



Legislation Text

File #: 170786., **Version:** 1

ORDINANCE AMENDING REGULATIONS FOR OBSTRUCTIONS OF AND UTILITY USE OF PUBLIC RIGHTS-OF-WAY (B)

Ordinance No. 170786

An ordinance of the City of Gainesville, Florida, amending Chapter 23 - Streets, Sidewalks and Other Public Places in the City of Gainesville Code of Ordinances relating to regulations that apply to temporary obstructions of public rights-of-way and to regulations that apply to use of public rights-of-way by utilities, including communications facilities and small wireless facilities; by deleting Chapter 23, Article III - Encroachments and Obstructions; by deleting Chapter 23, Article VI - Registration Requirements for Use of Public Rights-of-Way by Communications Services Providers and Other Wireline Users of Rights-of-Way; by renumbering the articles of Chapter 23; by adding a new Article V - Public Rights-of-Way Obstructions; by adding a new Article VI - Public Rights-of-Way Use by Utilities; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

Adopt the proposed ordinance.

STAFF REPORT

This ordinance will amend Chapter 23 of the Code of Ordinances regarding regulations for temporary obstructions of public rights-of-way (ROWS) and regulations for the use of ROWs by utilities, including for communications facilities and small wireless facilities. Essentially, this ordinance creates two distinct regulatory programs: one for general obstructions in ROWs, including anything from developers moving equipment or cranes in the ROWs to any other common ROW blockage, and the other for any utility use of the ROWs, including any private utility infrastructure installed either underground or aboveground. The City's ROWs are a unique and physically limited resource, and this ordinance seeks to use and manage this resource by thoughtfully balancing the objectives of safety, aesthetics, economic vitality, and service delivery.

The regulation of utilities within ROWs, and particularly the communications industry, is in a constant state of change because of a complicated system of overlapping federal, state, and local regulations, and because of the fast pace of emerging technology, including the changing infrastructure required to support the increased demand and capacity to receive and transmit data and voice communications. The primary driver of this ordinance was the Florida Legislature's 2017 amendment to Section 337.401, Florida Statutes, which now requires cities to allow the collocation of small wireless facilities on certain utility poles within ROWs.

Beginning in October 2016, the City enacted a series of moratoriums to allow for the crafting of this ordinance, and on September 7, 2017, the City adopted Ordinance No. 170179, which included provisions for the registration of entities that desire to install communications services facilities in ROWs. Whereas registration is essentially an information gathering mechanism and a prerequisite to any permitted use of ROWs, this ordinance completes the regulatory program by providing a permitting process and substantive requirements governing the use of ROWs.

This ordinance requires any person or entity that desires to use the City's ROWs for any utility use to first apply for and receive a permit. The City/GRU is exempt from this permitting requirement, except when acting as a communications services provider. In addition to providing general liability-shifting provisions and protections for any damage to persons or property resulting from permit issuance, this ordinance provides a thorough process for permit review and approval, in accordance with federal and state law. The substantive provisions governing utility use of ROWs include a general rule that all new installations of utilities or facilities shall be installed underground, with the exception of certain allowable uses of existing aboveground utility infrastructure, such as the addition of wireline facilities. In addition, this ordinance will allow the collocation of small wireless facilities on existing City (non-GRU) utility poles that are greater than 15 feet in height. Importantly, this ordinance does not allow for the installation of new utility poles to accommodate collocation of small wireless facilities. In addition, although this ordinance requires that collocation shall be allowed on City poles that are not owned or managed by GRU, the ordinance does not prohibit collocation on GRU poles. Whether to allow collocation on GRU poles may be decided at any time, and should take into account many factors including those mentioned above as well as revenue from collocation fees, increased service delivery, and potential federal law implications. Finally, this ordinance provides certain objective design standards governing the collocation of small wireless facilities, including: a requirement that prohibits any ground-level equipment (facilities shall be installed underground or attached to a pole at a height of at least 8 feet above ground-level); a requirement to use a slim design, where equipment may not extend more than 30 inches beyond the supporting pole; a requirement that all equipment must be either installed inside the pole or covered with a shroud conforming to the pole's design, texture, and color; and a requirement that small wireless facilities may not extend greater than 10 feet higher than the height of the supporting pole.

CITY ATTORNEY MEMORANDUM

This ordinance requires two hearings and shall become effective immediately upon adoption at second reading.