

LEGISLATIVE #
170353A

ORDINANCE NO. 170353

An ordinance of the City of Gainesville, Florida, readopting and ratifying, in part, Ordinance No. 160401 and Ordinance No. 160798, and extending the time period of the temporary moratorium to prohibit the filing, acceptance or processing of any permit, development order, or any other official action of the City having the effect of permitting or allowing the placement of above-ground wireless communication facilities in the public rights-of-way within the city limits; providing a severability clause; providing repealing clauses; and providing an effective date.

WHEREAS, to protect the public health, safety and welfare of its citizens, the City has adopted ordinances, including the regulation of the location, design and operation of wireless communication facilities, towers, and antennae (Section 30-98 of Land Development Code), the registration of utilities within the rights-of-way (Chapter 23, Article VI), the temporary obstruction of the public rights-of-way (Chapter 23, Article III), and utility installations within the public rights-of-way (Section 10.15 of the City of Gainesville Engineering and Design Manual); and

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

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

WHEREAS, in June 2016, the City received applications for rights-of-way use permits from a wireless infrastructure provider requesting permission to place its facilities within the City’s rights-of-way; and

WHEREAS, the city ordinances in effect in 2016, did not specifically address the

1 placement of wireless communication facilities within the public rights-of way: and

2 **WHEREAS**, on October 20, 2016, the City adopted Ordinance No. 160401, enacting a
3 moratorium on the placement of wireless communication facilities within the public rights-of-
4 way. The moratorium applied to the installation of both above and below ground wireless
5 communication facilities in the rights-of-way. The moratorium was adopted to allow the City
6 adequate time to review, study, hold public hearings, and prepare and adopt an amendment or
7 amendments to the City of Gainesville Comprehensive Plan and/or Code of Ordinances to
8 address this issue. The moratorium was to be effective through April 6, 2017; and

9 **WHEREAS**, on January 30, 2017, the Florida Senate introduced Senate Bill 596, and on
10 February 7, 2017, the Florida House of Representatives introduced House Bill 687, both of
11 which, if adopted, would provide specific direction to local governments on the regulation of
12 wireless communication facilities within the public rights-of-way; and

13 **WHEREAS**, both bills were amended throughout the 2017 legislative session and a final
14 amended version was enrolled April 28, 2017, but not signed into law until June 23, 2017; and

15 **WHEREAS**, the Advanced Wireless Infrastructure Deployment Act (“Act”) became
16 effective July 1, 2017, which Act authorizes local governments to enact ordinances regulating
17 wireless communication providers and wireless communication infrastructure providers
18 consistent with the Act; and

19 **WHEREAS**, the City could not effectively review its ordinances and study the types of
20 regulations it would be able to adopt until the state enacted its guidance on the regulation of
21 wireless communication facilities within the public rights-of-way. Therefore the City extended
22 its moratorium until October 7, 2017, by Ordinance No. 160798; and

23 **WHEREAS**, since the adoption of the Act, the City has diligently moved forward with
24 the review, study, public hearings, and adoption of ordinances, and on September 7, 2017,

1 adopted a registration ordinance, Ordinance No. 170179, to be consistent with the Act; and

2 **WHEREAS**, Ordinance No. 170179, repealed, in part, the prior moratorium only as it
3 applies to placement of underground wireless communication facilities within the public rights-
4 of-way. The moratorium remains in effect for the placement of above-ground wireless
5 communication facilities in the public rights-of-way so that the City may continue to review,
6 study, hold public hearings, and prepare and adopt amendments to its land development code and
7 other codes, so that the City's codes will be consistent with the Act but will also address the
8 public health, safety and welfare of the citizens of Gainesville; and

9 **WHEREAS**, the City Commission finds that it is in the best interest of its residents,
10 businesses and visitors to enact sufficient regulations to protect the public health, safety and
11 welfare and that it is in the City's best interest, for the City to extend the term of the moratorium
12 as to the placement of above-ground wireless communication facilities in the public rights-of-
13 way for an additional eighty-four days; and

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

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

21 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
22 **THE CITY OF GAINESVILLE, FLORIDA:**

23 **Section 1.** Readoption and ratification. The City Commission readopts and reaffirms
24 Ordinance No. 160401 and Ordinance No. 160798, as to placement of above-ground wireless

1 communication facilities within the public rights-of-way, and adopts the foregoing findings in
2 the Whereas clauses above. The moratorium as to placement of underground wireless
3 communication facilities has been repealed by Ordinance No. 170179.

4 **Section 2.** Imposition of an Additional Time Period of the Temporary Moratorium.

5 The time period of the temporary moratorium only as to above-ground wireless communication
6 facilities in the public rights-of-way, as provided in Section 2. of Ordinance No. 160798, is
7 extended for an additional period of eighty-four days, beginning at 12:00 a.m. on October 8,
8 2017, and ending either at 11:59 p.m. on December 31, 2017, or the date of the final adoption of
9 ordinance(s) amending the City of Gainesville Code of Ordinances, relating to construction of
10 wireless communication facilities in the public rights-of-way within the City, whichever date
11 occurs sooner.

12 **Section 3.** Except as modified and amended, by this ordinance and Ordinance No.
13 170179, the provisions and terms of Ordinance No. 160401 and Ordinance No. 160798 shall
14 remain in full force and effect.

15 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance
16 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
17 finding shall not affect the other provisions or applications of the ordinance which can be given
18 effect without the invalid or unconstitutional provisions or application, and to this end the
19 provisions of this ordinance are declared severable.

20 **Section 6.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
21 such conflict hereby repealed.

22 **Section 7.** This ordinance shall take effect immediately upon adoption and shall stand
23 repealed as of 12:00 a.m. on January 1, 2018, unless sooner repealed as provided in Section 2.

1 However, nothing herein shall prevent re-adoption of an ordinance in the same or similar form
2 for the purpose of extending the moratorium.

3
4 **PASSED AND ADOPTED** this _____ day of _____, 2017.

5
6 _____
7 LAUREN POE
8 MAYOR
9

10 ATTEST: Approved as to form and legality

11
12 _____
13 KURT M. LANNON
14 CLERK OF THE COMMISSION
15

12 _____
13 NICOLLE M. SHALLEY
14 CITY ATTORNEY
15

16 This Ordinance passed on first reading this _____ day of _____, 2017.

17 This Ordinance passed on second reading this _____ day of _____, 2017.