



Legislation Text

File #: 160905., Version: 1

RETENTION OF GRAY ROBINSON FOR WIRELESS TELECOMMUNICATIONS ADVICE (B)

The City Commission authorize the City Attorney to retain the law firm of Gray Robinson to assist staff in amending ordinances and policies regarding telecommunication facilities in an amount not to exceed \$100,000.00

In June 2016, the Public Works department received two applications for rights-of-way use permits from a company named Mobilitie. Mobilitie requested the permit to place 75' wooden poles in two separate locations. While the applications were incomplete and were denied because they were incomplete, the applications made staff aware that the City's current ordinances were not sufficient to address the new infrastructure needs associated with small cells and DAS. The City Attorney's office retained the law firm of Gray Robinson to assist the City in reviewing and updating its ordinances relative to wireless telecommunication facilities. Upon a review of the City's ordinances with Gary Resnick, attorney with Gray Robinson, it was determined that a moratorium should be enacted while the City studied the needed changes to update its ordinances. The moratorium was adopted by the City Commission effective October 6, 2016 and subsequently a City staff workgroup was formed to study and make recommendations to the City Commission. The staff workgroup includes representatives from the City's planning staff, public works staff, building department, GRU electric, GRU telecommunications and City Attorney's office. During the workgroup meeting with Gary Resnick, it was determined that the following ordinances needed amending to keep current with new FCC rulings, Florida law, and new technology: Chapter 23, Article III, Utility Installations within the Public Rights-of-Way, Chapter 23, Article VI, Registration Requirements for Use of Public Rights-of-way by Communications Service Providers and Other Wireline Users of Rights-of-Way, Chapter 14.5, Article VI, Cable Television, Section 30-98 of the Land Development Code, and Section 10.14 of the City of Gainesville Engineering Design and Construction Manual.

The moratorium was adopted effective through April 6, 2017. While the City's moratorium was in place, several additional issues arose that need both staff and legal expertise. First the FCC issued a Public Notice inviting comments for a rule-making proceeding addressing access by small cell and DAS technology to local government rights-of-way. The City retained Gray Robinson to file comments on that proceeding. Second, the state legislature approved a bill (that is now pending the Governor's signature) that would require the City to accept wireless communication facilities on its utility poles, with limited compensation and allow new poles in its rights-of-way to accommodate small cell and DAS technology. Third, several companies have approached GRU asking to utilize City utility poles for installation of horizontal attachments that would eventually allow for wireless telecommunication. Finally, GRU's pole attachment policies and procedures are beginning to expire and will need to be updated. Because of these additional issues, staff recommended and the City Commission adopted Ordinance 160798 extending the moratorium through October 7, 2017.

After the staff workgroup met, GRU had an additional meeting with Mr. Resnick to discuss issues that are important to GRU Electric and GRUCom. During the subgroup meeting, it was determined that not only did GRU's policies and agreements for pole attachments need updating, but the City should look at the future of its utility system keeping in mind the growing demand for use of the City's poles within its rights-of-way. The City has recently had requests from two companies to collocate on City poles. These two companies are in

addition to the four existing companies already collocated with horizontal attachments on City poles. As the technology changes, GRU anticipates many more requests which may have a significant burden on GRU's infrastructure and may impair the City's obligations to serve its electric and fiber customers.

The City Attorney's office originally retained Gray Robinson to assist the City with the moratorium and the ordinance amendments. The fee was not to exceed \$20,000.00. The retention was updated to include an additional ten hours relating to reviewing and evaluating GRU's policies for pole attachments. Additionally, on February 16, 2017, the City Commission authorized the City Attorney to retain Gray Robinson to provide a response to the FCC on behalf of Gainesville. Such comments were filed with the FCC on March 8, 2017. The fee for that service was \$2,500. To date, the City has paid \$26,831.00 to Gray Robinson.

Because of the numerous issues raised by the changes in wireless telecommunication technology, it is anticipated that additional legal services will be required. City staff recommends that the City Commission authorize the continued retention of Gray Robinson, to assist City staff and the City Commission in updating its ordinances, policies, and agreements. Mr. Resnick's hourly rate is \$325.00 per hour (a discounted rate for the City). Staff anticipates that the cumulative fees for the additional services would not exceed \$100,000.00. In the event the total additional fees exceed \$100,000.00, City staff will seek approval of the City Commission prior to additional expenditures.

In addition to the City's regulation of its rights-of-way and effective operations of GRU and GRUCom, the code provisions, agreements and policies referenced have a significant revenue impact to the City. The City receives communications services taxes (CST) from communications providers that provide services in the City, can charge a pass-through provider fee to other communications companies that use the rights-of-way but do not pay CST, and may charge rent for use of other City property by communications providers. In addition, the City, through GRU, may charge pole attachment fees and fees for utility pole work to accommodate such communications facilities. Updating these codes, agreements and policies will include review to ensure that the City is charging communications providers taxes and fees consistent with Florida law.