facilities in the public rights-of-way and does not remit communications services tax imposed
 36 by the City pursuant to Chapter 202, *Florida Statutes*, as a condition for occupying or using the
 37 public rights-of-way shall pay to the City annually \$500.00 per linear mile or portion thereof, of
 38 any communications facility that is physically located in the public rights-of-way. Such payment
 39 shall be made prior to the City issuing permits and annually thereafter. A registrant shall
 40 provide the City with information as to the locations and linear miles or portions thereof of its
 41 facilities. Any misrepresentation of a material fact that has the effect of reducing or avoiding
 42 the payment of fees is expressly prohibited and will be cause for revocation of the

1 registration, as well as subject the registrant to prosecution and penalties as provided in the
2 City Code.

3 ~~(c) Notwithstanding anything herein to the contrary, the City shall at all times~~
4 ~~hereby require the maximum compensation allowed under applicable law for use of the public~~
5 ~~rights of way.~~

6 ~~(d) Except to the extent prohibited by applicable law:~~

7 ~~_____ (1) The fee payments to be made pursuant to this article shall not be~~
8 ~~deemed to be in the nature of a tax;~~

9 ~~_____ (2) Such fee payments shall be in addition to any and all taxes of a general~~
10 ~~applicability;~~

11 ~~_____ (3) A registrant shall not have or make any claim for any deduction or other~~
12 ~~credit of all or any part of the amount of said fee payments from or against any of said City~~
13 ~~taxes or other fees or charges of general applicability which registrant is required to pay to the~~
14 ~~City, except as required by law; and~~

15 ~~_____ (4) The fee specified herein is the consideration for use of the public rights-~~
16 ~~of way, for the purpose of placing and maintaining a communications facility. A registrant shall~~
17 ~~pay applicable fees for placement or maintenance of a communications facility for so long as~~
18 ~~the registrant owns any such facility and such facility remains in the public rights of way.~~

19 **Section 23-107. Reports and records.**

20 ~~_____ (a) To the extent not inconsistent with applicable law, the City may, at its option,~~
21 ~~upon 60 days' notice to the registrant, but in no event more often than once per year, examine~~
22 ~~the records and accounting files, and such other books and records, if such records relate to the~~
23 ~~calculation of fee payments. The examination of such books, accounts, records or other~~
24 ~~materials necessary for determination of compliance with the terms, provisions, and~~
25 ~~requirements of this article shall be during regular hours of business of the registrant at an~~
26 ~~office of the registrant located within the county, or at another location satisfactory to the City.~~

27 ~~_____ (b) Upon reasonable request, a registrant shall provide the following documents to~~
28 ~~the City as received or filed:~~

29 ~~_____ (1) Any pleadings, petitions, notices, and documents, regarding any legal~~
30 ~~proceeding involving any provisions of this article which are reasonably necessary for the City to~~
31 ~~protect its interests under this article.~~

32 ~~_____ (2) Any request for protection under bankruptcy laws, or any judgment~~
33 ~~related to a declaration of bankruptcy.~~

34 ~~_____ (3) Nothing in this article shall affect the remedies the registrant has~~
35 ~~available under applicable law.~~

36 ~~_____ (4) Provided, however, nothing in this subsection shall be deemed to require~~
37 ~~registrant to provide attorney work product information.~~

38 ~~_____ (c) In addition, the City may, at its option, and upon reasonable notice to the~~

1 registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.

2 ~~—— (d) —— The City shall keep any documentation, books and records of the registrant~~
3 ~~confidential to the extent required under Florida Statutes.~~

4 **Section 23-108. ~~Underground installation; relocation.~~**

5 ~~—— (a) —— To the extent not inconsistent with applicable law, a registrant shall install any~~
6 ~~communications facilities subject to the City's approval and permits, underground where there~~
7 ~~are no above-ground utilities or in areas that the City has commenced efforts to move above~~
8 ~~ground utilities underground. This provision shall have primacy unless expressly preempted by~~
9 ~~federal law or regulations, state law or applicable PSC rules or regulations. Notwithstanding~~
10 ~~this provision, a registrant may install its communications facilities above ground subject to the~~
11 ~~City Manager's approval and obtaining applicable permits, and, if applicable, the approval of~~
12 ~~the owner of a structure upon which the registration seeks to install its communications facility.~~

13 ~~—— (b) —— Every registrant which places or maintains communications facilities~~
14 ~~underground shall maintain appropriate participation in the applicable notification center for~~
15 ~~subsurface installations, such as Sunshine One Call (1-800-432-4770) or any successor alert~~
16 ~~and warning system to protect and locate their underground facilities.~~

17 ~~—— (c) —— Any communications facilities heretofore or hereafter placed upon, under, over,~~
18 ~~or along any public rights-of-way that is found by the City Manager to be unreasonably~~
19 ~~interfering in any way with the convenient, safe or continuous use or the maintenance,~~
20 ~~improvement, extension or expansion of such public rights-of-way shall, upon written notice to~~
21 ~~the registrant or its agent, be removed or relocated, within 30 days of such notice, by such~~
22 ~~registrant at its own expense in accordance F.S. § 337.403. The City Manager may extend the~~
23 ~~time within which a registrant shall remove or relocate a communications facility, for good~~
24 ~~cause shown.~~

25 ~~—— (d) —— The registrant shall not in any way displace, damage, or destroy any facilities, or~~
26 ~~other property within the public rights-of-way including, but not limited to, electric, gas, sewer,~~
27 ~~water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging~~
28 ~~to the City. The registrant shall be liable to the City for the costs of any repairs made necessary~~
29 ~~by any such displacement, damage or destruction, of facilities belonging to the City, and the~~
30 ~~registrant shall pay such costs upon demand. In the case of an emergency, the City may~~
31 ~~commence repairs without any prior notice to the registrant. The term emergency shall mean a~~
32 ~~condition that may affect the public's health, safety or welfare in the sole determination of the~~
33 ~~City. In the event of an emergency, the City may cause the repairs to be made at the facility's~~
34 ~~owner expense, utilizing City employees, agents or contractors, charge any and all costs, and~~
35 ~~require reimbursement within 14 calendar days after the submission of the bill by the City to~~
36 ~~the registrant. After 30 days, the City may obtain reimbursement from the security fund. In all~~
37 ~~other nonemergency circumstances, the registrant shall be given prior written notice. If such~~
38 ~~repairs are not performed in a reasonable and satisfactory manner within the 14 calendar days~~
39 ~~after receiving notice, the City may, cause the repairs to be made at the facility's owner~~
40 ~~expense, utilizing City employees, agents or contractors, charge any and all costs, and require~~
41 ~~reimbursement within 30 days after the submission of the bill by the City to the registrant.~~

1 Again, after 30 days, the City may obtain reimbursement from the security fund.

2 ~~—— (e) —— Subject to F.S. § 337.403, whenever an order of the City requires such removal or~~
3 ~~change in the location of any communications facility from the public rights of way, and the~~
4 ~~facility owner fails to remove or change the same at its own expense to conform to the~~
5 ~~directive within the time stated in the notice, the City may proceed to cause the~~
6 ~~communications facility to be removed. The expense thereby incurred except as provided in~~
7 ~~F.S. § 337.403(1)(a) — (c), shall be paid out of any money available therefor, and such expense~~
8 ~~shall be charged against the owner of the communications facility and levied, collected and paid~~
9 ~~to the City.~~

10 ~~—— (f) —— Subject to F.S. § 337.404, whenever it shall be necessary for the City to remove~~
11 ~~or relocate any communications facility, the owner of the communications facility, or the~~
12 ~~owner's chief agent, shall be given written notice of such removal or relocation and requiring~~
13 ~~the payment of the costs thereof, and shall be given reasonable time, which shall not be less~~
14 ~~than 10 nor more than 20 days in which to file an appeal with the City Manager to contest the~~
15 ~~reasonableness of the order. Upon receipt of a written appeal, the City Manager and owner~~
16 ~~shall select a mediator and set the matter for hearing. The hearing shall be scheduled within 30~~
17 ~~working days. Should the owner or the owner's representative not appear, the determination~~
18 ~~of the cost to the owner shall be final, in accordance with F.S. § 337.404.~~

19 ~~—— (g) —— A final order of the City imposed pursuant to Florida Statutes, and applicable~~
20 ~~provisions of the City Code, if any, shall constitute a lien on any property of the owner and may~~
21 ~~be enforced as provided therein.~~

22 ~~—— (h) —— If the City declares an emergency and requests the removal or abatement of~~
23 ~~facilities, by written notice, a registrant shall remove or abate the registrant's facilities by the~~
24 ~~deadline provided by the City Manager. A registrant and the City shall cooperate to the extent~~
25 ~~possible to assure continuity of service. If a registrant, after notice, fails or refuses to act, the~~
26 ~~City may remove or abate the facility, at the sole cost and expense of the registrant, without~~
27 ~~paying compensation to the registrant and without the City incurring liability for damages.~~

28 ~~—— (i) —— Upon abandonment of a facility within the public rights of way of the City, the~~
29 ~~owner of the facility shall notify the City within 90 days. The City shall provide notice of~~
30 ~~abandonment of a facility in the public rights of way to the registrant via certified mail at the~~
31 ~~address provided on the registration. If the facility owner does not respond to such notice and~~
32 ~~provide information to demonstrate that the facility is not abandoned within thirty (30)~~
33 ~~calendar days, the facility shall be deemed abandoned. The City may require that the facility~~
34 ~~owner of an abandoned facility remove all or any portion of the facility, or the City may~~
35 ~~determine that such non-removal will be in the best interest of the public health, safety and~~
36 ~~welfare. In the event that the City does not direct the removal of the abandoned facility by the~~
37 ~~owner of the facility, then such owner, shall be deemed to consent to the alteration or removal~~
38 ~~of all or any portion of the facility as directed by the City or to the transfer of ownership of the~~
39 ~~abandoned facility to the City, without further obligation on the part of the City.~~

40 ~~—— (j) —— A registrant shall, on the request of any person holding a permit issued by the~~
41 ~~City, temporarily raise or lower its communications facilities to permit the work authorized by~~

1 the permit. The expense of such temporary raising or lowering of facilities shall be paid by the
 2 person requesting same, and the registrant shall have the authority to require such payment in
 3 advance. The registrant shall be given not less than 30 days' advance notice to arrange for such
 4 temporary relocation.

5 **Section 23-109. ~~Use of rights of way.~~**

6 ~~_____ (a) _____ A registrant agrees at all times to comply with and abide by all applicable~~
 7 ~~provisions of the state statutes and local laws including, but not limited to, applicable zoning~~
 8 ~~regulations not inconsistent with state and federal laws.~~

9 ~~_____ (b) _____ Except in the case of an emergency, no communications service provider shall~~
 10 ~~construct any facility on, over, above, along, upon, under, across, or within any public right of~~
 11 ~~way which disrupts the public rights of way without first filing an application with and obtaining~~
 12 ~~a permit from the City therefor, pursuant to applicable permitting requirements of the City, and~~
 13 ~~other applicable City Code requirements, except as otherwise provided in this article. The City~~
 14 ~~has determined not to charge permit application fees to communications services providers~~
 15 ~~that remit communications services taxes for communications services provided within the City~~
 16 ~~pursuant to Chapter 202, Florida Statutes. The City reserves the right to charge applicable fees~~
 17 ~~for permit applications to all other persons seeking to perform construction within the public~~
 18 ~~rights of way to the extent not inconsistent with the City Code and applicable law. The term~~
 19 ~~"emergency" means a condition that affects the public's health, safety or welfare, which~~
 20 ~~includes unplanned out of service condition of a pre-existing service. Registrant shall still be~~
 21 ~~required to provide prior notice to the City in the event of an emergency. For the purposes of~~
 22 ~~the notice requirements herein, the City shall provide the registrant with a City contact. The~~
 23 ~~City may waive the permit requirement in nonemergency cases where there will be no~~
 24 ~~disruption of the public rights of way. When work is performed on an emergency basis, the~~
 25 ~~registrant must still apply for a permit by the following business day in accordance with public~~
 26 ~~works department permitting guidelines. In all instances, the registrant shall restore all~~
 27 ~~damaged property and indemnify the City from any and all damages caused by the registrant's~~
 28 ~~emergency work. The City may waive the permit requirement in cases where there will be no~~
 29 ~~disruption of the public rights of way.~~

30 ~~_____ (c) _____ As part of any permit application, with respect to new or existing facilities, where~~
 31 ~~applicable, in the public rights of way, the registrant shall furnish to the director of public works~~
 32 ~~and the City Manager a proposal for construction of the communications facility that sets forth~~
 33 ~~at least the following:~~

34 ~~_____ (1) _____ An engineering plan, consistent with the City's Engineering Design~~
 35 ~~Manual, and signed and sealed by a state registered professional engineer or prepared by a~~
 36 ~~person who is exempt from such registration requirements as provided in F.S. § 471.003~~
 37 ~~identifying the location of the proposed facility, including a description of the facilities to be~~
 38 ~~installed, where it is to be located, and the approximate size of facilities and equipment that~~
 39 ~~will be located in, on, over, or above the public rights of way, and the linear mileage of such~~
 40 ~~facilities for the purpose of determining compensation to be paid to the City.~~

41 ~~_____ (2) _____ Maps showing the routing of new construction that involves an alteration~~

1 to the surface or subsurface of the public right of way. A registrant may not begin construction
 2 until the plans and drawings have been approved in writing or electronically by the director of
 3 public works and a right of way use permit has been issued.

4 ~~_____ (3) _____ A description of the manner in which the facility will be installed (i.e.
 5 anticipated construction methods and/or techniques).~~

6 ~~_____ (4) _____ The time required to place the facility.~~

7 ~~_____ (5) _____ A maintenance of traffic plan for any disruption of the public rights of
 8 way.~~

9 ~~_____ (6) _____ Information on the ability of the public rights of way to accommodate
 10 the proposed facility, if available (such information shall be provided without certification as to
 11 correctness, to the extent obtained from other users of the public rights of way).~~

12 ~~_____ (7) _____ If appropriate, given the facility proposed, an estimate of the cost of
 13 restoration to the public rights of way.~~

14 ~~_____ (8) _____ And, such plan shall include the timetable for construction for each phase
 15 of the project, and the areas of the City which will be affected.~~

16 ~~_____ (9) _____ The City may request such additional information as it finds reasonably
 17 necessary to review an application for a permit to perform work in the public rights of way
 18 including, but not limited to, a survey showing that the area is within the public rights of way.~~

19 ~~_____ (d) _____ The City shall have the power to prohibit or limit the placement of new or
 20 additional facilities within the public rights of way, if there is insufficient space to
 21 accommodate all of the requests to occupy or use the rights of way, for the protection of
 22 existing facilities in the public rights of way, where such facilities will interfere with clear zones,
 23 public safety or the Americans with Disability Act requirements, or for City plans for public
 24 improvements or development projects which have been determined by the City to be in the
 25 public interest.~~

26 ~~_____ (1) _____ In case of conflict or interference between the facilities of different
 27 registrants, the registrant whose facilities were first permitted shall have priority over a
 28 competing registrant's use of the public rights of way.~~

29 ~~_____ (2) _____ There may be from time to time within the City various easements and
 30 streets which the City does not have the unqualified right to authorize registrant to use;
 31 therefore, the City does not warrant or represent as to any particular easement, rights of way,
 32 or portion of a right of way or easement, that it has the right to authorize the registrant to
 33 install or maintain portions of its facilities therein, and in each case the burden and
 34 responsibility for making such determination in advance of the installation shall be upon the
 35 registrant. The City shall not be required to assume any responsibility for the securing of any
 36 rights of way, easements or other rights which may be required by the registrant for the
 37 installations of its facilities, nor shall the City be responsible for securing any permits or
 38 agreements with other persons or utilities, including utilities operated or owned by the City.~~

39 ~~_____ (3) _____ Nothing in this article shall affect the City's authority to add, vacate, or~~

1 ~~abandon public rights of way, and the City makes no warranties or representations regarding~~
 2 ~~the availability of any added, vacated or abandoned public rights of way for communications~~
 3 ~~facilities.~~

4 ~~————— (4) ——— Upon request of the City, a registrant may be required to coordinate the~~
 5 ~~placement or maintenance of facilities under a permit with any other work, construction,~~
 6 ~~installation or repairs that may be occurring or scheduled to occur within a reasonable time~~
 7 ~~frame in the subject public rights of way, and registrant may be required to reasonably alter its~~
 8 ~~placement or maintenance schedule as necessary so as to minimize disruptions and disturbance~~
 9 ~~in the public rights of way.~~

10 ~~————— (e) ——— All facilities shall be installed, located and maintained so as not to unreasonably~~
 11 ~~interfere with the use of the public rights of way by the public and to cause unreasonable~~
 12 ~~interference with the rights and convenience of property owners who adjoin any of the public~~
 13 ~~rights of way. The registrant shall be liable for costs and expenses for the displacement,~~
 14 ~~damage or destruction of any paved area, irrigation system or landscaping within the public~~
 15 ~~rights of way. The registrant shall make such repairs upon request of the affected property~~
 16 ~~owner. In the event the registrant fails to make the appropriate repairs, to restore such~~
 17 ~~property to as good a condition as existed prior to commencement of work, the affected~~
 18 ~~property owner may file a complaint with the City Manager. In this instance, the registrant shall~~
 19 ~~be given prior written notice of the necessary repairs by the City Manager. If such repairs are~~
 20 ~~not performed in a reasonable and satisfactory manner within the 30 calendar days after~~
 21 ~~receiving notice, the City may cause the repairs to be made at the facility's owner expense,~~
 22 ~~utilizing City employees, agents or contractors, charge any and all costs, and require~~
 23 ~~reimbursement within 30 days after the submission of the bill by the City to the registrant.~~
 24 ~~After 30 days, the City may obtain reimbursement from the security fund. The "prior written~~
 25 ~~notice" described in this subsection shall be considered a final written decision for purposes of~~
 26 ~~the appellate rights outlined in the Code.~~

27 ~~————— (f) ——— The use of trenchless technology (i.e., directional bore method) for the~~
 28 ~~installation of facilities in the public rights of way as well as joint trenching and/or the~~
 29 ~~collocation of facilities in existing conduit is strongly encouraged, and may be required by the~~
 30 ~~City. The director of public works may waive the requirement of trenchless technology if the~~
 31 ~~director determines that field conditions warrant the waiver.~~

32 ~~————— (g) ——— The City Manager may issue such orders or additional rules and regulations~~
 33 ~~concerning the placement or maintenance of a communications facility in the public rights of~~
 34 ~~way, as may be consistent with applicable law and not inconsistent with this Article. —————~~

35 ~~————— (h) ——— All safety practices required by applicable law or accepted industry practices~~
 36 ~~and standards shall be used during construction, maintenance, repair and removal of the~~
 37 ~~communications facilities. Registrant's work, while in progress, shall be properly protected at all~~
 38 ~~times with suitable barricades, flags, lights, flares or other devices as are required by the~~
 39 ~~Manual on Uniform Traffic Control Devices (FDOT) and/or any requirements of the public works~~
 40 ~~department to protect all members of the public having occasion to use the portion of the~~
 41 ~~streets involved or adjacent property.~~

42 ~~————— (i) ——— In the event that at any time during the term of the rights granted herein the~~

1 City shall lawfully elect to alter, or change the grade of, any public rights of way, upon
2 reasonable notice by the City, the registrant shall make any necessary removals, relaying and
3 relocations of its communications facilities at its own expense, in accordance with applicable
4 law. The City reserves the right to place and maintain, and permit to be placed or maintained,
5 sewer, gas, water, electric, storm drainage, communications or other types of facilities, cables
6 or conduits, and to do, and to permit to be done, any underground and overhead installation or
7 improvement that may be deemed necessary or proper by the City in the public rights of way
8 occupied by the registrant.

9 ~~_____ (j) _____~~ A registrant shall obtain any and all required permits and pay any and all
10 required fees before commencing any construction on or otherwise disturbing any public
11 rights of way as a result of its construction.

12 ~~_____ (1) _____~~ The registrant shall, at its own expense, restore such property to as good
13 a condition as existed prior to commencement of work. A registrant shall guarantee its
14 restoration in accordance with current public works standards. If such restoration is not
15 performed in a reasonable and satisfactory manner within 30 calendar days after the
16 completion of construction, the City may, after prior written notice to registrant, cause the
17 repairs to be made at the facility's owner expense, utilizing City employees, agents or
18 contractors, charge any and all costs, and require reimbursement within 30 days after the
19 submission of the bill by the City to the registrant.

20 ~~_____ (2) _____~~ A permit from the City constitutes authorization to undertake only
21 certain activities on public rights of way in accordance with this article, and does not create a
22 property right or grant authority to impinge upon the rights of others who may have an interest
23 in the public rights of way.

24 ~~_____ (k) _____~~ All ongoing installation, construction and maintenance of a communications
25 facility located in the public rights of way shall be subject to the City's periodic inspection for
26 compliance with this article, or any applicable provisions of the City Code.

27 ~~_____ (l) _____~~ The City makes no warranties or representations regarding the fitness, suitability
28 or availability of the City's public rights of way for the registrant's communications facilities and
29 any performance of work, costs incurred or services provided by registrant shall be at
30 registrant's sole risk.

31 ~~_____ (m) _____~~ The registrant shall, at no cost to the City, produce and provide a complete set of
32 as-built plans including, but not limited to, horizontal and typical vertical profiles, within 60
33 days after construction of any portion of the system to the City Manager, with copies to the
34 public works department. A registrant shall also cooperate with the City by providing in a timely
35 and complete manner any additional information requested under this subsection. Upon
36 completion of any installation or construction of new facilities in public right of way and at no
37 cost to the City, the registrant shall provide such additional information, as may be requested,
38 showing the exact location of its facilities and structures, including but not limited to, maps,
39 geographical information systems, plats, construction documents, drawings and any other
40 information the City may find reasonably necessary. Such plans shall be provided in digitized
41 format showing the two-dimensional location of the facilities based on the City's geographical

1 database data, or other format acceptable to the City. All information required by this article
 2 shall be maintained in accordance with the public record laws of the state.

3 ~~_____ (n) _____ Suspension or denial of permits. Subject to subsection (p) of this section, the City~~
 4 ~~Manager may suspend an existing permit or deny an application for a permit for work in the~~
 5 ~~public rights of way for one or more of the following reasons:~~

6 ~~_____ (1) _____ Violation of permit conditions, including conditions set forth in this article~~
 7 ~~or other applicable provisions of the City Code or regulations governing use of public rights of~~
 8 ~~way; or~~

9 ~~_____ (2) _____ Misrepresentation or fraud by registrant in a registration or permit~~
 10 ~~application to the City; or~~

11 ~~_____ (3) _____ Failure to properly renew or ineffectiveness of a registration; or~~

12 ~~_____ (4) _____ Failure to relocate or remove facilities as may be lawfully required by the~~
 13 ~~City; or~~

14 ~~_____ (5) _____ Failure of registrant, its employees, agents or subcontractors, in~~
 15 ~~connection with the subject permit, to place barricades or signs around the work area, take~~
 16 ~~reasonable safety precautions to alert the public of work at the work site, or repair, replace and~~
 17 ~~restore any sidewalk, street, alley, pavement, water, sewer or other utility line or~~
 18 ~~appurtenance, soil, landscaping, dirt or other improvement, property or structure of any~~
 19 ~~nature. In the event of such failure, the City may perform the work utilizing City employees,~~
 20 ~~agents or contractors, charge any and all costs, and require reimbursement within 30 days after~~
 21 ~~the submission of the bill by the City to registrant. Upon payment to the City for the violations~~
 22 ~~that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~

23 ~~_____ (o) _____ Immediately after the suspension or denial of permit pursuant to this article, the~~
 24 ~~City shall provide written notice of the violation, which notice shall contain a description of the~~
 25 ~~violation. A final written decision of the City Manager suspending a permit or denying an~~
 26 ~~application is subject to appeal. Upon correction of any violation that gave rise to a suspension~~
 27 ~~or denial of permit, the suspension or denial shall be lifted.~~

28 ~~_____ (p) _____ All decisions of the City Manager may be appealed by filing a written notice of~~
 29 ~~appeal within 21 business days of the City Manager's decision. The appeal shall be filed with~~
 30 ~~the City Manager with a copy to the City Attorney. Any appeal not timely filed shall be waived.~~
 31 ~~The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a~~
 32 ~~brief summary of the relief which is sought, and shall be accompanied by a reasonable~~
 33 ~~nonrefundable fee to be established by the City Commission to cover the City's costs of the~~
 34 ~~appeal. The City and the appellant shall mutually agree on a mediator. The City Manager shall~~
 35 ~~provide the materials considered by the City relevant to the City Manager's decision to the~~
 36 ~~mediator. The mediator may affirm, modify or reverse the decision of the City Manager within~~
 37 ~~a reasonable time after the conclusion of the hearing, but no later than 21 days. The City~~
 38 ~~Manager shall notify any party who has filed a written request for such notification of the date~~
 39 ~~when the matter will be presented to the mediator. Nothing contained herein shall preclude~~
 40 ~~the mediator from seeking additional information prior to rendering a final decision. The~~

1 decision of the mediator shall be reduced to a written order and a copy of the decision shall be
2 forwarded to the City Manager and the appealing party. Within the time prescribed by the
3 appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the
4 mediator may appeal an adverse decision to the circuit court in and for the county or applicable
5 federal or district court. The party making the appeal shall be required to pay to the City a fee
6 to be established by City Commission, to defray the costs of preparing the record on appeal.

7 ~~_____ (q) _____~~ To the extent that any person or registrant leases or otherwise uses the facilities
8 of an entity that is duly registered or otherwise authorized to place and maintain facilities in the
9 public rights of way of the City, the person or registrant shall make no claim, nor assert any
10 right, which will impede the lawful exercise of the City's rights, including requiring the removal
11 of such facilities from the public rights of way of the City, regardless of the effect on the
12 person's ability to provide service or on the registrant's ability to maintain its own
13 communications facilities in the public rights of way of the City.

14 ~~_____ (r) _____~~ The involuntary termination of an effective registration may only be
15 accomplished by an action of the City Commission. The City may declare the effective
16 registration terminated and revoke and cancel all privileges granted under that registration if a
17 federal or state authority suspends, denies, or revokes a registrant's certification to provide
18 communications service, the registrant is adjudicated bankrupt by a United States District Court
19 or through any legal proceeding of any kind, or that a receiver is appointed to take possession
20 of the assets of the registrant, the registrant abandons all of its facilities. Prior to such
21 termination by the City resulting from a violation of any of the provisions of this subsection, the
22 registrant shall be provided a written notice setting forth all matters pertinent to such violation,
23 and describing the action of the City with respect thereto. The registrant shall have 60 days
24 after receipt of such notice within which to cure the violation, or within which to present a plan,
25 satisfactory to the City, to accomplish the same. In the event of a vote by the City Commission
26 to terminate, the registrant shall, within a reasonable time following such termination, remove
27 or abandon the facilities and take such steps as are necessary to render every portion of the
28 facilities remaining within the public right of way of the City safe. If the registrant has either
29 abandoned its facilities or chooses to abandon its facilities, the City may either require the
30 registrant's bonding company to remove some or all of the facilities from the public right of
31 way and restore the public right of way to its proper condition or the City may require that
32 some or all of the facilities be removed and the public right of way restored to its proper
33 condition at the registrant's expense, utilizing City employees, agents or contractors, and
34 charge any and all costs, and require reimbursement. The obligations of the registrant and the
35 bonding company hereunder shall survive, for a period of 24 months from, the termination of
36 the registration. At the City's option, the City may acquire the ownership of such abandoned
37 facility with no further obligations of the registrant or bonding company. In the event of a
38 termination of registration, this provision does not permit the City to cause the removal or
39 acquire ownership of any facilities that are used to provide another service for which the
40 registrant holds a valid certification with the applicable governing federal and/or state agencies
41 and is properly registered with the City, for such certificated service. A registrant shall pay all
42 fees owed to the City for so long as the registrant owns any facility within the public rights of
43 way.

1 **Section 23-110. ~~Compliance with other laws; police power; transfers and assignments.~~**

2 ~~(a) A facility owner shall at all times be subject to and shall comply with all~~
 3 ~~applicable federal, state and local laws. A facility owner shall at all times be subject to all lawful~~
 4 ~~exercises of the police power of the City, to the extent not inconsistent with applicable laws.~~
 5 ~~Nothing in this Article shall operate to waive or to delay the City's ability under its police~~
 6 ~~powers to take appropriate action to protect the public health, safety and welfare.~~

7 ~~(b) If the registrant transfers or assigns its registration incident to a sale or other~~
 8 ~~transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with~~
 9 ~~the terms of this article. Written notice of any transfer, sale or assignment shall be provided to~~
 10 ~~the City within 20 days of the effective date of the transfer, sale or assignment. For the transfer~~
 11 ~~of registration to be effective, the transferee or assignee must comply with the registration~~
 12 ~~requirements under this Article.~~

13 ~~(c) Notwithstanding anything in this article, pledges in trust or mortgages or other~~
 14 ~~hypothecations of the assets of the registrant to secure the construction, operation or repair of~~
 15 ~~its communications facilities may be made to any person without notice to the City.~~

16 **Section 23-111. ~~Insurance; indemnification.~~**

17 ~~(a) The registrant shall provide, pay for and maintain, throughout the term of its~~
 18 ~~registration, and with companies satisfactory to the City, the types of insurance described~~
 19 ~~herein. All insurance shall be from responsible companies duly authorized to do business in the~~
 20 ~~state and having a financial rating in Best's Insurance Guide of A+ or better. The insurance~~
 21 ~~coverage obtained by the registrant shall be approved by the risk management division. All~~
 22 ~~liability policies shall provide that the City is an additional insured as to the operations under~~
 23 ~~the registration and shall provide the severability of interest provision. The required coverage~~
 24 ~~must be evidenced by properly executed certificates of insurance. The certificates must be~~
 25 ~~manually signed by the authorized representative of the insurance company. Thirty days'~~
 26 ~~advance written notice must be given to the City of any cancellation or intent not to renew or~~
 27 ~~reduction in the policy coverage, which notice shall be sent by registered or certified mail to the~~
 28 ~~City. Companies issuing the insurance policies shall have no recourse against the City for~~
 29 ~~payment of any premiums or assessments, and the same shall be the sole responsibility of the~~
 30 ~~registrant.~~

31 ~~(b) The limits of coverage of insurance required shall be not less than the following:~~

32 ~~(1) Worker's compensation within statutory limits and employers liability~~
 33 ~~insurance with limits of not less than \$1,000,000.00. This coverage must be evidenced by a~~
 34 ~~certificate of insurance that requires at least 30 days' advance written notice of cancellation,~~
 35 ~~nonrenewal or material change to the City.~~

36 ~~(2) Commercial general liability insurance including premises/operations;~~
 37 ~~independent contractors; contractual liability; products/completed operations; XCU coverage;~~
 38 ~~and personal injury coverage for limits of no less than \$3,000,000.00 per occurrence combined~~
 39 ~~single limit and \$5,000,000.00 in the aggregate. The coverage must be evidenced by a~~
 40 ~~certificate of insurance that names the City as an additional insured and provides the City with~~

1 at least 30 days' advance written notice of cancellation, nonrenewal or material change.

2 ~~_____ (3) _____ Commercial automobile liability coverage for all owned, non-owned~~
 3 ~~and hired vehicles for limits of no less than \$1,000,000.00 per occurrence combined single limit.~~
 4 ~~This coverage must be evidenced by a certificate of insurance that names the City as an~~
 5 ~~additional insured, and provides the City with at least 30 days' advance written notice of~~
 6 ~~cancellation, nonrenewal or material change.~~

7 ~~_____ (4) _____ Commercial excess or umbrella liability coverage may be used in~~
 8 ~~combination with primary coverage to achieve the required limits of liability. This coverage~~
 9 ~~must be evidenced by a certificate of insurance that names the City as an additional insured~~
 10 ~~and provides the City with at least 30 days' written notice of cancellation renewal or material~~
 11 ~~change.~~

12 ~~_____ (c) _____ The City may, in its sole discretion, allow a registrant to be self-insured for one or~~
 13 ~~more lines of insurance coverage. In such instances, the registrant shall demonstrate to the~~
 14 ~~satisfaction of the administration and risk management division of the City that it has adequate~~
 15 ~~financial resources to defend and cover claims in the amounts and categories as required by the~~
 16 ~~administration and risk management division of the City.~~

17 ~~_____ (d) _____ Upon the effective date of a registration, the registrant shall submit to the City~~
 18 ~~proof that it has obtained the insurance required under this article, including a certificate of~~
 19 ~~insurance signed by the insurance agent.~~

20 ~~_____ (e) _____ The City shall have the authority to increase or decrease the policy limits set~~
 21 ~~forth above upon 60 days' written notice to the registrant. Within 60 days from receipt of a~~
 22 ~~notice to increase its policy limits, the registrant shall submit to the City proof of such increased~~
 23 ~~coverage. The City shall not increase the policy limits required of the registrant unless it~~
 24 ~~increases the requirements for every other registrant operating in the City pursuant to this~~
 25 ~~article. Upon registrant's request, and a showing by the registrant of good cause, the City may~~
 26 ~~decrease a registrant's policy limit.~~

27 ~~_____ (f) _____ The registrant shall file and maintain proof of insurance with the risk~~
 28 ~~management division. An insurance certificate obtained in compliance with this article is~~
 29 ~~subject to City approval, and in addition to all other requirements under this article, the~~
 30 ~~insurance certificate must contain the following provisions provide that:~~

31 ~~_____ (1) _____ Notice of claims shall be provided to the City Manager by certified~~
 32 ~~mail; and~~

33 ~~_____ (2) _____ The terms of this article which impose obligations on the registrant~~
 34 ~~concerning liability, duty and standard of care, including the indemnity section, are included in~~
 35 ~~the policy and that the risks are insured within the policy terms and conditions. The City may~~
 36 ~~require the certificate to be changed to reflect changing liability limits. A registrant shall~~
 37 ~~immediately advise the City of actual or potential litigation that may develop that would affect~~
 38 ~~insurance coverage herein.~~

39 ~~_____ (g) _____ An insurer has no right of recovery against the City. The required insurance~~
 40 ~~policies shall protect the registrant and the City. The registrant's insurance shall be primary~~

1 coverage for losses covered by the policies.

2 ~~_____ (h) _____ The policy clause "other insurance" shall not apply to the City where the City is~~
 3 ~~an insured under the policy.~~

4 ~~_____ (i) _____ The registrant shall pay premiums and assessments. A company which issues an~~
 5 ~~insurance policy has no recourse against the City for payment of a premium or assessment.~~
 6 ~~Insurance policies obtained by a registrant must provide that the issuing company waive all~~
 7 ~~right of recovery by way of subrogation against the City in connection with damage covered by~~
 8 ~~the City.~~

9 ~~_____ (j) _____ The registrant shall provide proof to the City of compliance with this article for~~
 10 ~~an effective registration. Failure to provide the City or to maintain the insurance required~~
 11 ~~herein will render the registration null and void without further action by the City.~~

12 ~~_____ (k) _____ Indemnification shall be conducted pursuant to the following:~~

13 ~~_____ (1) _____ The registrant shall, at its sole cost and expense, indemnify, hold and~~
 14 ~~defend the City and its officers, directors, agents, servants, employees, successors, and assigns~~
 15 ~~harmless from and against any and all claims suits, actions, damages and causes of action for~~
 16 ~~personal injury, death or property damage, any other losses, damages, charges of death or~~
 17 ~~property damage, any other losses, damages, charges or expenses, including attorneys' fees,~~
 18 ~~witness fees, court costs and any orders, judgments or decrees which may be entered which~~
 19 ~~rise out of, in connection with or attributable to, registrant's construction, maintenance,~~
 20 ~~occupation, placement, repair, relocation, removal or operation by the registrant of any portion~~
 21 ~~of the communications system or business excepting only those claims resulting from the gross~~
 22 ~~negligence of the City. The registrant shall undertake at its own expense, the defense of any~~
 23 ~~action which may be brought against the City for damages, injunctive relief or for any other~~
 24 ~~cause of action arising or alleged to have arisen out of, in connection with or attributable to,~~
 25 ~~the foregoing and, in the event any final judgment therein should be rendered against the City~~
 26 ~~resulting from the foregoing, the registrant shall promptly pay the final judgment together with~~
 27 ~~all costs relating thereto; the registrant being allowed, however, an appeal or appeals to the~~
 28 ~~appropriate court or courts from the j _____ judgment rendered in any such suit or action upon~~
 29 ~~the filing of such superseded bond as shall be required to prevent levy or judgment against the~~
 30 ~~City during such appeal or appeals.~~

31 ~~_____ (2) _____ Nothing in this article shall prohibit the City from participating in the~~
 32 ~~defense of any litigation by its own counsel and obtaining indemnification of the reasonable~~
 33 ~~costs associated therewith upon a court order awarding such costs.~~

34 ~~_____ (3) _____ The City shall give prompt written notice to a registrant of any claim~~
 35 ~~for which the City seeks indemnification. The registrant shall have the right to investigate,~~
 36 ~~defend and compromise these claims subject to prior City approval. Failure of the City to~~
 37 ~~provide written notice shall not waive the requirement of subsection (k)(1) of this section.~~

38 ~~_____ (4) _____ Nothing contained in this provision shall be construed or interpreted~~
 39 ~~as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.~~

40 **Section 23-112. Construction bond.**

1 ~~———— (a) ——— Except in the case of an emergency, as described in section 23-108, prior to~~
2 ~~performing any work in the public rights-of-way, a registrant shall establish in the City's favor a~~
3 ~~construction bond as required by Section 23-38 of the City Code in an amount specified in an~~
4 ~~engineering permit or other authorization as necessary to ensure the registrant's faithful~~
5 ~~performance of the construction in the public rights-of-way, in accordance with applicable~~
6 ~~sections of the City Code. The amount of the construction bond shall be as set forth in the~~
7 ~~engineering permit, and may be modified in the City's reasonable discretion, based on the cost~~
8 ~~of the restoration to take place in the public rights-of-way, and any previous history of the~~
9 ~~registrant concerning restoration within the public rights-of-way of the City. The City, in its~~
10 ~~discretion, may request a certified estimate of the cost of restoration by a state registered~~
11 ~~professional civil engineer or certified by a person who is exempt from such requirements as~~
12 ~~provided in F.S. § 471.003.~~

13 ~~———— (b) ——— In the event a registrant subject to such a construction bond fails to complete~~
14 ~~the work in a safe, timely and competent manner in accordance with the provisions of the~~
15 ~~permit, there shall be recoverable, jointly and severally from the principal and surety of the~~
16 ~~bond, any damages or loss suffered by the City as a result, including the full amount of any~~
17 ~~compensation, indemnification or cost of removal or abandonment of any property of the~~
18 ~~registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees,~~
19 ~~up to the full amount of the bond.~~

20 ~~———— (c) ——— In accordance with the current standards of the public works department of the~~
21 ~~City, and satisfaction of all obligations in accordance with the bond, the City shall eliminate the~~
22 ~~bond. Notwithstanding, the City may require a new bond for any subsequent work performed~~
23 ~~in the public right-of-way.~~

24 ~~———— (d) ——— The construction bond shall be issued by a surety having a minimum rating of A-~~
25 ~~1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the~~
26 ~~City Attorney; and shall provide that:~~

27 ~~"This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the~~
28 ~~City, by certified mail, return receipt requested, of a written notice from the issuer of the~~
29 ~~bond of intent to cancel or not to renew".~~

30 ~~———— (e) ——— The rights reserved by the City with respect to any construction bond established~~
31 ~~pursuant to this article are in addition to all other rights and remedies the City may have under~~
32 ~~this article, or at law or equity.~~

33 ~~———— (f) ——— The rights reserved to the City under this article are in addition to all other rights~~
34 ~~of the City, whether reserved in this article, or authorized by other law, and no action,~~
35 ~~proceeding or exercise of a right with respect to the construction bond will affect any other~~
36 ~~right the City may have.~~

37 **~~Section 23-113. ——— Security fund.~~**

38 ~~———— At the time of registration, the registrant shall file with the City, for City approval, a cash~~
39 ~~security, or irrevocable letter of credit, in the sum of \$50,000.00, in a form acceptable to the~~
40 ~~City Manager. For purposes of the irrevocable letter of credit, the registrant must have as a~~

1 surety a company qualified to do business in the state. The cash security or irrevocable letter of
 2 credit, shall be to secure the full and faithful performance by the registrant of all requirements,
 3 duties and obligations imposed upon registrant by the provisions of this article, and to pay any
 4 taxes, fees or liens owed to the City. The irrevocable letter of credit shall be furnished annually,
 5 or as frequently as necessary, and shall provide a continuing guarantee of the registrant's full
 6 and faithful performance at all times. Should the City draw upon the cash security or
 7 irrevocable letter of credit, the City shall promptly notify the registrant, and the registrant shall
 8 within 30 calendar days restore the cash security, or irrevocable letter of credit, to full required
 9 amount. In the event a registrant fails to perform its duties and obligations imposed upon the
 10 registrant by the provisions of this article, subject to section 23-109, there shall be recoverable,
 11 jointly and severally from the principal and issuer of the letter of credit, any damages or loss
 12 suffered by the City as a result, including the full amount of any compensation or
 13 indemnification, plus a reasonable allowance for attorneys' fees, up to the full amount of the
 14 fund. The cash security or letter of credit may be waived by the City where the City determines
 15 in its sole discretion that the security fund is not necessary to secure the required performance
 16 under this article. The City may from time to time increase the amount of the security fund to
 17 reflect the increased risks to the City and to the public.

18 **Section 23-114. — Enforcement remedies.**

19 ——— (a) — In addition to any other remedies available at law or equity or provided in this
 20 article, the City may apply any one or a combination of the following remedies in the event a
 21 registrant violates this article, or applicable local law or order related to use of the public rights-
 22 of way. It shall be unlawful to violate any provision of this article. Each day a violation of this
 23 article occurs constitutes a separate and distinct offense:

24 ——— (1) — Failure to comply with the provisions of this article or other law
 25 applicable to users and/or occupants of the public rights-of-way, may result in imposition of
 26 penalties to be paid by the registrant to the City in an amount of not less than \$500.00 per day
 27 or part thereof that the violation continues.

28 ——— (2) — A registrant's failure to obtain a permit before commencing work, except
 29 in cases of an emergency, may result in imposition of penalties to be paid to the City in an
 30 amount of not less than \$1,000.00 per day or part thereof that the violation continues.

31 ——— (3) — In addition to or instead of any other remedy, the City may seek legal or
 32 equitable relief from any court of competent jurisdiction.

33 ——— (b) — Before imposing a fine pursuant to this article, the City shall give written notice
 34 of the violation and its intention to assess such penalties, which notice shall contain a
 35 description of the alleged violation. Following receipt of such notice, the registrant shall have a
 36 reasonable period of time to either:

37 ——— (1) — Cure the violation and the City shall make good faith reasonable efforts
 38 to assist in resolving the violation; or

39 ——— (2) — File an appeal as provided herein.

40 If the violation is not cured within that reasonable period of time provided, and no appeal is

1 filed, the City may collect all fines owed, beginning with the first day of the violation, either by
2 removing such amount from the security fund or through any other means allowed by law.

3 ~~—— (c) —— In determining which remedy or remedies are appropriate, the City shall take~~
4 ~~into consideration the nature of the violation, the person or persons bearing the impact of the~~
5 ~~violation, the nature of the remedy required to prevent further violations, and such other~~
6 ~~matters as the City determines are appropriate to the public interest.~~

7 ~~—— (d) —— Failure of the City to enforce any requirements of this article shall not constitute~~
8 ~~a waiver of the City's right to enforce that violation or subsequent violations of the same type~~
9 ~~or to seek appropriate enforcement remedies.~~

10 ~~—— (e) —— In any proceeding before the City Commission wherein there exists an issue with~~
11 ~~respect to a registrant's performance of its obligations pursuant to this article, the registrant~~
12 ~~shall be given the opportunity to provide such information as it may have concerning its~~
13 ~~compliance with the terms of the article. The City Commission may find a registrant that does~~
14 ~~not demonstrate compliance with the terms and conditions of this article in default and apply~~
15 ~~any one or combination of the remedies otherwise authorized by this article.~~

16 ~~—— (f) —— The City Manager shall be responsible for administration and enforcement of~~
17 ~~this article, and is authorized to give any notice required by law.~~

18 ~~—— (g) —— Nothing in this article shall affect the remedies the registrant has available~~
19 ~~under applicable law.~~

20 **~~Section 23-115. Force majeure.~~**

21 ~~In the event a registrant's performance of or compliance with any of the provisions of~~
22 ~~this article is prevented by a cause or event not within the facility owner's control, such inability~~
23 ~~to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed~~
24 ~~as a result thereof, provided, however, that such owner uses all practicable means to~~
25 ~~expeditiously cure or correct any such inability to perform or comply. For purposes of this~~
26 ~~article, causes or events not within a facility owners control shall include, without limitation,~~
27 ~~acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of~~
28 ~~public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of~~
29 ~~a governmental agency or court. Causes or events within registrant's control, and thus not~~
30 ~~falling within this article, shall include, without limitation, registrant's financial inability to~~
31 ~~perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any~~
32 ~~of registrant's directors, officers, employees, contractors or agents.~~

33 **~~Section 23-116. Reservation of rights.~~**

34 ~~—— (a) —— The City reserves the right to amend this article as it shall find necessary in the~~
35 ~~lawful exercise of its police powers. The City reserves the right to adopt further Ordinances to~~
36 ~~regulate communications facilities in the public rights-of-way, including but not limited to~~
37 ~~design standards, location guidelines, pole attachment procedures, and other provisions to the~~
38 ~~extent not inconsistent with applicable law.~~

39 ~~—— (b) —— This article shall be applicable to all communications facilities permitted to be~~
40 ~~placed in the public rights-of-way, on or after its effective date, and shall apply to all existing~~

1 ~~communications facilities in the public rights-of-way prior to the effective date of this article, to~~
2 ~~the full extent permitted by state and federal law. Providers with existing communications~~
3 ~~facilities have 120 days from the effective date of this article to comply with the terms of this~~
4 ~~article, or be in violation thereof.~~

5 ~~_____ (c) _____ The City reserves to itself the right to intervene in any suit, action or proceeding~~
6 ~~involving any provision of this article. Registrant agrees to advise City of any such suits.~~

7

8 **SECTION 3.** Chapter 23 of the City of Gainesville Code of Ordinances is amended and two
9 new articles are added as follows.

10 **CHAPTER 23 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

11

12 **ARTICLE I. IN GENERAL**

13

14 **ARTICLE II. STREET DESIGNATION AND BUILDING ADDRESS NUMBERING PLAN**

15

16 ~~ARTICLE IV.~~ **III. CONSTRUCTION OF SIDEWALKS, CURBS AND GUTTERS**

17

18 ~~ARTICLE V.~~ **IV. CONSTRUCTION AND REMOVAL OF DRIVEWAYS**

19

20 **ARTICLE V. PUBLIC RIGHTS-OF-WAY OBSTRUCTIONS**

21

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

23

24 **SECTION 4.** The new Article V of Chapter 23 of the City of Gainesville Code of Ordinances is
25 added as follows.

26 **ARTICLE V. PUBLIC RIGHTS-OF-WAY OBSTRUCTIONS**

27

28 **Section 23-104. Definitions.**

29 **Obstruct** means to impede, block, hinder, stifle, retard, restrain, interfere, repair, dig,
30 excavate, or intermeddle with movement of vehicular or pedestrian traffic.

31

32 **Right-of-way** means public ways, public highways, streets, alleys, sidewalks, thoroughfares,
33 medians, or walkways of which the city has jurisdiction.

34

1 **Site plan** means a graphic depiction of the work location and proposed project. The level of
 2 detail required shall be commensurate with the nature and extent of the work, subject to
 3 acceptance by the Public Works Director or designee.

4
 5 **Section 23-105. Applicability.**

6 It shall be unlawful for any person or entity to obstruct any right-of-way in the City of
 7 Gainesville, including temporarily obstructing the general movement of vehicular or
 8 pedestrian traffic and including any digging or excavation in the public rights-of-way, without
 9 first obtaining a permit from the Public Works Department. All obstructions within any public
 10 right-of-way not permitted in accordance with this article are hereby declared to be
 11 nuisances and shall be abated and removed in accordance with law.

12
 13 **Section 23-106. Exemptions.**

14 The requirements of this article shall not apply to the following:

- 15 A. Any person or entity that obstructs a right-of-way pursuant to another city permit that
 16 authorizes the obstruction within the right-of-way, including but not limited to parades,
 17 filming, news racks, sidewalk cafes, or special events.
- 18 B. Right-of-way obstructions anticipated to last for less than one hour.
- 19 C. Right-of-way obstructions made by any person or entity in response to a natural disaster,
 20 man-made disaster, or similar emergency.
- 21 D. Right-of-way obstructions made by any utility use of the right-of-way, which shall be
 22 regulated and permitted under Chapter 23, Article VI of the Code of Ordinances.
- 23 E. Right-of-way obstructions made by the city, its agents, or contractors performing work on
 24 behalf of the city, unless the Public Works Department notifies the city's agent or
 25 contractor that a written permit is required due to past performance. The Public Works
 26 Department shall be notified in the event of a disruption of pavement, sidewalks,
 27 hardscape, or planted landscaping.

28
 29 **Section 23-107. Review Procedures and Criteria.**

30 Applications for a permit under this article shall be submitted in a form approved by the
 31 Public Works Department, and shall be submitted together with any applicable application
 32 fees. The Public Works Department shall approve and issue permits for right-of-way
 33 obstructions no later than 15 calendar days after receiving a complete application, provided
 34 the application meets all of the requirements and conditions provided in this section. The
 35 Public Works Director or designee may issue permits under this article for a total duration or
 36 applicable hours that, in the Public Works Director or designee's sole discretion, is most
 37 appropriate for the particular situation and is most protective of the public health, safety, and
 38 welfare.

- 39 A. *Site plan and MOT plan.* The applicant shall submit a site plan and maintenance-of-traffic
 40 (MOT) plan in compliance with the requirements of the Federal Highway Administration

- 1 and the Florida Department of Transportation. The site plan shall indicate the exact
 2 location of the right-of-way to be obstructed, the estimated duration of the obstruction,
 3 the safety measures that will be used to protect the public health and safety, and the
 4 reason for the obstruction.
- 5 B. *Emergency contact.* The applicant must provide the phone number for an emergency
 6 contact who will be available 24 hours a day, if the work is anticipated to last longer than
 7 one day.
- 8 C. *Police/Fire Rescue.* Before issuing a permit, the Public Works Director or designee shall
 9 inform the city's Police Department and Fire Rescue Department of the proposed
 10 obstruction. The Public Works Director or designee shall deny the permit if either of those
 11 agencies determines the obstruction will be a danger to public health or safety.
- 12 D. *Metered parking.* If metered parking spaces will be obstructed, than the applicant shall
 13 pay a fee at the time of application in an amount that the Public Works Director or
 14 designee determines will compensate the city for the lost parking revenue, unless the city
 15 is otherwise prohibited by law from levying such a fee. This requirement does not apply to
 16 public agencies.
- 17 E. *Waste.* Large tree limbs, tree butts, stumps, logs, plaster, earth, construction debris,
 18 industrial waste or other matter in bulk shall not be classified as trash and no person shall
 19 place or cause the same to be placed in the streets of the city or along the parkways
 20 adjacent to the street.
- 21 F. *Cranes and mechanical equipment.* The use of cranes, hoists, and other mechanical
 22 apparatus within the right-of-way are subject to the following additional conditions and
 23 restrictions:
- 24 1. The maximum duration for such apparatus to operate or be maintained in a right-of-
 25 way shall be 15 calendar days, unless extended by the Public Works Director or
 26 designee for good cause shown.
- 27 2. Full-tracked vehicles, including but not limited to bulldozers and skidsteers, shall not
 28 be off-loaded, on-loaded, walked, or operated in a paved city right-of-way.
- 29 3. Fixed-tower cranes may only be permitted in the right-of-way if the Public Works
 30 Director or designee finds that both of the following conditions are met:
- 31 a. No suitable alternative exists; and
- 32 b. Submission of sufficient plans and specifications to ensure that both the crane and
 33 its foundation are adequate, and that such use will not endanger the public health
 34 and safety.
- 35 G. *Restoration of public rights-of-way.* Permittees shall immediately after right-of-way
 36 obstructions restore the public rights-of-way to as good a condition as existed immediately
 37 prior to commencement of the permitted obstruction. Restoration shall be completed in
 38 accordance with applicable city standards. If such restoration is not performed in a
 39 reasonable and satisfactory manner within 30 calendar days after the completion of the

1 obstruction, the city may after written notice to the permittee cause the restoration to be
2 made with the total cost being charged to and paid for by the permittee upon demand, and
3 the city may charge the costs against any security the permittee provided in accordance
4 with this article. For one year following completion of any work permitted under this
5 section, the permittee shall guarantee its restoration work and shall correct at its sole
6 expense any restoration work that does not satisfy the requirements of this article. Where
7 excavations or repairs are made in any hard-surfaced or brick-paved streets, all
8 excavations may be done by the city at its discretion, at the sole cost and expense of the
9 applicant.

10 H. Indemnification. Any person or entity receiving a permit under this article shall, at its sole
11 cost and expense, indemnify, hold harmless, and defend the city and its officers, employees,
12 and agents from all liabilities, damages, losses, claims, suits, causes of action, and costs or
13 expenses of any kind or nature, including but not limited to reasonable attorneys' fees, for
14 personal injury, death, property damage, or any other losses that arise from or are in any
15 way connected with the right-of-way obstruction, whether any act or omission complained
16 of is authorized, allowed, or prohibited by this article or any permit issued hereunder,
17 except to the extent that such claims are caused by the sole negligence of the city.

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

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

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

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

37 I. Insurance. Permittees shall provide, pay for, and maintain satisfactory to the city the types
38 of insurance policies and coverage limits described here. Policies shall be issued by
39 companies authorized to do business in the State of Florida and shall have an A.M. Best,
40 latest edition, financial strength rating of at least A+ and financial size category of at least
41 VIII. All policies shall name the city as an additional insured with respect to all activities

1 under this article. At least 30 calendar days' advance written notice shall be given to the city
 2 of any cancellation, intent not to renew, or reduction in the policy coverage, which notice
 3 shall be sent by registered or certified mail. The city's Risk Management Director may
 4 reasonably raise or lower the amount of insurance required, and may allow a permittee to
 5 be self-insured for one or more lines of insurance coverage.

6 1. *Comprehensive general liability.* Commercial general liability insurance including
 7 premises/operations; independent contractors; contractual liability;
 8 products/completed operations; XCU coverage; and personal injury and property
 9 damage coverage for limits of no less than \$1,000,000 per occurrence combined single
 10 limit and \$2,000,000 in the aggregate.

11 2. *Commercial automobile liability.* Commercial automobile liability coverage for all
 12 owned, non-owned, and hired vehicles for limits of no less than \$1,000,000 per
 13 occurrence combined single limit.

14 3. *Worker's compensation and employer's liability.* Worker's compensation in an amount
 15 not less than the statutory limit and employer's liability insurance with limits of not less
 16 than \$1,000,000.

17 4. *Commercial excess or umbrella liability.* Commercial excess or umbrella liability
 18 coverage may be used in combination with primary coverage to achieve the required
 19 limits of liability.

20 J. *Security.* If any excavation is made within a public right-of-way, or if there is any risk of
 21 damage or detriment to the premises of a public right-of-way, then the applicant shall
 22 provide security to the city to ensure that the right-of-way is restored to the same or
 23 better condition than existed when the permit was issued and to ensure payment for any
 24 damage to public property or trash and debris removal as a result of such permit issuance.
 25 Applicants shall provide security enforceable by and payable to the city, in any combination
 26 of the types provided below, in an amount reasonably corresponding to the nature and
 27 extent of the work to be performed within the right-of-way as determined by the Public
 28 Works Director or designee. An applicant who intends to apply for multiple permits in a
 29 calendar year may provide the city with security in an amount acceptable to the Public
 30 Works Director or designee sufficient to adequately cover the estimated obstructions and
 31 excavations to be performed during that calendar year. The deposit shall be used by the
 32 city only in the event that the applicant fails to repair damage or remove trash and debris
 33 resulting from the activity. The city shall return any cash deposit no later than 15 calendar
 34 days after notice to the city of right-of-way obstruction completion unless there is damage
 35 to city property or other costs incurred by the city, including but not limited to relining the
 36 right-of-way to the same or better condition that existed when the permit was issued.
 37 This requirement does not apply to public agencies.

38 1. *Surety bond.* A surety bond executed by a surety company authorized to do business in
 39 the State of Florida with a minimum rating of A-VII as rated by A.M. Best Company, Inc.
 40 The surety bond shall be approved by the City Attorney as to form and legality, and shall
 41 provide the following: "This bond may not be canceled, or allowed to lapse, until 60

1 calendar days after receipt by the City of Gainesville, by certified mail, return receipt
 2 requested, of a written notice from the issuer of the bond of intent to cancel or not to
 3 renew."

4 2. Letter of credit. An irrevocable and unconditional letter of credit issued by a Florida
 5 bank, in a form and by a financial institution acceptable to the City Attorney.

6 3. Cash deposit. A cash deposit with the city, held in an account where interest earned on
 7 the cash deposit shall be for the account and to the credit of the person making such
 8 deposit.

9 K. Due care. Permittees shall exercise due care and follow all safety practices required by
 10 applicable law or accepted industry practices when operating in accordance with a permit
 11 issued under this article, including the use of suitable barricades, flags, lights, flares, or
 12 other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) or
 13 any requirements of the city to protect the public.

14 L. Hazardous conditions. If the city at any time reasonably determines that a permittee has
 15 caused a condition that is hazardous or harmful to the public health, safety, or welfare, the
 16 permittee, at its own expense and without liability to or recourse against the city, shall
 17 remedy all such conditions after being provided reasonable notice. If the city at any time
 18 reasonably determines that an emergency situation exists and the permittee is not
 19 immediately available or is unable to immediately provide the necessary remedy, then the
 20 city shall have the right to remedy the situation with the total cost being charged to and
 21 paid for by the permittee upon demand, and the city may charge the costs against any
 22 security the permittee provided in accordance with this article.

23 M. Compliance with law. Permittees shall at all times be in full compliance with and abide by
 24 all applicable provisions of federal, state, or local laws, codes, and regulations, including but
 25 not limited to Chapter 556, Florida Statutes, as may be amended from time to time.

26 N. Right of inspection. The city shall have the right to inspect any work as it finds necessary to
 27 ensure compliance with this article or any applicable law or regulation.

28 O. Police powers. Any permit issued under this article shall be subject to the city's lawful
 29 exercise of its police power, and applicants and permittees shall comply with any
 30 requirements or policies that the city finds reasonably necessary to protect the public
 31 health, safety, and welfare, and the Public Works Director or designee may establish
 32 reasonable conditions in the permit to protect the public health, safety, and welfare.

33 P. Permit inactivity. The permit may be revoked by the city if there is no activity performed
 34 by the applicant at the location specified in the site plan for 15 consecutive calendar days
 35 after the city provided the applicant with written notice of such inactivity.

36 Q. Violations. Upon providing written notice to any person or entity receiving a permit under
 37 this article of a violation of any of the requirements or conditions of the permit, the
 38 permit shall be revoked and become null and void if the permittee fails to cure the
 39 violation within the reasonable cure period provided in the notice.

40

1 **Section 23-108. Penalties.**

2 Any person who violates any provision of this article shall be subject to punishment as provided
 3 in Section 1-9 of this Code of Ordinances. The city may seek any legal remedies available in law
 4 or equity.

5
 6
 7 **SECTION 5.** The new Article VI of Chapter 23 of the City of Gainesville Code of Ordinances is
 8 added as follows.

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

10
 11 **Section 23-109. Definitions.**

12 Throughout this article, the following words and phrases shall have the meanings indicated
 13 unless the text in which used clearly indicates otherwise. Any word or phrase used in this
 14 article that is not defined in this article shall have: 1) the meaning provided in Chapters 202 or
 15 337, Florida Statutes, as amended; or 2) if not provided in Chapters 202 or 337, Florida Statutes,
 16 the common dictionary meaning most appropriate to the context in which such word or phrase
 17 is used.

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

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

33 **Applicable codes** means uniform building, fire, electrical, plumbing, or mechanical codes
 34 adopted by a recognized national code organization or local amendments to those codes
 35 enacted solely to address threats of destruction of property or injury to persons, or local codes
 36 or ordinances adopted to implement Section 337.401(7), Florida Statutes.

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

39 **As-built plans** means a set of drawings in a format as specified by the city submitted by the

1 applicant upon completion of a project, which drawings reflect all changes to original plans
 2 made during the construction process and show the exact dimensions, geometry, and location
 3 of all elements of the work completed under the permit.

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

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

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

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

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

29 A. Information services.

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

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

32 D. The sale of advertising, including, but no limited to, directory advertising.

33 E. Bad check charges.

34 F. Late payment charges.

35 G. Billing and collection services.

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

1 **Communications services provider** means any person providing communications services
2 through the placement or maintenance of a communications facility in public rights-of-way,
3 including wireline telecommunication providers and wireless service providers.

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

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

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

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

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

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

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

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

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

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

1 **Person** means any natural person, corporation, business association, or other business entity,
 2 including but not limited to a partnership, sole proprietorship, political subdivision, public or
 3 private agency of any kind, utility, successor, or assign of any of the foregoing or any other legal
 4 entity.

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

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

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

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

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

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

1 and other services; and utility poles or other support structures.

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

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

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

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

18 A. The structure or improvements on, under, within, or adjacent to the structure on which the
19 equipment is collocated;

20 B. Wireline backhaul facilities; or

21 C. Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is
22 otherwise not immediately adjacent to or directly associated with a particular antenna.

23 **Wireless infrastructure provider** means a person who has been certified by state or federal law
24 to provide telecommunications services in the state and who builds or installs wireless
25 communication transmission equipment, wireless facilities, or wireless support structures but is
26 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.

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

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

3 **Section 23-110. Purpose.**

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

15 **Section 23-111. Applicability.**

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

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

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

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

37 **Section 23-113. Registration.**

38 Any person that owns, operates, or maintains a utility under, on, over, across, or within a public
39 rights-of-way, or that must submit an application for a permit under this article to place, install,
40 locate, relocate, construct, maintain, repair, operate, or remove any utilities under, on, over,
41 across, or within the public rights-of-way shall register with the city by submitting all of the
42 following information on a form provided by the city. Such persons shall at all times maintain

1 current and valid information with the city and shall provide any updated information to the
 2 city within 30 calendar days of any change. Registration shall establish neither a right to place
 3 or maintain nor a priority to place or maintain any utilities or associated structures or facilities
 4 within the public rights-of-way.

5 A. The name under which the registrant transacts business in the city and, if different, in the
 6 State of Florida.

7 B. The address and telephone number of the registrant's principle place of business in the
 8 State of Florida and any branch office located in the city or, if none, the name, address, and
 9 telephone number of the registrant's national headquarters and its registered agent in the
 10 State of Florida.

11 C. The name, address, electronic mail address, and telephone number of the registrant's
 12 primary contact person and, if different, the person to contact in case of an emergency.

13 D. Plans and maps describing all utilities and associated structures or facilities that are owned
 14 or used by the registrant and that are existing in the public rights-of-way at the time of
 15 registration, not including any information that has previously been provided to the city.
 16 Information shall include the location of such utilities, facilities, or structures with maps and
 17 geographical information systems or Global Positioning System (GPS) coordinates, and shall
 18 be provided in digitized format showing the two-dimensional location of the facilities based
 19 on the city's geographical database data or other format acceptable to the city.

20 E. A copy of the registrant's current certificate of authorization, public convenience and
 21 necessity, or other applicable certifications or licenses issued by the Florida Public Service
 22 Commission, the Florida Department of State, the Federal Communications Commission, or
 23 other federal authority.

24 F. Evidence that the registrant complies with all applicable conditions, including but not
 25 limited to the insurance coverage required under this article and all conditions provided in
 26 Section 23-114.

27
 28 **Section 23-114. General Conditions.**

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

33 A. *Registration.* Current and valid registration information shall be provided and maintained in
 34 accordance with Section 23-113, and updated information shall be provided to the city
 35 within 30 calendar days of any change.

36 B. *As-built plans.* No later than 60 calendar days after completion of any work permitted
 37 under this article, the permittee shall at no cost to the city provide complete as-built plans,
 38 including but not limited to horizontal and typical vertical profiles. In addition, the
 39 permittee shall provide any other information the City Manager or designee deems
 40 reasonably necessary, including information showing the location of utilities, facilities or

1 structures such as maps, geographical information systems or Global Positioning System
2 (GPS) coordinates, plats, construction documents, and drawings. Such plans shall be
3 provided in digitized format showing the two-dimensional location of the utilities based on
4 the city's geographical database data or other format acceptable to the city.

5 C. *Restoration of public rights-of-way.* Immediately after the completion of any permitted
6 work or phase thereof, permittees shall at its own expense restore the public rights-of-way
7 to as good a condition as existed immediately prior to commencement of work. Restoration
8 shall be completed in accordance with applicable city standards. If such restoration is not
9 performed in a reasonable and satisfactory manner within 30 calendar days after the
10 completion of work, the city may after written notice to the permittee cause the restoration
11 to be made with the total cost being charged to and paid for by the permittee upon
12 demand, and the city may charge the costs against any security the permittee provided in
13 accordance with this article. For one year following completion of any work permitted
14 under this section, the permittee shall guarantee its restoration work and shall correct at its
15 sole expense any restoration work that does not satisfy the requirements of this article.

16 D. *Damage to property or public road.* Permittees shall not in any way displace, damage, or
17 destroy any utilities, facilities, or other property within the public rights-of-way, and shall be
18 liable for the costs of such damage. In addition, permittees shall be responsible for any
19 damage resulting from the issuance of the permit, including damage to any public road in
20 accordance with Section 337.402, Florida Statutes. After sufficient written notice and
21 opportunity to cure and in accordance with applicable law, the city may cause any
22 necessary work to be done to remedy the damage with the total cost being charged to and
23 paid for by the permittee upon demand, and the city may charge the costs against any
24 security the permittee provided in accordance with this article.

25 E. *Interference caused by utility.* Permittees shall, at no cost to the city and in accordance with
26 Sections 337.403 and 337.404, Florida Statutes, move or remove any utility at the request
27 of the city if the city finds that the utility interferes with any work the city performs within,
28 on, over, or under any public right-of-way or interferes in any way with the convenient,
29 safe, or continuous use or maintenance of same. After sufficient written notice and
30 opportunity to cure and in accordance with applicable law, the city may cause any
31 necessary work to be done to remedy the interference 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 F. *Temporary relocations of facilities for other users of public rights-of-way.* No later than 30
35 calendar days after receiving written notice from any other permittee that has received a
36 permit from the city to use the public rights-of-way, permittees shall temporarily move or
37 relocate its utilities to allow for the permitted use. Any expense shall be paid by the
38 permittee requesting the temporary relocation, and the permittee receiving the request
39 shall have the authority to require such payment in advance.

40 G. *Conversion from aboveground to underground.* If the city has adopted an undergrounding
41 requirement that prohibits aboveground utilities or structures in public rights-of-way or
42 requires the conversion of such utilities or facilities to underground, any permittees of

- 1 aboveground utilities or structures shall, at its sole expense, convert to underground or
2 relocate as may be allowable and permitted under this article.
- 3 H. Due care. Permittees shall exercise due care and follow all safety practices required by
4 applicable law or accepted industry practices in performing work in or occupying the public
5 rights-of-way, including the use of suitable barricades, flags, lights, flares, or other devices
6 as are required by the Manual on Uniform Traffic Control Devices (FDOT) or any
7 requirements of the city to protect the public. Permittees shall not endanger the life or
8 property of other persons, or place or maintain its utilities in any manner that interferes
9 with, displaces, damages, destroys, or prohibits access to any other utilities.
- 10 I. Maintenance. Permittees shall maintain any utility permitted under this article in a safe,
11 neat, and clean condition, including but not limited to a condition reasonably free of grease,
12 rust, corrosion, excessive dirt, faded or damaged paint, or graffiti.
- 13 J. Hazardous conditions. If the city at any time reasonably determines that a utility has caused
14 a condition that is hazardous or harmful to the public health, safety, or welfare, the
15 permittee of such utility, at its own expense and without liability to or recourse against the
16 city, shall remedy all such conditions after being provided reasonable notice. If the city at
17 any time reasonably determines that an emergency situation exists and the permittee is not
18 immediately available or is unable to immediately provide the necessary remedy, then the
19 city shall have the right to remedy the situation with the total cost being charged to and
20 paid for by the permittee upon demand, and the city may charge the costs against any
21 security the permittee provided in accordance with this article.
- 22 K. Compliance with law. Permittees shall at all times be in full compliance with and abide by
23 all applicable provisions of federal, state, or local laws, codes, and regulations, including but
24 not limited to Chapter 333, Florida Statutes, and all federal regulations pertaining to airport
25 airspace protections, as well as all applicable historic preservation zoning regulations.
- 26 L. Right of inspection. The city shall have the right to inspect any work or utilities as it finds
27 necessary to ensure compliance with this article or any applicable law or regulation.
- 28 M. Police powers. Any public rights-of-way use by utilities and any permit issued under this
29 article shall be subject to the city's lawful exercise of its police power, and applicants and
30 permittees shall comply with any requirements or policies adopted by the City Manager,
31 including but not limited to any provisions included in a Public Rights-of-Way Use Manual
32 referenced in this article and any other conditions that the City Manager or designee finds
33 reasonably necessary to protect the public health, safety, and welfare.
- 34 N. No property right. Permits issued under this article do not create any property right or
35 other vested interest, or in any way limit the city's authority to otherwise manage or vacate
36 any portion of the public rights-of-way. In addition, the city reserves the right to place and
37 maintain, and permit to be placed or maintained, any utility, facility, or improvement that
38 the city deems necessary or proper in any public rights-of-way.
- 39 O. Indemnification. Permittees shall, at its sole cost and expense, indemnify, hold harmless,
40 and defend the city and its officers, employees, and agents from all liabilities, damages,

1 losses, claims, suits, causes of action, and costs or expenses of any kind or nature, including
 2 but not limited to reasonable attorneys' fees, for personal injury, death, property damage,
 3 or any other losses that arise from or are in any way connected with the construction,
 4 maintenance, occupation, placement, repair, relocation, removal, or operation of the
 5 permittee's utilities or facilities, whether any act or omission complained of is authorized,
 6 allowed, or prohibited by this article or any permit issued hereunder, except to the extent
 7 that such claims are caused by the sole negligence of the city.

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

12 2. This indemnification obligation is not limited in any way by a limitation of the amount or
 13 type of damages or compensation payable by or for the permittee under workers'
 14 compensation, disability, or other employee benefit acts, or the acceptance of insurance
 15 certificates required under this article, or the terms, applicability, or limitations of any
 16 insurance held by the permittee. The city does not waive any rights against the
 17 permittee that it may have by reason of this indemnification because of the city's
 18 acceptance of permittee's insurance policies required under this article, and this
 19 indemnification shall apply to all damages and claims for damages of any kind suffered
 20 regardless of whether such insurance policies shall have been determined to be
 21 applicable to any such damages or claims for damages.

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

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

27 P. Insurance. Permittees shall provide, pay for, and maintain satisfactory to the city the types
 28 of insurance policies and coverage limits described here. Policies shall be issued by
 29 companies authorized to do business in the State of Florida and shall have an A.M. Best,
 30 latest edition, financial strength rating of at least A+ and financial size category of at least
 31 VIII. All policies shall name the city as an additional insured with respect to all activities
 32 under this article. The required coverage must be evidenced by properly executed
 33 certificates of insurance, which shall be manually signed by the authorized representative of
 34 the insurance company and provided to the city at least annually. At least 30 calendar days'
 35 advance written notice shall be given to the city of any cancellation, intent not to renew, or
 36 reduction in the policy coverage, which notice shall be sent by registered or certified mail.
 37 The city may, in its sole discretion and only under extraordinary circumstances, allow a
 38 permittee to be self-insured for one or more lines of insurance coverage. A permittee's
 39 insurance coverage and limits shall include at least the following, and the city reserves the
 40 right to reasonably increase or decrease the following policy limits upon providing each
 41 permittee with at least 30 calendar days' written notice:

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

15 Q. *Security for performance and compliance.* Permittees shall provide security enforceable by
16 and payable to the city, in any combination of the types provided below, to secure
17 performance and compliance with all the requirements, duties, and obligations imposed by
18 this article. Security shall be provided in an amount established by the City Manager or
19 designee that is reasonably proportional to both the linear mileage and number of utilities
20 and facilities, but shall in no case be less than \$10,000 or more than \$50,000. Security shall
21 be maintained at all times during the use or occupancy of the public rights-of-way and at
22 least until the later of: 1) the effective date of transfer, sale, or assignment by the permittee
23 of all of its utilities and facilities in the public rights-of-way and provided the successor or
24 assign has provided the city with equivalent security; or 2) 12 months after the permittee's
25 removal or abandonment of all of its utilities and facilities in the public rights-of-way.

26 In the event a permittee fails to perform any requirement, duty, or obligation imposed by
27 this article, the city may recover from the security, jointly and severally, any damages or loss
28 suffered by the city as a result, including but not limited to the full amount of any
29 compensation or costs related to the construction or restoration of the public rights-of-way,
30 the removal, relocation, or abandonment of any utilities or facilities in the public rights-of-
31 way, and any damages arising from issuance of a permit under this article including
32 reasonable attorneys' fees. Should the city draw upon the security, the permittee shall
33 within 30 calendar days of written notice from the city restore the security to full required
34 amount.

- 35 1. *Surety bond.* A surety bond executed by a surety company authorized to do business in
36 the State of Florida with a minimum rating of A-VII as rated by A.M. Best Company, Inc.
37 The surety bond shall be approved by the City Attorney as to form and legality, and shall
38 provide the following: "This bond may not be canceled, or allowed to lapse, until 60
39 calendar days after receipt by the City of Gainesville, by certified mail, return receipt
40 requested, of a written notice from the issuer of the bond of intent to cancel or not to
41 renew."

1 2. Letter of credit. An irrevocable and unconditional letter of credit issued by a Florida
2 bank, in a form and by a financial institution acceptable to the City Attorney.

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

6 R. Transfers. If a permittee transfers or assigns its registration or permit incident to a sale or
7 other transfer of assets, the transferee or assignee shall be obligated to comply with the
8 terms of this article. Written notice of any transfer, sale, or assignment shall be provided to
9 the city within 30 calendar days of the effective closing date of the transfer, sale, or
10 assignment. For the transfer of registration and permitting to be effective, the transferee or
11 assignee shall comply with all requirements under this article.

12 S. Abandonment. Upon abandonment of a utility within the public rights-of-way, the
13 permittee or owner of the utility shall notify the city within 90 calendar days. In addition,
14 the city may provide notice of abandonment of a utility in the public rights-of-way to the
15 permittee or owner via certified mail at the address provided on the registration. If, within
16 30 calendar days after the date the city provided notice, the permittee or owner does not
17 respond to such notice and provide information to demonstrate that the utility is not
18 abandoned, the utility shall be deemed abandoned. The city may require that the
19 permittee or owner of an abandoned utility remove all or any portion of the same, or the
20 city may determine that such non-removal will be in the best interest of the public health,
21 safety, and welfare. If the permittee fails to remove all or any portion of an abandoned
22 utility as directed by the city within a reasonable time period as may be required by the city,
23 the city may perform such removal and charge the costs against any security provided in
24 accordance with this article. In the event that the city does not direct the removal of the
25 abandoned utility by the permittee or owner, then such permittee or owner shall be
26 deemed to consent to the alteration or removal of all or any portion of the utility as
27 directed by the city or to the transfer of ownership of the abandoned utility to the city,
28 without further obligation on the part of the city.

29
30 **Section 23-115. Compensation.**

31 A. Permit fees. Permit applications shall include any applicable permit fees adopted by the
32 City Commission. However, the city has elected not to require permit fees from
33 communications services providers that remit communications services taxes pursuant to
34 Chapter 202, Florida Statutes, for communications services provided within the city.

35 B. Small wireless facility collocation. The rate to collocate a small wireless facility on a city
36 utility pole shall be \$150 per pole annually.

37 C. Pass-through providers. Pass-through providers shall annually pay to the city \$500.00 per
38 linear mile or portion thereof of any communications facility that is placed or maintained in
39 the public rights-of-way. Such payment shall be made prior to the city issuing permits and
40 annually thereafter. The amounts charged pursuant to this section shall be based on the
41 linear miles of public rights-of-way where a communications facility is placed, not based on

1 a summation of the lengths of individual cables, conduits, strands, or fibers. The city shall
 2 discontinue charging such amounts to a person that has ceased to be a pass-through
 3 provider, and any annual amounts charged shall be reduced for a prorated portion of any
 4 12-month period during which the person remits communication services taxes imposed by
 5 the city pursuant to Chapter 202, Florida Statutes.

6 D. *General use charges.* The city shall require the maximum compensation allowed under
 7 applicable law for use and occupancy of the public rights-of-way, which shall be in addition
 8 to any compensation or fees for attaching or collocating small wireless facilities on city
 9 utility poles or otherwise using infrastructure or property owned by the city.

10
 11 **Section 23-116. Permit Application and Review Procedure.**

12 A. *Permit required.* It shall be unlawful for any person to place, install, locate, relocate,
 13 construct, maintain, repair, operate, or remove any utilities under, on, over, across, or
 14 within the public rights-of-way without first obtaining a written permit from the city in
 15 accordance with this article, with certain exemptions as described below in this subsection.
 16 Permits issued shall: 1) apply only to the areas of the public rights-of-way specifically
 17 identified in the permit; 2) include and be subject to all conditions provided in Section 23-
 18 114; and 3) remain effective for at least one year, but may be extended by the City
 19 Manager or designee for good cause or if the permittee remains in compliance with this
 20 article.

21 1. *Emergency conditions.* In the case of an emergency condition that affects the public
 22 health, safety, or welfare, including an unplanned service interruption, an owner or
 23 agent of a utility existing in the public rights-of-way may take immediate action to
 24 remedy the emergency and shall, as soon as practicable, provide notice and information
 25 to the city and submit any permit application required by this article for the work
 26 performed.

27 2. *Routine maintenance.* A person shall be allowed to perform routine maintenance on a
 28 utility existing in the public rights-of-way without a new permit for such work, provided
 29 the work does not involve any excavation, closure of a sidewalk, or closure of a vehicle
 30 lane. However, such person shall provide to the city reasonable advance written notice
 31 identifying the areas where the maintenance will occur, scope of work, and the dates
 32 and duration of the work to be performed.

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

40 4. *Micro wireless facilities.* A communications services provider that has been permitted
 41 under this article to occupy the public rights-of-way and that is remitting

1 communications service taxes imposed by the city pursuant to Chapter 202, Florida
 2 Statutes, may without a new permit for such work install, place, maintain, or replace a
 3 micro wireless facility that is suspended on cables strung between existing utility poles
 4 in compliance with this article.

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

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

13 1. *Registration.* Current and valid registration information shall be provided and
 14 maintained in accordance with Section 23-113, and updated information shall be
 15 provided to the city within 30 calendar days of any change.

16 2. *Communications services statement.* A statement describing whether the applicant
 17 provides or intends to provide communications services within the city; whether the
 18 applicant is a pass-through provider or intends to have its communications facilities pass
 19 through the city; and whether the applicant leases or intends to lease its facilities to
 20 others who will be providing communications services within the city.

21 3. *Collocation agreement.* Applications for small wireless facility collocations on a city
 22 utility pole shall include an executed collocation agreement, on a form provided by the
 23 city. Applications for small wireless facility collocations on any utility pole other than a
 24 city utility pole shall include a copy of a valid agreement for such collocation. In lieu of
 25 the entire agreement, the applicant may provide the first page and the signature page
 26 of such agreement or a notarized letter of authorization from the owner of the utility
 27 pole, providing adequate identifying information and indicating the applicant is
 28 authorized to collocate.

29 4. *Compensation.* Applications shall include all applicable compensation as provided in
 30 Section 23-115.

31 5. *Engineering and construction plans.* Applications shall include the following:

32 a. *The proposed dates, times, and locations for utility installation or work, including a*
 33 *description of the type, size, and number of proposed utilities or facilities.*

34 b. *A description of the manner in which the utility will be installed or modified,*
 35 *including anticipated construction methods or techniques, and an engineering plan*
 36 *with drawings, photographs, and cross-section schematics prepared by a licensed*
 37 *engineer or person exempt from licensing under Section 471.003, Florida Statutes,*
 38 *that is consistent with the city's Engineering Design Manual and Public Rights-of-*
 39 *Way Use Manual, and that includes: 1) the type and location of proposed utilities,*
 40 *including the approximate size and linear mileage of utilities, facilities and*

1 equipment; 2) the type of installation or work proposed for the subject utilities; 3)
 2 maps showing the routing of new construction or any work that involves any
 3 alteration to the public right-of-way; 4) maps showing the locations of any known
 4 utilities located above, on, or below the subject public rights-of-way; 5) maps
 5 showing the subject utility with distances in relation to utilities, facilities, pavement,
 6 sidewalks, driveways, ramps, trees, or other structures located within 25 feet of all
 7 work proposed in the public rights-of-way; and 6) engineering certification attesting
 8 that the proposed location of the utility work is structurally sufficient and otherwise
 9 appropriate for the proposed work. The city, at its sole discretion, may require the
 10 applicant to have the engineering and construction plans certified by an
 11 independent licensed engineer or person exempt from licensing under Section
 12 471.003, Florida Statutes, as selected by the city.

13 c. Any trees or landscaping that may be impacted by the work proposed, which shall
 14 be regulated under applicable provisions of the city's Code of Ordinances.

15 d. Maintenance of traffic or temporary sidewalk closure plan for any disruption of the
 16 public rights-of-way.

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

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

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

29 1. *Notice of application deficiency.* Within 14 calendar days after the date of filing an
 30 application, unless mutually extended by the city and applicant, the City Manager or
 31 designee shall determine whether the application is complete. If an application is
 32 deemed incomplete, the City Manager or designee shall notify the applicant by
 33 electronic mail and specifically identify the missing information. An application shall be
 34 deemed complete if the City Manager or designee fails to notify the applicant otherwise
 35 within 14 calendar days after the date of filing an application.

36 2. *Small wireless facilities – request for alternative location.* Within 14 calendar days after
 37 the date of filing an application to collocate a small wireless facility on a city utility pole,
 38 the City Manager or designee may request that the proposed location of the small
 39 wireless facility be moved to another location and be placed on an alternative city utility
 40 pole. The city and applicant may negotiate the alternative location for 30 calendar days
 41 after the date of the request. At the conclusion of this negotiation period, if the

1 alternative location is accepted by the applicant, the applicant shall notify the city of
 2 such acceptance and the application shall be deemed granted as it relates to any new
 3 location for which there is agreement and all other locations in the application. If an
 4 agreement is not reached, the applicant shall notify the city of such non-agreement and
 5 the city must grant or deny the original application within 90 calendar days after the
 6 date the application was filed. All notices shall be in writing provided by electronic mail.

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

11 4. *Notice of approval or denial.* The City Manager or designee shall approve an application
 12 unless it is incomplete or it does not comply with the requirements of this article, and
 13 notice of approval shall be provided to the applicant by electronic mail. If an application
 14 is denied, the City Manager or designee shall notify the applicant by electronic mail on
 15 the day the application is denied with specification as to the basis of denial, including
 16 the specific code provisions on which the denial is based. The applicant may cure the
 17 deficiencies identified and resubmit the application within 30 calendar days after notice
 18 of the denial is sent to the applicant. The City Manager or designee shall approve or
 19 deny the revised application within 30 calendar days after receipt or the application is
 20 deemed approved. Any subsequent review shall be limited to the deficiencies cited in
 21 the denial.

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

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

30 A. *General provisions.* All applications shall meet the following criteria:

- 31 1. Shall not materially interfere with the safe operation of traffic control equipment.
- 32 2. Shall not materially interfere with sight lines or clear zones for transportation,
 33 pedestrians, or public safety purposes, as provided in the city's Public Works Design
 34 Manual.
- 35 3. Shall not materially interfere with compliance with the Americans with Disabilities Act,
 36 or similar federal or state standards regarding pedestrian access or movement.
- 37 4. Shall not materially fail to comply with the 2010 edition of the Florida Department of
 38 Transportation Utility Accommodation Manual.
- 39 5. Shall comply with applicable provisions of the Florida Building Code.

- 1 6. Shall comply with applicable federal, state, and city regulations pertaining to airport
2 airspace protections.
- 3 7. Shall comply with applicable historic preservation zoning regulations.
- 4 8. Shall comply with the requirements and conditions of this article, including but not
5 limited to: 1) the registration requirements under Section 23-113; and 2)
6 documentation agreeing to and providing the general permit conditions in Section 23-
7 114, including indemnity, insurance, and security for performance and compliance.
- 8 9. *Power to restrict area.* With the exception of small wireless facility collocation as
9 provided in this section and to the extent consistent with applicable law, the City
10 Manager or designee shall have the power to limit or prohibit the placement of new or
11 additional utilities within the public rights-of-way in order to safeguard the public
12 health, safety, and welfare, including but not limited to each of the following situations:
- 13 a. When there is insufficient space to accommodate a request.
- 14 b. To protect existing utilities in the public rights-of-way.
- 15 c. To allow for city plans for public improvements or development projects determined
16 by the city to be in the public interest.
- 17 B. *Undergrounding.* All installations of new utilities or facilities permitted under this article
18 shall be installed underground in accordance with the criteria in this subsection. However,
19 this subsection shall not apply to small wireless facility collocation as provided in this
20 section or to the addition of wireline facilities on aboveground utility infrastructure that at
21 the time of application already exists in the public rights-of-way.
- 22 1. All work shall be in accordance with applicable city policies and engineering standards,
23 including the Public Works Design Manual, any city Public Rights-of-Way Use Manual,
24 and any city Dig-Once Policy.
- 25 2. Utilities shall be collocated underground in exiting conduit when applicable or, if
26 unavailable, space shall be made available in any new conduit for other applicants
27 consistent with federal requirements.
- 28 3. All work shall be in accordance with all applicable standards and requirements of the
29 following:
- 30 a. The Florida Department of Transportation Utilities Accommodation Guide.
- 31 b. The State of Florida Manual of Uniform Minimum Standards for Design Construction
32 and Maintenance for Streets and Highways.
- 33 c. The Trench Safety Act, Chapter 553, Florida Statutes.
- 34 d. The Underground Facility Damage Prevention and Safety Act, Chapter 556, Florida
35 Statutes.
- 36 e. The National Electrical Code or the ANSI National Electric Safety Code.

- 1 f. The “Safety Rules for the Installation and Maintenance of Electrical Supply and
 2 Communication Lines” established by the Department of Commerce, Bureau of
 3 Standards of the United States.
- 4 g. Appropriate participation in the applicable notification system for subsurface
 5 installations, such as Sunshine State One-Call or any successor alert and warning
 6 system.
- 7 C. Small wireless facility collocation. Small wireless facilities shall be allowed to collocate on
 8 city utility poles, as that term is defined in this article, or city wireless support structures
 9 that at the time of application already exist in the public rights-of-way, provided the
 10 application meets the criteria in this subsection. In addition, small wireless facilities may be
 11 collocated on existing utility poles that are not city utility poles, such as utility poles owned
 12 by Gainesville Regional Utilities (GRU) or privately-owned utility poles, provided that such
 13 collocation is at the sole discretion of and has the permission of the owner of the non-city
 14 utility pole and provided that the application meets the criteria in this subsection. Any
 15 utility pole that requires pole replacement to support collocation under the make-ready
 16 provisions of this subsection shall be considered an existing utility pole for purposes of this
 17 subsection.
- 18 1. Design standards. Small wireless facilities shall meet the following standards:
- 19 a. Collocation shall only be allowed on utility poles with a height of greater than 15
 20 feet, and shall not be allowed on any horizontal structure to which signal lights or
 21 other traffic control devices are attached.
- 22 b. Small wireless facilities and all associated equipment shall not be installed at ground
 23 level but shall be installed either underground or at least eight feet above the
 24 ground-level of the supporting pole or structure.
- 25 c. A small wireless facility, including any attached antennas, shall not extend in height
 26 greater than 10 feet above the utility pole or structure upon which it is to be
 27 collocated.
- 28 d. A slim design shall be used wherein the top mounted antenna does not exceed the
 29 diameter of the supporting pole or structure at the level of the antenna attachment
 30 by more than three inches on any edge, and any side-mounted enclosures do not
 31 extend more than 30 inches beyond the exterior dimensions of the supporting pole
 32 or structure measured from the edge of the pole or structure to the outermost
 33 surface of the side-mounted enclosure.
- 34 e. Small wireless facilities and all associated equipment shall be: 1) located within the
 35 utility pole or wireless support structure; or 2) covered with a shroud that conforms
 36 to the pole or structure’s design, texture, and color.
- 37 f. No signage may be located on small wireless facilities unless provided for in the sign
 38 regulations in the city’s Land Development Code, which allows for public safety-
 39 based information such as emergency contact information.

1 g. Small wireless facilities shall have no lights or illumination, unless required by
 2 federal, state, or local law. This provision shall not apply to lights that are otherwise
 3 associated with a supporting utility pole and that exist separately from the small
 4 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 be completed
 10 within 60 calendar days after written acceptance of the good faith estimate by the
 11 applicant. Alternatively, the city may require the applicant to provide a make-ready
 12 estimate at the applicant's expense for the work necessary to support the small
 13 wireless facility, including pole replacement, and perform the make-ready work. The
 14 city shall not condition or restrict the manner in which the applicant obtains,
 15 develops, or provides the estimate or conducts the make-ready work subject to
 16 usual construction restoration standards for work in the public right-of-way.

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

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

29
 30 **Section 23-118. Appeals.**

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

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

1 who has filed a written request for such notification of the date when the matter will be
 2 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 be rendered in writing no later than 20 calendar days after
 8 the conclusion of the hearing, and shall be an order recommending that the City Manager
 9 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 calendar days after the date of the written order of
 12 the mediator. The decision of the City Manager or designee shall be final and may be
 13 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 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 state that the continued violation may be cause for
 4 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 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 be deemed abandoned and the city may
 19 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 be deemed excused and no penalties or sanctions
 23 shall be imposed as a result thereof; provided, however, that such person uses all
 24 practicable means to expeditiously cure or correct any such inability to perform or comply.
 25 For purposes of this article, causes or events not within a person's control shall include,
 26 without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires, and other
 27 natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and
 28 restraints imposed by order of a governmental agency or court. Causes or events within a
 29 person's control, and thus not falling within this provision, shall include, without limitation,
 30 financial inability to perform or comply, economic hardship, and misfeasance, malfeasance
 31 or nonfeasance by any of the person's directors, officers, employees, contractors, or agents.

34 **SECTION 6.** It is the intent of the City Commission that the provisions of Sections 1 through 5 of
 35 this ordinance shall become and be made a part of the Code of Ordinances of the City of
 36 Gainesville, Florida, and that the sections and paragraphs of the Code of Ordinances may be
 37 renumbered or relettered in order to accomplish such intent.

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

6 **SECTION 8.** All ordinances or parts of ordinances in conflict herewith are to the extent of such
 7 conflict hereby repealed.

8 **SECTION 9.** This ordinance shall become effective immediately upon adoption.

9

10 **PASSED AND ADOPTED** this ____ day of _____, 2018.

11

12

13

14

15

16

17

 LAUREN POE
 MAYOR

18 Attest:

Approved as to form and legality:

19

20

21

 OMICHELE GAINEY
 CLERK OF THE COMMISSION

 NICOLLE M. SHALLEY
 CITY ATTORNEY

24

25 This ordinance passed on first reading this ____ day of _____, 2018.

26 This ordinance passed on second reading this ____ day of _____, 2018.