

LEGISLATIVE #

160401A

ORDINANCE NO. 160401

An ordinance of the City of Gainesville, Florida, enacting a temporary moratorium to prohibit the filing, acceptance or processing of any permit, development order, or any other official action of the City having the effect of permitting or allowing the construction of wireless communication facilities in the public right-of-way within the city limits; providing a severability clause; providing repealing clauses; and providing an effective date.

WHEREAS, to protect the public health, safety and welfare of its citizens, the City has adopted several ordinances, including regulation of the location, design and operation of wireless communication facilities, towers, and antennae (Section 30-98 of Land Development Code), the registration of utilities within the rights-of-way (Chapter 23, Article VI), the temporary obstruction of the public rights-of-way (Chapter 23, Article III), and utility installations within the public rights-of-way (Section 10.14 of the City of Gainesville Engineering and Design Manual); and

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

WHEREAS, the communication 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 larger data and voice communications; and

WHEREAS, a new network of wireless communications infrastructure has emerged comprised of a series of small individual antenna (“Small Cells”), or nodes (“Distributed Antenna Systems” or “DAS”), and wireless backhaul networks that are linked to a larger hub site; and

WHEREAS, the City has been contacted by two companies requesting permission to

1 place their wireless communication facilities within the public rights-of-way within the City; and

2 **WHEREAS**, the current city ordinances do not specifically address the placement of
3 wireless communication facilities within the public rights-of-way; and

4 **WHEREAS**, additionally since the adoption of the City’s codes, the Federal
5 Communication Commission has adopted new rules addressing wireless communication
6 facilities; and

7 **WHEREAS**, these changes in federal regulations, the emerging technology, and the new
8 communication infrastructure require a careful review by the City of its policies and ordinances
9 associated with regulation of cell towers, antennae, and other wireless communication facilities;
10 and

11 **WHEREAS**, the City Commission determines that it is in the best interest of its
12 residents, businesses and visitors to enact sufficient regulations to protect the public health,
13 safety and welfare; and

14 **WHEREAS**, a temporary moratorium on the acceptance of applications for, the
15 processing of, and the issuance of right-of-way use permits, development permits, site plan
16 approvals or any other official action of the City of Gainesville permitting or having the effect of
17 allowing the construction of wireless communication facilities in the public rights-of-way within
18 the City will allow time to review, study, hold public hearings, and prepare and adopt an
19 amendment or amendments to the City of Gainesville Comprehensive Plan and/or Code of
20 Ordinances to address this use; and

21 **WHEREAS**, at least 10 days’ notice has been given of the public hearing once by
22 publication in a newspaper of general circulation notifying the public of this proposed ordinance
23 and of a public hearing in the City Commission meeting room, first floor, City Hall in the City of

1 Gainesville; and

2 **WHEREAS**, the public hearings were held pursuant to the published notice described at
3 which hearings the parties in interest and all others had an opportunity to be and were, in fact,
4 heard.

5 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
6 **THE CITY OF GAINESVILLE, FLORIDA:**

7 **Section 1. Findings.** The City Commission adopts the foregoing findings.

8 **Section 2. Purpose.**

9 (a) The purpose of this ordinance is to enable the City of Gainesville sufficient time
10 to review, hold public hearings and adopt an amendment or amendments to the City of
11 Gainesville Code of Ordinances, relating to the location, design and operation of wireless
12 communication facilities within the public rights-of-way within the City. The City will not
13 approve any application or issue any permits authorizing the construction of wireless
14 communication facilities within the public rights-of-way, except as provided in this ordinance, or
15 as may otherwise be required by applicable law.

16 (b) It is further the purpose of this Ordinance to fulfill the City's constitutional charge
17 and statutory obligations to protect and preserve the public health, safety and welfare of the
18 citizens of the City of Gainesville, regarding whether wireless communications facilities should
19 be permitted within the public rights-of-way; and if permitted within the public rights-of-way,
20 the types of regulations to be imposed upon placement of wireless communication facilities; and
21 thus defer official government action until the City of Gainesville has properly held public
22 hearings and adopted amendments to the City of Gainesville Code of Ordinances, as necessary.

1 (c) To fulfill the City’s obligations to continue uninterrupted provision of public
2 works, fire safety, law enforcement, emergency management, emergency medical services, and
3 municipal water, wastewater, gas, and electric utility operation, it is clarified that this
4 moratorium will not apply to the construction, installation, maintenance and replacement of
5 facilities within the public rights-of-way that are for governmental purposes.

6 **Section 3. Definitions.**

7 “*Wireless communication facility*” means any equipment or facility used for the
8 transmission or reception of wireless communications and located on public right-of-way. This
9 term includes but is not limited to wireless support structures, antennas, cabling, regular and
10 backup power supplies, and comparable equipment, regardless of technological configuration
11 (including Distributed Antenna Systems (DAS) and small cell networks. For purposes of this
12 Ordinance, the term shall include communication towers and all wireless communications
13 facilities as defined in Section 365.172(3)(gg), Florida Statutes, or facilities to provide wireless
14 communication services as listed at <https://www.fcc.gov/general/wireless-services>.

15 “*Communication Tower*” means a building or ground-mounted tower which as measured
16 from the finished grade of the property (1) is greater than thirty-five feet in height (2) does not
17 exceed 300 feet in height (including antenna), and (3) is built for the sole or primary purpose of
18 supporting any Federal Communications Commission (FCC) licensed antennas and their
19 associated facilities. The term communication tower shall not include amateur radio operators’
20 equipment licensed by the FCC. Communication towers are generally described as either
21 Monopole (freestanding), Guyed (anchored with guy wires), or Self Supporting (square,
22 triangular or pyramidal in plan view and constructed of steel lattice, tubular steel, reinforced
23 concrete, or wood).

1 “*Governmental Purposes*” means, but is not limited to public works, fire safety, law
2 enforcement, emergency management, emergency medical services or municipal water,
3 wastewater, gas, and electric utility operations.

4 **Section 4. Imposition of Moratorium.**

5 For a period commencing after 6:00 p.m. on October 6, 2016, and ending at 11:59 p.m.
6 on April 6, 2017:

7 (a) No application for permit, authorization or any other official action of the City
8 having the effect of permitting or allowing the construction of wireless communication facilities
9 in the public rights-of-way within the city limits, may be filed, accepted or processed or
10 approved by the City of Gainesville, except as may be required by applicable law. To the extent
11 such an application is submitted, the City staff is authorized to take action to deny such
12 application during the term of this moratorium within such time frame as may be required by
13 applicable law.

14 (b) No Zoning Compliance Permit may be issued by the City of Gainesville which
15 would authorize the construction of a wireless communication facility within the public rights-
16 of-way.

17 (c) The imposition of the moratorium is not intended to affect nor does it effect:
18 wireless communication facilities serving governmental purposes.

19 **Section 5.** If any word, phrase, clause, paragraph, section or provision of this ordinance
20 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
21 finding shall not affect the other provisions or applications of the ordinance which can be given
22 effect without the invalid or unconstitutional provisions or application, and to this end the
23 provisions of this ordinance are declared severable.

