

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 e. ~~— 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 **ARTICLE I. IN GENERAL**

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

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

14 **ARTICLE ~~V~~, IV. CONSTRUCTION AND REMOVAL OF DRIVEWAYS**

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

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

17  
18  
19  
20  
21  
22  
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 **Section 23-104. Definitions.**

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

30  
31 **Right-of-way** means public ways, public highways, streets, alleys, sidewalks, thoroughfares,  
32 **medians, or walkways of which the city has jurisdiction.**  
33  
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