



## Legislation Text

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**File #:** 190129., **Version:** 1

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### **Ordinance Amending Regulations for Utility Use of Public Rights-of-Way (B)**

Ordinance No. 190129

An ordinance of the City of Gainesville, Florida, amending the City of Gainesville Code of Ordinances Chapter 23, Article VI - Public Rights-of-Way Use by Utilities and Appendix A, Schedule of Fees, Rates, and Charges, relating to regulations that apply to public rights-of-way use by utilities, including communications facilities and small wireless facilities; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

The City Commission adopt the proposed ordinance.

#### **STAFF REPORT**

This ordinance will amend the City's regulations in Chapter 23 of the Code of Ordinances that apply to public rights-of-way (ROWs) use by utilities, including communications facilities and small wireless facilities, as required by the Florida Legislature's 2019 adoption of Senate Bill 1000. On March 1, 2018, the City Commission adopted Ordinance No. 170786 and substantially revised the City's regulations regarding use of public ROWs by utilities, primarily in response to the Florida Legislature's 2017 amendment to Section 337.401, Florida Statutes, which required cities to allow the collocation of small wireless facilities on certain utility poles within public ROWs and which provided certain procedural and substantive limitations on local governments. Subsequently, the Governor of the State of Florida approved Senate Bill 1000 on June 25, 2019, which further limits the authority of local governments to regulate their public ROWs regarding use by communications services providers.

The City's regulatory program for utility use of public ROWs recognizes that public ROWs are a unique and physically limited resource and seeks to use and manage this resource by thoughtfully balancing the objectives of safety, aesthetics, economic vitality, and service delivery, all within the complicated context of overlapping federal, state, and local regulations that apply particularly to the communications industry. Accordingly, Chapter 23 Article VI of the City's Code of Ordinances requires any person or entity that desires to use the City's ROWs for any utility use to first receive a permit and to meet certain substantive and procedural requirements. The City/GRU is exempt from this permitting requirement, except when acting as a communications services provider.

One of the primary changes mandated by the Florida Legislature in 2017 was that local governments were for the first time required to allow the collocation of small wireless facilities on existing City (non-GRU) utility poles that are greater than 15 feet in height, subject to certain restrictions. Importantly, that 2017 law did not require local governments to allow the installation of new utility poles within public ROWs by communications services providers in order to accommodate small wireless facility collocation, and accordingly the City's 2018 ordinance did not allow for such. However, the 2019 Senate Bill 1000 now requires local governments to allow communications services providers to install a new utility pole when the provider demonstrates that it is not

reasonably able to provide wireless service by collocation on an existing aboveground utility pole. This change could have a substantial impact on the presence of communications infrastructure within the City's public ROWs. As a result, the City's allowance of collocation on existing GRU poles (which make up the vast majority of existing utility poles within City limits) would significantly help to meet the demand for wireless infrastructure collocation and would therefore minimize the installation of new utility poles.

In addition to the primary changes mentioned above, this ordinance amends other procedural and substantive provisions of the City's Code in accordance with 2019 HB 1000, such as: definition amendments; amendments to the registration requirements; limitations on the City's ability to require small wireless facilities to convert from aboveground to underground; limitations on the security the City may require from utility providers to secure performance and compliance with the City's Code; and amendments to the timeline for appeals of City permitting decisions. This ordinance also amends Appendix A to provide for certain allowable fees.

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