

LEGISLATIVE #

170179A

ORDINANCE NO. 170179

An ordinance of the City of Gainesville, Florida repealing and replacing Article VI, Chapter 23, of the City Code and setting forth requirements for the registration, permitting, insurance coverage, indemnification, construction bonds, security funds, force majeure, abandonment, liability, warranties and compensation for placing or maintaining communications service facilities and wireless support structures in the public rights-of-way; providing for severability, repealing clause; and an effective date.

WHEREAS, to promote the public health, safety and general welfare of its citizens, the City has adopted several ordinances, including Article VI, Chapter 23, of the City Code, entitled Registration Requirements For Use Of Public Rights-Of-Way By Communications Services Providers And Other Wireline Users Of Rights-Of-Way; 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, in 2017, Florida passed HB 687 which *inter alia*, amends Section 337.401, *Florida Statutes*, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act (“Wireless Deployment Act”), effective July 1, 2017, to address municipalities’ regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures; and

WHEREAS, the Wireless Deployment Act provides that municipalities may require a registration process in accordance with Section 337.401(3), *Florida Statutes*, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of

1 communications facilities in the right-of-way related to registration, permitting, insurance
2 coverage, indemnification, performance bonds, security funds, force majeure, abandonment,
3 municipality liability or municipal warranties.

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

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

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

13 **WHEREAS**, the current City Code does not contain requirements for registration,
14 insurance, permitting, insurance coverage, indemnification, performance bonds, security funds,
15 force majeure, abandonment, municipality liability or municipal warranties that address
16 sufficiently the placement or maintenance within the public rights-of-way for wireline and
17 wireless communications facilities or wireless support structures; and

18 **WHEREAS**, the City Commission determines that it is in the best interest of its
19 residents, businesses and visitors to enact sufficient regulations to protect the public health,
20 safety and welfare by exercising the City’s authority over the placement and maintenance of such
21 wireless facilities and infrastructure to the maximum extent under applicable law; and

22 **WHEREAS**, it is the intent of the City to require that the placement or maintenance of
23 any wireline or wireless communications facility or wireless support structure in the public

1 rights-of-way must have an effective registration which satisfies the requirements set forth herein
2 for such registration, to the extent not inconsistent with applicable federal and state laws and
3 regulations.

4 **WHEREAS**, at least 10 days' notice has been given of the public hearing once by
5 publication in a newspaper of general circulation notifying the public of this proposed ordinance
6 and of a public hearing in the City Commission meeting room, first floor, City Hall in the City of
7 Gainesville; and

8 **WHEREAS**, the public hearing was held pursuant to the published notice described at
9 which hearing the parties in interest and all others had an opportunity to be and were, in fact,
10 heard.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
12 **THE CITY OF GAINESVILLE, FLORIDA:**

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

14 **Section 2.** Article VI, Chapter 23 of the City Code, specifically Sections 23-104 through
15 and including 23-111, are hereby repealed in their entirety and replaced with the following:

16 Section 23-104. **Definitions.**

17 For the purpose of this section, the following terms, phrases, words and derivations shall
18 have the meanings given herein. When not inconsistent with the context, words used in the
19 present tense include the future tense, words in the plural number include the singular number,
20 and words in the singular number include the plural number. The words "shall" and "will" are
21 mandatory, and "may" is permissive. Words not otherwise defined herein or in any permit that
22 might be granted hereunder shall be given the meaning set forth in the Communications Act of
23 1934, 47 USC 151 et seq., as amended (collectively the "Communications Act"), and, if not

1 defined therein, as defined by the Advanced Wireless Infrastructure Deployment Act, Section
2 337.401, Florida Statutes, and, if not defined therein, be construed to mean the common and
3 ordinary meaning.

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

10 “*City Manager*” means the City of Gainesville, FL, City Manager or his/her designee.

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

17 “*Communications service provider*” shall refer to any person making available or
18 providing communications services, as defined herein, or a wireless infrastructure provider.

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

24 “*Law*” means any local, state or federal legislative, judicial or administrative order,

1 certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline
2 or other requirements, as amended, now in effect or subsequently enacted or issued including,
3 but not limited to, the Communications Act of 1934, 47 USC 151 et seq. as amended, all orders,
4 rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or
5 the governing state authority pursuant thereto, Section 337.401, *Florida Statutes*, as amended,
6 and all state statutes and regulations issued by state agencies pursuant thereto.

7 “*General Manager*” means the General Manager of Gainesville Regional Utilities, or his
8 or her designee.

9 “*Place*” or “*maintain*” or “*placement*” or “*maintenance*” or “*placing*” or “*maintaining*”
10 means to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate
11 or relocate. A communications services provider that owns or exercises physical control over
12 communications facilities in public rights-of-way, such as the physical control to maintain and
13 repair, is "placing or maintaining" the facilities. To the extent required by applicable law, a party
14 providing service only through resale or only through use of a third party's unbundled network
15 elements is not "placing or maintaining" the communications facilities through which such
16 service is provided. The transmission and receipt of radio frequency signals through the airspace
17 of the public rights-of-way is not placing or maintaining facilities in the public rights-of-way.

18 “*PSC*” means the Florida public service commission.

19 “*Public rights-of-way*” means the surface, the airspace above the surface and the area
20 below the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement,
21 or any other public way for which the City is the authority that has jurisdiction and control and
22 may lawfully grant access to such property pursuant to applicable law. The term "public rights-
23 of-way" shall not include any real or personal City property except as described above and shall
24 not include City buildings, fixtures, or other structures or improvements, regardless of whether

1 they are situated in the public rights-of-way.

2 “*Registrant*” or “*facility owner*” means a communications service provider or other
3 person which seeks to use or occupy the public rights-of-way that has registered with the City in
4 accordance with the provisions of this article.

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

7 “*Utility pole*” means a pole or similar structure that is used in whole or in part to support
8 communications facilities or for electric distribution, lighting, traffic control, signage, or similar
9 function. The term includes the vertical support structure for traffic lights but does not include a
10 horizontal structure to which signal lights or other traffic control devices are attached and does
11 not include a pole or similar structure 15 feet in height or less unless the City issues a permit for
12 the construction of such pole. The term does not include a utility pole owned by Gainesville
13 Regional Utilities, a utility pole used to support City-owned or operated electric distribution
14 facilities, or any other utility pole exempt from such term pursuant to Section 337.401, *Florida*
15 *Statutes*.

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

19 Section 23-105. **Registration**

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

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

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

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

14 (3) Evidence of the insurance coverage required under this article and
15 acknowledgment that registrant has received and reviewed a copy of this article;

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

18 (5) A security fund in accordance with this article.

19 (c) The City will review the information submitted by the applicant. Such review will
20 be by the City Manager. If the applicant submits information in accordance with subsection 23-
21 105(b), the registration shall be effective and the City shall notify the applicant of the
22 effectiveness of registration in writing. The City shall notify the applicant of the non-
23 effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so
24 reply to an applicant within 45 days after receipt of registration information from the applicant or

1 within such time frame as required by applicable law. Upon notification of the non-effectiveness
2 of the registration, nothing herein shall preclude the applicant from filing a subsequent
3 application addressing the basis for the non-effectiveness. If the applicant disputes the
4 determination of non-effectiveness for the particular application submitted, the applicant may file
5 an appeal of the City Manager's determination as set forth within this Ordinance. Failure to
6 comply with the appeals article for the particular application found to be non-effective shall be
7 sufficient grounds for the City to reject that particular application in the future. A registrant may
8 cancel a registration upon written notice to the City noticing that it will no longer maintain
9 facilities in the public rights-of-way and will no longer need to obtain permits to perform work in
10 public rights-of-way. Within 30 days of any change in the information required to be submitted
11 pursuant to subsection 23-105(b), a registrant shall provide updated information to the City.

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

21 (e) Unless specifically prohibited by applicable law, each application for registration
22 or transfer shall be accompanied by a nonrefundable application fee in the amount established by
23 the City Commission. The fee amount shall approximate the City's costs and expenses incurred
24 in connection with approving the registration or transfer. If the application fee is insufficient to

1 cover all costs or expenses incurred by the City in connection with processing the registration,
2 the applicant shall reimburse the City for any such costs and expenses in excess of the
3 application fee. Fee amounts may be amended from time to time, by resolution of the City
4 Commission, for the purpose of complying with this provision.

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

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

19 Section 23-106. **Compensation.**

20 (a) A registrant that places or maintains communications facilities in the public
21 rights-of-way shall be required to pay compensation to the City for access to the public rights-of-
22 way as required by applicable law and ordinances of the City. Compensation for access to the
23 public rights-of-way shall be in addition to any compensation or fees for attaching or collocating
24 communications facilities on City utility poles or otherwise using infrastructure or property

1 owned by the City. The City Commission hereby authorizes the City Manager to impose the
2 maximum fee allowed under applicable law for collocation or use of City property.
3 Compensation for access to the public rights-of-way shall be in addition to any fees or
4 compensation pursuant to pole attachment agreements or other agreements between a registrant,
5 and the City, which agreement shall be subject to the approval of the City Commission.

6 (b) A registrant pass-through provider that places or maintains communications
7 facilities in the public rights-of-way and does not remit communications services tax imposed by
8 the City pursuant to Chapter 202, *Florida Statutes*, as a condition for occupying or using the
9 public rights-of-way shall pay to the City annually \$500.00 per linear mile or portion thereof, of
10 any communications facility that is physically located in the public rights-of-way. Such payment
11 shall be made prior to the City issuing permits and annually thereafter. A registrant shall provide
12 the City with information as to the locations and linear miles or portions thereof of its facilities.
13 Any misrepresentation of a material fact that has the effect of reducing or avoiding the
14 payment of fees is expressly prohibited and will be cause for revocation of the registration, as
15 well as subject the registrant to prosecution and penalties as provided in the City Code.

16 (c) Notwithstanding anything herein to the contrary, the City shall at all times hereby
17 require the maximum compensation allowed under applicable law for use of the public rights-of-
18 way.

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

20 (1) The fee payments to be made pursuant to this article shall not be deemed
21 to be in the nature of a tax;

22 (2) Such fee payments shall be in addition to any and all taxes of a general
23 applicability;

24 (3) A registrant shall not have or make any claim for any deduction or other

1 credit of all or any part of the amount of said fee payments from or against any of said City taxes
2 or other fees or charges of general applicability which registrant is required to pay to the City,
3 except as required by law; and

4 (4) The fee specified herein is the consideration for use of the public rights-of-
5 way, including all public easements, for the purpose of placing and maintaining a
6 communications facility. A registrant shall pay applicable fees for placement or maintenance of
7 a communications facility for so long as the registrant owns any such facility and such facility
8 remains in the public rights-of-way.

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

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

17 (b) Upon reasonable request, a registrant shall provide the following documents to the
18 City as received or filed:

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

22 (2) Any request for protection under bankruptcy laws, or any judgment related
23 to a declaration of bankruptcy.

24 (3) Nothing in this article shall affect the remedies the registrant has available

1 under applicable law.

2 (c) In addition, the City may, at its option, and upon reasonable notice to the
3 registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.

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

6 Section 23-108. **Underground installation; relocation.**

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

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

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

1 time within which a registrant shall remove or relocate a communications facility, for good cause
2 shown.

3 (d) The registrant shall not in any way displace, damage, or destroy any facilities, or
4 other property within the public rights-of-way including, but not limited to, electric, gas, sewer,
5 water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging to
6 the City. The registrant shall be liable to the City for the costs of any repairs made necessary by
7 any such displacement, damage or destruction, of facilities belonging to the City, and the
8 registrant shall pay such costs upon demand. In the case of an emergency, the City may
9 commence repairs without any prior notice to the registrant. The term emergency shall mean a
10 condition that may affect the public's health, safety or welfare in the sole determination of the
11 City. In the event of an emergency, the City may cause the repairs to be made at the facility's
12 owner expense, utilizing City employees, agents or contractors, charge any and all costs, and
13 require reimbursement within 14 calendar days after the submission of the bill by the City to the
14 registrant. After 30 days, the City may obtain reimbursement from the security fund. In all other
15 nonemergency circumstances, the registrant shall be given prior written notice. If such repairs
16 are not performed in a reasonable and satisfactory manner within the 14 calendar days after
17 receiving notice, the City may, cause the repairs to be made at the facility's owner expense,
18 utilizing City employees, agents or contractors, charge any and all costs, and require
19 reimbursement within 30 days after the submission of the bill by the City to the registrant. Again,
20 after 30 days, the City may obtain reimbursement from the security fund.

21 (e) Subject to F.S. § 337.403, whenever an order of the City requires such removal or
22 change in the location of any communications facility from the public rights-of-way, and the
23 facility owner fails to remove or change the same at its own expense to conform to the directive
24 within the time stated in the notice, the City may proceed to cause the communications facility to

1 be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a)—(c), shall
2 be paid out of any money available therefor, and such expense shall be charged against the
3 owner of the communications facility and levied, collected and paid to the City.

4 (f) Subject to F.S. § 337.404, whenever it shall be necessary for the City to remove
5 or relocate any communications facility, the owner of the communications facility, or the owner's
6 chief agent, shall be given written notice of such removal or relocation and requiring the
7 payment of the costs thereof, and shall be given reasonable time, which shall not be less than 10
8 nor more than 20 days in which to file an appeal with the a special magistrate selected by the
9 City to contest the reasonableness of the order. Upon receipt of a written appeal, the special
10 magistrate shall set the matter for hearing within 30 working days. Should the owner or the
11 owner's representative not appear, the determination of the cost to the owner shall be final, in
12 accordance with F.S. § 337.404.

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

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

22 (i) Upon abandonment of a facility within the public rights-of-way of the City, the
23 owner of the facility shall notify the City within 90 days. The City may provide notice of
24 abandonment of a facility in the public rights-of-way. If the facility owner does not respond to

1 such notice and provide information to demonstrate that the facility is not abandoned within
2 thirty (30) calendar days, the facility shall be deemed abandoned. The City may require that the
3 facility owner of an abandoned facility shall remove all or any portion of the facility, or the City
4 may determine that such non-removal will be in the best interest of the public health, safety and
5 welfare. In the event that the City does not direct the removal of the abandoned facility by the
6 owner of the facility, then such owner, shall be deemed to consent to the alteration or removal of
7 all or any portion of the facility as directed by the City or to the transfer of ownership of the
8 abandoned facility to the City, without further obligation on the part of the City.

9 (j) A registrant shall, on the request of any person holding a permit issued by the
10 City, temporarily raise or lower its communications facilities to permit the work authorized by
11 the permit. The expense of such temporary raising or lowering of facilities shall be paid by the
12 person requesting same, and the registrant shall have the authority to require such payment in
13 advance. The registrant shall be given not less than 30 days' advance notice to arrange for such
14 temporary relocation.

15 Section 23-109. **Use of rights-of-way.**

16 (a) A facility owner agrees at all times to comply with and abide by all applicable
17 provisions of the state statutes and local laws including, but not limited to, applicable zoning
18 regulations not inconsistent with state and federal laws.

19 (b) Except in the case of an emergency, no communications service provider shall
20 construct any facility on, over, above, along, upon, under, across, or within any public right-of-
21 way which disrupts the public rights-of-way without first filing an application with and obtaining
22 a permit from the City therefor, pursuant to applicable permitting requirements of the City, and
23 other applicable City Code requirements, except as otherwise provided in this article. The City
24 has determined not to charge permit application fees to communications services providers that

1 remit communications services taxes for communications services provided within the City
2 pursuant to Chapter 202, *Florida Statutes*. The City reserves the right to charge applicable fees
3 for permit applications to all other persons seeking to perform construction within the public
4 rights-of-way to the extent not inconsistent with the City Code and applicable law. The term
5 "emergency" means a condition that affects the public's health, safety or welfare, which includes
6 unplanned out of service condition of a pre-existing service. Registrant shall still be required to
7 provide prior notice to the City in the event of an emergency. For the purposes of the notice
8 requirements herein, the City shall provide the registrant with a City contact. The City may
9 waive the permit requirement in nonemergency cases where there will be no disruption of the
10 public rights-of-way. When work is performed on an emergency basis, the registrant must still
11 apply for a permit by the following business day in accordance with public works department
12 permitting guidelines. In all instances, the registrant shall restore all damaged property and
13 indemnify the City from any and all damages caused by the registrant's emergency work. The
14 City may waive the permit requirement in cases where there will be no disruption of the public
15 rights-of-way.

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

20 (1) An engineering plan, consistent with the City's Engineering Design
21 Manual, and signed and sealed by a state registered professional engineer or prepared by a
22 person who is exempt from such registration requirements as provided in F.S. § 471.003
23 identifying the location of the proposed facility, including a description of the facilities to be
24 installed, where it is to be located, and the approximate size of facilities and equipment that will

1 be located in, on, over, or above the public rights-of-way, and the linear mileage of such facilities
2 for the purpose of determining compensation to be paid to the City.

3 (2) Maps showing the routing of new construction that involves an alteration
4 to the surface or subsurface of the public right-of-way. A registrant may not begin construction
5 until the plans and drawings have been approved in writing or electronically by the director of
6 public works and a right-of-way use permit has been issued.

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

9 (4) The time required to place the facility.

10 (5) A maintenance of traffic plan for any disruption of the public rights-of-
11 way.

12 (6) Information on the ability of the public rights-of-way to accommodate the
13 proposed facility, if available (such information shall be provided without certification as to
14 correctness, to the extent obtained from other users of the public rights-of-way).

15 (7) If appropriate, given the facility proposed, an estimate of the cost of
16 restoration to the public rights-of-way.

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

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

22 (d) The City shall have the power to prohibit or limit the placement of new or
23 additional facilities within the public rights-of-way, if there is insufficient space to accommodate
24 all of the requests to occupy or use the rights-of-way, for the protection of existing facilities in

1 the public rights-of-way, where such facilities will interfere with clear zones, public safety or the
2 Americans with Disability Act requirements, or for City plans for public improvements or
3 development projects which have been determined by the City to be in the public interest.

4 (1) In case of conflict or interference between the facilities of different
5 registrants, the registrant whose facilities were first permitted shall have priority over a
6 competing registrant's use of the public rights-of-way.

7 (2) There may be from time to time within the City various easements and
8 streets which the City does not have the unqualified right to authorize registrant to use; therefore,
9 the City does not warrant or represent as to any particular easement, rights-of-way, or portion of
10 a right-of-way or easement, that it has the right to authorize the registrant to install or maintain
11 portions of its facilities therein, and in each case the burden and responsibility for making such
12 determination in advance of the installation shall be upon the registrant. The City shall not be
13 required to assume any responsibility for the securing of any rights-of-way, easements or other
14 rights which may be required by the registrant for the installations of its facilities, nor shall the
15 City be responsible for securing any permits or agreements with other persons or utilities,
16 including utilities operated or owned by the City.

17 (3) Nothing in this article shall affect the City's authority to add, vacate, or
18 abandon public rights-of-way, and the City makes no warranties or representations regarding the
19 availability of any added, vacated or abandoned public rights-of-way for communications
20 facilities.

21 (4) Upon request of the City, a registrant may be required to coordinate the
22 placement or maintenance of facilities under a permit with any other work, construction,
23 installation or repairs that may be occurring or scheduled to occur within a reasonable time frame
24 in the subject public rights-of-way, and registrant may be required to reasonably alter its

1 placement or maintenance schedule as necessary so as to minimize disruptions and disturbance
2 in the public rights-of-way.

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

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

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

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

11 (i) In the event that at any time during the term of the rights granted herein the City
12 shall lawfully elect to alter, or change the grade of, any public rights-of-way, upon reasonable
13 notice by the City, the registrant shall make any necessary removals, relaying and relocations of
14 its communications facilities at its own expense, in accordance with applicable law. The City
15 reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas,
16 water, electric, storm drainage, communications or other types of facilities, cables or conduits,
17 and to do, and to permit to be done, any underground and overhead installation or improvement
18 that may be deemed necessary or proper by the City in the public rights-of-way occupied by the
19 registrant.

20 (j) A registrant shall obtain any and all required permits and pay any and all required
21 fees before commencing any construction on or otherwise disturbing any public rights-of-way as
22 a result of its construction.

23 (1) The registrant shall, at its own expense, restore such property to as good a
24 condition as existed prior to commencement of work. A registrant shall guarantee its restoration

1 in accordance with current public works standards. If such restoration is not performed in a
2 reasonable and satisfactory manner within 30 calendar days after the completion of construction,
3 the City may, after prior written notice to registrant, cause the repairs to be made at the facility's
4 owner expense, utilizing City employees, agents or contractors, charge any and all costs, and
5 require reimbursement within 30 days after the submission of the bill by the City to the
6 registrant.

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

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

14 (l) The City makes no warranties or representations regarding the fitness, suitability
15 or availability of the City's public rights-of-way for the registrant's communications facilities and
16 any performance of work, costs incurred or services provided by registrant shall be at registrant's
17 sole risk.

18 (m) The registrant shall, at no cost to the City, produce and provide a complete set of
19 as-built plans including, but not limited to, horizontal and typical vertical profiles, within 60 days
20 after construction of any portion of the system to the City Manager, with copies to the public
21 works department. A registrant shall also cooperate with the City by providing in a timely and
22 complete manner any additional information requested under this subsection. Upon completion
23 of any installation or construction of new facilities in public right-of-way and at no cost to the
24 City, the registrant shall provide such additional information, as may be requested, showing the

1 exact location of its facilities and structures, including but not limited to, maps, geographical
2 information systems, plats, construction documents, drawings and any other information the City
3 may find reasonably necessary. Such plans shall be provided in digitized format showing the
4 two-dimensional location of the facilities based on the City's geographical database data, or other
5 format acceptable to the City. All information required by this article shall be maintained in
6 accordance with the public record laws of the state.

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

10 (1) Violation of permit conditions, including conditions set forth in this article
11 or other applicable provisions of the City Code or regulations governing use of public rights-of-
12 way; or

13 (2) Misrepresentation or fraud by registrant in a registration or permit
14 application to the City; or

15 (3) Failure to properly renew or ineffectiveness of a registration; or

16 (4) Failure to relocate or remove facilities as may be lawfully required by the
17 City; or

18 (5) Failure of registrant, its employees, agents or subcontractors, in
19 connection with the subject permit, to place barricades or signs around the work area, take
20 reasonable safety precautions to alert the public of work at the work site, or repair, replace and
21 restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance,
22 soil, landscaping, dirt or other improvement, property or structure of any nature. In the event of
23 such failure, the City may perform the work utilizing City employees, agents or contractors,
24 charge any and all costs, and require reimbursement within 30 days after the submission of the

1 bill by the City to registrant. Upon payment to the City for the violations that gave rise to a
2 suspension or denial of permit, the suspension or denial shall be lifted.

3 (o) Immediately after the suspension or denial of permit pursuant to this article, the
4 City shall provide written notice of the violation, which notice shall contain a description of the
5 violation. A final written decision of the City Manager suspending a permit or denying an
6 application is subject to appeal. Upon correction of any violation that gave rise to a suspension or
7 denial of permit, the suspension or denial shall be lifted.

8 (p) All decisions of the City Manager may be appealed to a special magistrate
9 selected by the City within 10 business days, by filing a written notice of appeal with the special
10 magistrate and providing copies to the City Manager and the City Attorney. Any appeal not
11 timely filed shall be waived. The notice of appeal shall state the decision which is being
12 appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be
13 accompanied by a nonrefundable fee to be established by administrative order of the City
14 Manager to cover the City's costs of the appeal. The City Manager shall provide the materials
15 considered by the City relevant to the City Manager's decision to the special magistrate. The
16 special magistrate may affirm, modify or reverse the decision of the City Manager. The City
17 Manager shall notify any party who has filed a written request for such notification of the date
18 when the matter will be presented to the special magistrate. Nothing contained herein shall
19 preclude the special magistrate from seeking additional information prior to rendering a final
20 decision. The decision of the special magistrate shall be reduced to a written order and a copy of
21 the decision shall be forwarded to the City Manager and the appealing party. Within the time
22 prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a
23 decision of the special magistrate may appeal an adverse decision to the circuit court in and for
24 the county or applicable federal or district court. The party making the appeal shall be required to

1 pay to the City a fee to be established by administrative order of the City Manager, subject to
2 approval of the City Commission, to defray the costs of preparing the record on appeal.

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

10 (r) The involuntary termination of an effective registration may only be
11 accomplished by an action of the City Commission. The City may declare the effective
12 registration terminated and revoke and cancel all privileges granted under that registration if a
13 federal or state authority suspends, denies, or revokes a registrant's certification to provide
14 communications service, the registrant is adjudicated bankrupt by a United States District Court
15 or through any legal proceeding of any kind, or that a receiver is appointed to take possession of
16 the assets of the registrant, the registrant abandons all of its facilities. Prior to such termination
17 by the City resulting from a violation of any of the provisions of this subsection, the registrant
18 shall be provided a written notice setting forth all matters pertinent to such violation, and
19 describing the action of the City with respect thereto. The registrant shall have 60 days after
20 receipt of such notice within which to cure the violation, or within which to present a plan,
21 satisfactory to the City, to accomplish the same. In the event of a vote by the City Commission
22 to terminate, the registrant shall, within a reasonable time following such termination, remove or
23 abandon the facilities and take such steps as are necessary to render every portion of the facilities
24 remaining within the public right-of-way of the City safe. If the registrant has either abandoned

1 its facilities or chooses to abandon its facilities, the City may either require the registrant's
2 bonding company to remove some or all of the facilities from the public right-of-way and restore
3 the public right-of-way to its proper condition or the City may require that some or all of the
4 facilities be removed and the public right-of-way restored to its proper condition at the
5 registrant's expense, utilizing City employees, agents or contractors, and charge any and all costs,
6 and require reimbursement. The obligations of the registrant and the bonding company hereunder
7 shall survive, for a period of 24 months from, the termination of the registration. At the City's
8 option, the City may acquire the ownership of such abandoned facility with no further
9 obligations of the registrant or bonding company. In the event of a termination of registration,
10 this provision does not permit the City to cause the removal or acquire ownership of any
11 facilities that are used to provide another service for which the registrant holds a valid
12 certification with the applicable governing federal and/or state agencies and is properly
13 registered with the City, for such certificated service. A registrant shall pay all fees owed to the
14 City for so long as the registrant owns any facility within the public rights-of-way.

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

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

22 (b) If the registrant transfers or assigns its registration incident to a sale or other
23 transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with the
24 terms of this article. Written notice of any transfer, sale or assignment shall be provided to the

1 City within 20 days of the effective date of the transfer, sale or assignment. For the transfer of
2 registration to be effective, the transferee or assignee must comply with the registration
3 requirements under this Article.

4 (c) Notwithstanding anything in this article, pledges in trust or mortgages or other
5 hypothecations of the assets of the registrant to secure the construction, operation or repair of its
6 communications facilities may be made to any person without notice to the City. Any mortgage,
7 pledge, lease or other encumbrance of the communications facilities shall be subject and
8 subordinate to the rights of the City by virtue of this article or other applicable law.

9 Section 23-111. **Insurance; indemnification.**

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

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

24 (1) Worker's compensation within statutory limits and employers liability

1 insurance with limits of not less than \$1,000,000.00. This coverage must be evidenced by a
2 certificate of insurance that requires at least 30 days' advance written notice of cancellation,
3 nonrenewal or material change to the City.

4 (2) Commercial general liability insurance including premises/operations;
5 independent contractors; contractual liability; products/completed operations; XCU coverage;
6 and personal injury coverage for limits of no less than \$3,000,000.00 per occurrence combined
7 single limit and \$5,000,000.00 in the aggregate. The coverage must be evidenced by a certificate
8 of insurance that names the City as an additional insured and provides the City with at least 30
9 days' advance written notice of cancellation, nonrenewal or material change.

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

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

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

24 (d) Upon the effective date of a registration, the registrant shall submit to the City

1 proof that it has obtained the insurance required under this article, including a certificate of
2 insurance signed by the insurance agent.

3 (e) The City shall have the authority to increase or decrease the policy limits set forth
4 above upon 60 days' written notice to the registrant. Within 60 days from receipt of a notice to
5 increase its policy limits, the registrant shall submit to the City proof of such increased coverage.
6 The City shall not increase the policy limits required of the registrant unless it increases the
7 requirements for every other registrant operating in the City pursuant to this article. The City
8 may decrease the required policy limits for the registrant whether or not policy limits have been
9 decreased for other registrant.

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

14 (1) Notice of claims shall be provided to the City Manager by certified
15 mail; and

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

22 (g) An insurer has no right of recovery against the City. The required insurance
23 policies shall protect the registrant and the City. The registrant's insurance shall be primary
24 coverage for losses covered by the policies.

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

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

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

11 (k) Indemnification shall be conducted pursuant to the following:

12 (1) The registrant shall, at its sole cost and expense, indemnify, hold and
13 defend the City and its officers, directors, agents, servants, employees, successors, and assigns
14 harmless from and against any and all claims suits, actions, damages and causes of action for
15 personal injury, death or property damage, any other losses, damages, charges of death or
16 property damage, any other losses, damages, charges or expenses, including attorneys' fees,
17 witness fees, court costs and any orders, judgments or decrees which may be entered which rise
18 out of, in connection with or attributable to, registrant's construction, maintenance, occupation,
19 placement, repair, relocation, removal or operation by the registrant of any portion of the
20 communications system or business excepting only those claims resulting from the gross
21 negligence of the City. The registrant shall undertake at its own expense, the defense of any
22 action which may be brought against the City for damages, injunctive relief or for any other
23 cause of action arising or alleged to have arisen out of, in connection with or attributable to, the
24 foregoing and, in the event any final judgment therein should be rendered against the City

1 resulting from the foregoing, the registrant shall promptly pay the final judgment together with
2 all costs relating thereto; the registrant being allowed, however, an appeal or appeals to the
3 appropriate court or courts from the judgment rendered in any such suit or action upon the filing
4 of such superseded bond as shall be required to prevent levy or judgment against the City during
5 such appeal or appeals.

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

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

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

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

16 (a) Except in the case of an emergency, as described in section 23-108, prior to
17 performing any work in the public rights-of-way, a registrant shall establish in the City's favor a
18 construction bond as required by Section 23-38 of the City Code in an amount specified in an
19 engineering permit or other authorization as necessary to ensure the registrant's faithful
20 performance of the construction in the public rights-of-way, in accordance with applicable
21 sections of the City Code. The amount of the construction bond shall be as set forth in the
22 engineering permit, and may be modified in the City's reasonable discretion, based on the cost of
23 the restoration to take place in the public rights-of-way, and any previous history of the registrant
24 concerning restoration within the public rights-of-way of the City. The City, in its discretion,

1 may request a certified estimate of the cost of restoration by a state registered professional civil
2 engineer or certified by a person who is exempt from such requirements as provided in F.S. §
3 471.003.

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

11 (c) In accordance with the current standards of the public works department of the
12 City, and satisfaction of all obligations in accordance with the bond, the City shall eliminate the
13 bond. Notwithstanding, the City may require a new bond for any subsequent work performed in
14 the public right-of-way.

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

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

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

24 (f) The rights reserved to the City under this article are in addition to all other rights

1 of the City, whether reserved in this article, or authorized by other law, and no action, proceeding
2 or exercise of a right with respect to the construction bond will affect any other right the City
3 may have.

4 Section 23-113. **Security fund.**

5 At the time of registration, the registrant shall file with the City, for City approval, a cash
6 security, a bond, or irrevocable letter of credit, in the sum of \$50,000.00, in a form acceptable to
7 the City Manager. For purposes of the bond and irrevocable letter of credit, the registrant must
8 have as a surety a company qualified to do business in the state. The cash security, bond, or
9 irrevocable letter of credit, shall be to secure the full and faithful performance by the registrant of
10 all requirements, duties and obligations imposed upon registrant by the provisions of this article,
11 and to pay any taxes, fees or liens owed to the City. The bond or irrevocable letter of credit shall
12 be furnished annually, or as frequently as necessary, and shall provide a continuing guarantee of
13 the registrant's full and faithful performance at all times. Should the City draw upon the cash
14 security, bond, or irrevocable letter of credit, the City shall promptly notify the registrant, and the
15 registrant shall within 30 calendar days restore the cash security, annual bond, or irrevocable
16 letter of credit, to full required amount. In the event a registrant fails to perform its duties and
17 obligations imposed upon the registrant by the provisions of this article, subject to section 23-
18 109, there shall be recoverable, jointly and severally from the principal and surety of the bond,
19 any damages or loss suffered by the City as a result, including the full amount of any
20 compensation or indemnification, plus a reasonable allowance for attorneys' fees, up to the full
21 amount of the fund. The cash security, bond or letter of credit may be waived by the City where
22 the City determines in its sole discretion that the security fund is not necessary to secure the
23 required performance under this article. The City may from time to time increase the amount of
24 the security fund to reflect the increased risks to the City and to the public.

1 Section 23-114. **Enforcement remedies.**

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

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

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

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

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

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

22 (2) File an appeal as provided herein.

23 If the violation is not cured within that reasonable period of time provided, and no appeal is filed,
24 the City may collect all fines owed, beginning with the first day of the violation, either by

1 removing such amount from the security fund or through any other means allowed by law.

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

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

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

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

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

19 Section 23-115. **Force majeure.**

20 In the event a registrant's performance of or compliance with any of the provisions of this
21 article is prevented by a cause or event not within the facility owner's control, such inability to
22 perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a
23 result thereof, provided, however, that such owner uses all practicable means to expeditiously
24 cure or correct any such inability to perform or comply. For purposes of this article, causes or

1 events not within a facility owners control shall include, without limitation, acts of God, floods,
2 earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots
3 or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency
4 or court. Causes or events within registrant's control, and thus not falling within this article, shall
5 include, without limitation, registrant's financial inability to perform or comply, economic
6 hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers,
7 employees, contractors or agents.

8 Section 23-116. **Reservation of rights.**

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

14 (b) This article shall be applicable to all communications facilities permitted to be
15 placed in the public rights-of-way, on or after its effective date, and shall apply to all existing
16 communications facilities in the public rights-of-way prior to the effective date of this article, to
17 the full extent permitted by state and federal law. Providers with existing communications
18 facilities have 120 days from the effective date of this article to comply with the terms of this
19 article, or be in violation thereof.

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

22

23 **Section 3. Severability.** If any word, phrase, clause, paragraph, section or provision
24 of this ordinance or the application hereof to any person or circumstance is held invalid or

1 unconstitutional, such finding shall not affect the other provisions or applications of the
2 ordinance which can be given effect without the invalid or unconstitutional provisions or
3 application, and to this end the provisions of this ordinance are declared severable.

4 **Section 4. Conflicts and Repeal.** This ordinance repeals, in part, the moratorium
5 (adopted by Ordinances No. 160401 and 160798) only as to placement of underground wireless
6 communication facilities within the public rights-of-way. The moratorium remains in effect for
7 the placement of above-ground wireless communication facilities in the public rights-of-way.
8 All other ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict
9 hereby repealed.

10 **Section 5. Effective Date.** It is the express intent of the City that this ordinance shall
11 take effect as of *6:00pm on* September 7, 2017, provided however this ordinance shall not be
12 effective as to placement of above-ground wireless communication facilities in the public rights-
13 of-way, until such time as moratorium ordinances No. 160401 and 160798 are fully repealed.

14 **PASSED AND ADOPTED** this ____ day of _____ 2017.

15
16 _____
17 LAUREN POE
18 MAYOR

21
22 ATTEST: Approved as to form and legality

23
24 _____
25 KURT M. LANNON
26 CLERK OF THE COMMISSION
27 _____
NICOLLE M. SHALLEY
CITY ATTORNEY

28 This Ordinance passed on first reading this ____ day of _____ 2017.

29 This Ordinance passed on second reading this ____ day of _____ 2017.

30