

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40

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

2 Any person who violates any provision of this article shall be subject to punishment as provided
3 in Section 1-9 of this Code of Ordinances. The city may seek any legal remedies available in law
4 or equity.
5
6

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 A. **Information services.**

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

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

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

33 E. **Bad check charges.**

34 F. **Late payment charges.**

35 G. **Billing and collection services.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **B.** Wireline backhaul facilities; or

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

23 **Wireless infrastructure provider** means a person who has been certified by state or federal law
24 to provide telecommunications services in the state and who builds or installs wireless
25 communication transmission equipment, wireless facilities, or wireless support structures but is
26 not a wireless services provider.

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

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

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

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

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

2
3 **Section 23-110. Purpose.**

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

14
15 **Section 23-111. Applicability.**

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

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

29
30 **Section 23-112. Authority to Implement Article.**

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

36
37 **Section 23-113. Registration.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 E. *Interference caused by utility.* Permittees shall, at no cost to the city and in accordance with
26 Sections 337.403 and 337.404, Florida Statutes, move or remove any utility at the request
27 of the city if the city finds that the utility interferes with any work the city performs within,
28 on, over, or under any public right-of-way or interferes in any way with the convenient,
29 safe, or continuous use or maintenance of same. After sufficient written notice and
30 opportunity to cure and in accordance with applicable law, the city may cause any
31 necessary work to be done to remedy the interference with the total cost being charged to
32 and paid for by the permittee upon demand, and the city may charge the costs against any
33 security the permittee provided in accordance with this article.

34 F. *Temporary relocations of facilities for other users of public rights-of-way.* No later than 30
35 calendar days after receiving written notice from any other permittee that has received a
36 permit from the city to use the public rights-of-way, permittees shall temporarily move or
37 relocate its utilities to allow for the permitted use. Any expense shall be paid by the
38 permittee requesting the temporary relocation, and the permittee receiving the request
39 shall have the authority to require such payment in advance.

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

1 aboveground utilities or structures shall, at its sole expense, convert to underground or
2 relocate as may be allowable and permitted under this article.

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

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

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

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

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

28 M. *Police powers.* Any public rights-of-way use by utilities and any permit issued under this
29 article shall be subject to the city's lawful exercise of its police power, and applicants and
30 permittees shall comply with any requirements or policies adopted by the City Manager,
31 including but not limited to any provisions included in a Public Rights-of-Way Use Manual
32 referenced in this article and any other conditions that the City Manager or designee finds
33 reasonably necessary to protect the public health, safety, and welfare.

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

39 O. *Indemnification.* Permittees shall, at its sole cost and expense, indemnify, hold harmless,
40 and defend the city and its officers, employees, and agents from all liabilities, damages,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 2. Make-ready work.

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

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

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

29
30 Section 23-118. Appeals.

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

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

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

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

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

14
15 **Section 23-119. Enforcement.**

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

18 B. Permit revocation.

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

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

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

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

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

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

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

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

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

1 vi. Conducting work in the public rights-of-way without a permit.

2 2. Prior to permit revocation, the city shall make a written demand upon the permittee to
3 remedy such violation, which shall state that the continued violation may be cause for
4 permit revocation. The City Manager or designee may place additional or revised
5 conditions on the permittee.

6 3. Within 30 calendar days of the city's written notification, the permittee shall remedy the
7 violation or submit to the City Manager or designee a plan for correction. The
8 permittee's failure to remedy the violation or to submit a correction plan acceptable to
9 the City Manager or designee or to implement an approved plan shall be cause for
10 permit revocation. A final determination to revoke a permit may be appealed in
11 accordance with this article.

12 4. If a permit is revoked, the permittee shall: 1) reimburse the city for the city's reasonable
13 costs, including restoration costs and administrative costs; and 2) in accordance with
14 this article and as otherwise may be provided in state law, notify the city of the
15 assumption or anticipated assumption by another permittee of ownership of the
16 permittee's utilities in the public rights-of-way, or provide the city with an acceptable
17 plan for disposition of its utilities in the public rights-of-way. If a permittee fails to
18 comply with this subsection, the utilities shall be deemed abandoned and the city may
19 exercise any remedies or rights it has under this article or at law.

20 C. Force majeure. In the event a person's performance of or compliance with any of the
21 provisions of this article is prevented by a cause or event not within the person's control,
22 such inability to perform or comply shall be deemed excused and no penalties or sanctions
23 shall be imposed as a result thereof; provided, however, that such person uses all
24 practicable means to expeditiously cure or correct any such inability to perform or comply.
25 For purposes of this article, causes or events not within a person's control shall include,
26 without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires, and other
27 natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and
28 restraints imposed by order of a governmental agency or court. Causes or events within a
29 person's control, and thus not falling within this provision, shall include, without limitation,
30 financial inability to perform or comply, economic hardship, and misfeasance, malfeasance
31 or nonfeasance by any of the person's directors, officers, employees, contractors, or agents.
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33
34 **SECTION 6.** It is the intent of the City Commission that the provisions of Sections 1 through 5 of
35 this ordinance shall become and be made a part of the Code of Ordinances of the City of
36 Gainesville, Florida, and that the sections and paragraphs of the Code of Ordinances may be
37 renumbered or relettered in order to accomplish such intent.

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


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

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

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10 **PASSED AND ADOPTED** this 1st day of March, 2018.

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LAUREN POE
MAYOR

Attest:

Approved as to form and legality:



OMICHELE GAINÉY
CLERK OF THE COMMISSION



NICOLLE M. SHALLEY
CITY ATTORNEY

25 This ordinance passed on first reading this 15th day of February, 2018.

26 This ordinance passed on second reading this 1st day of March, 2018.