

1 **SECTION 1.** Article VI of Chapter 23 of the City of Gainesville Code of Ordinances is amended
2 as follows. Except as amended herein, the remainder of Article VI of Chapter 23 remains in full
3 force and effect.

4 **Chapter 23 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

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

6 **Section 23-109. Definitions.**

7 Throughout this article, the following words and phrases shall have the meanings indicated
8 unless the text in which used clearly indicates otherwise. Any word or phrase used in this
9 article that is not defined in this article shall have: 1) the meaning provided in F.S. Ch. 202 or
10 337, as amended; or 2) if not provided in F.S. Ch. 202 or 337, the common dictionary meaning
11 most appropriate to the context in which such word or phrase is used.

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

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

26 *Applicable codes* means uniform building, fire, electrical, plumbing, or mechanical codes
27 adopted by a recognized national code organization or local amendments to those codes
28 enacted solely to address threats of destruction of property or injury to persons, and includes
29 the National Electric Safety Code and the ~~2017~~ current edition of the Florida Department of
30 Transportation Utility Accommodation Manual.

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

33 *As-built plans* means a set of drawings in a format as specified by the city submitted by the
34 applicant upon completion of a project, which drawings reflect all changes to original plans
35 made during the construction process and show the exact dimensions, geometry, and
36 location of all elements of the work completed under the permit.

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

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

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

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

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

26 (a) Information services.

27 (b) Installation or maintenance of wiring or equipment on a customer's premises.

28 (c) The sale or rental of tangible personal property.

29 (d) The sale of advertising, including, but not limited to, directory advertising.

30 (e) Bad check charges.

31 (f) Late payment charges.

32 (g) Billing and collection services.

33 (h) Internet access service, as defined in Section 1105(5) of the Internet Tax Freedom Act,
34 47 U.S.C. Section 151 note, as amended by Pub. L. No. 110-108, electronic mail
35 service, electronic bulletin board service, or similar online computer services.

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

1 *Communications services tax* means the local tax authorized to be levied and collected by
2 counties and municipalities upon communications services providers for communications
3 services, pursuant to F.S. § 202.19, as amended.

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

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

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

15 *Florida Building Code* means the Florida Building Code promulgated under F.S. Ch. 553, and
16 includes any city amendments thereto as both may be amended from time to time.

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

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

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

31 *Pass-through provider* means any person who places or maintains a communications facility
32 in the public rights-of-way and who does not remit communication service taxes imposed by
33 the city pursuant to F.S. Ch. 202, as amended. A pass-through provider can also be a wireless
34 infrastructure provider.

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

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

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

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

15 (a) County, state, or federal rights-of-way, unless the city has been properly delegated
16 authority to issue permits for structures within those rights-of-way.

17 (b) Utility easements or other forms of real property interest that are not part of
18 dedicated public rights-of-way.

19 (c) Property owned by any person other than the city, except as otherwise provided
20 herein.

21 (d) Service entrances or driveways leading from the road or street onto adjacent
22 property.

23 (e) Except as described above, any real or personal property of the city, including city
24 parks, buildings, fixtures, poles, conduits, facilities, or other structures or
25 improvements, regardless of whether they are situated in the public rights-of-way.

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

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

29 (a) Each antenna associated with the facility is located inside an enclosure of no more
30 than six cubic feet in volume or, in the case of antennas that have exposed elements,
31 each antenna and all of its exposed elements could fit within an enclosure of no more
32 than six cubic feet in volume; and

33 (b) All other wireless equipment associated with the facility is cumulatively no more than
34 28 cubic feet in volume. The following types of associated ancillary equipment are not
35 included in the calculation of equipment volume: electric meters; concealment
36 elements; telecommunications demarcation boxes; ground-based enclosures;
37 grounding equipment; power transfer switches; cutoff switches; vertical cable runs for
38 the connection of power and other services; and utility poles or other support
39 structures.

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

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

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

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

17 (a) The structure or improvements on, under, within, or adjacent to the structure on
18 which the equipment is collocated;

19 (b) Wireline backhaul facilities; or

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

23 *Wireless infrastructure provider* means a person who has been certified under F.S. Ch. 364, to
24 provide telecommunications services in the state or under F.S. Ch. 610, to provide cable or
25 video services in the state, or such person's affiliate, and who builds or installs wireless
26 communication transmission equipment, wireless facilities, or wireless support structures but
27 is not a wireless services provider.

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

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

32 *Wireless support structure* means a freestanding structure, such as a monopole or self-
33 supporting tower, or another existing or proposed structure designed to support or capable
34 of supporting wireless facilities. The term does not include a utility pole, pedestal, or other
35 support structure for ground-based equipment not mounted on a utility pole and less than
36 five feet in height.

37 *Wireline facilities* means a wireline aerial or below-grade facility used to provide
38 communications services. The term includes backhaul facilities associated with a wireless
39 facility and coaxial or fiber-optic cable that is between wireless structures or utility poles or

1 that is otherwise not immediately adjacent to or directly associated with a particular antenna
2 of a wireless facility.

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

4

5 **Section 23-110. Purpose.**

6 The city recognizes that the public rights-of-way are a unique and physically limited resource
7 requiring proper and thoughtful management to maximize safety, aesthetics, and economic
8 vitality for the public, and these factors must be reasonably balanced in any decision to use or
9 manage the public rights-of-way. The intent of this article is to accommodate the demand for
10 utility infrastructure and communications facilities, while also protecting the safety,
11 aesthetics, and economic vitality inherent in the public rights-of-way, by providing reasonable
12 regulations for the placement and maintenance of utility infrastructure and communication
13 facilities within the public rights-of-way in accordance with applicable law, including F.S. §
14 337.401, as amended, the provisions of the Federal Telecommunications Act of 1996, and
15 other applicable federal and state law.

16

17 **Section 23-111. Applicability.**

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

24 This article applies to all utilities existing in the public rights-of-way prior to the effective date
25 of this article, and the owners or agents of such utilities have one year from the effective date
26 of this article to comply with the terms of this article or be in violation thereof, with the
27 exception of any provision of this article regarding the location or design of the utility.

28 ~~Notwithstanding the foregoing, this article does not apply to the City of Gainesville or~~
29 ~~Gainesville Regional Utilities (GRU), except to the extent that the city or GRU is acting as a~~
30 ~~communications services provider.~~

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32 **Section 23-112. Authority to Implement Article.**

33 The city manager is authorized to implement this article and is authorized to develop, if
34 deemed necessary by the city manager, ~~a public rights-of-way use manual that provides~~
35 ~~implementing regulations, including that include~~ engineering requirements, policies, or
36 procedures that must be followed in applying for and issuing permits under this article. ~~The~~
37 ~~public rights-of-way use manual must be adopted by the city commission. Regulations~~
38 promulgated pursuant to this section must be adopted by the city commission within the
39 city's engineering design and construction manual.

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Section 23-113. Registration.

Any person that owns, operates, or maintains a utility under, on, over, across, or within a public rights-of-way, or that must submit an application for a permit under this article to place, install, locate, relocate, construct, maintain, repair, operate, or remove any utilities under, on, over, across, or within the public rights-of-way shall register with the city by submitting all of the following information on a form provided by the city. Such persons shall at all times maintain current and valid information with the city and shall provide any updated information to the city within 90 calendar days of any change. Registration establishes neither a right to place or maintain nor a priority to place or maintain any utilities or associated structures or facilities within the public rights-of-way.

- (a) The name under which the registrant transacts business in the city and, if different, in the State of Florida.
- (b) The address and telephone number of the registrant's principle place of business in the State of Florida and any branch office located in the city or, if none, the name, address, and telephone number of the registrant's national headquarters and its registered agent in the State of Florida.
- (c) The name, address, electronic mail address, and telephone number of the registrant's primary contact person and, if different, the person to contact in case of an emergency.
- (d) Plans and maps describing all utilities and associated structures or facilities that are owned or used by the registrant and that are existing in the public rights-of-way at the time of registration, not including any information that has previously been provided to the city. Information shall include the location of such utilities, facilities, or structures with maps and geographical information systems or Global Positioning System (GPS) coordinates, and shall be provided in digitized format showing the two-dimensional location of the facilities based on the city's geographical database data or other format acceptable to the city. This provision does not apply to communications services providers.
- (e) A copy of the registrant's current certificate of authorization, public convenience and necessity, or other applicable certifications or licenses issued by the Florida Public Service Commission, the Florida Department of State, the Federal Communications Commission, or other federal authority.
- (f) The registrant's federal employer identification number.
- (g) A statement of whether the registrant is a pass-through provider as defined in this article.
- (h) Evidence that the registrant complies with the insurance coverage required under this article.

1 **Section 23-114. General Conditions.**

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

5 (a) *Registration.* Current and valid registration information must be provided and
6 maintained in accordance with section 23-113, and updated information must be
7 provided to the city within 90 calendar days of any change.

8 (b) *As-built plans.* No later than 60 calendar days after completion of any work permitted
9 under this article, the permittee shall at no cost to the city provide complete as-built
10 plans, including but not limited to horizontal and typical vertical profiles. In addition,
11 the permittee shall provide any other information the city manager or designee deems
12 reasonably necessary, including information showing the location of utilities, facilities
13 or structures such as maps, geographical information systems or global positioning
14 system (GPS) coordinates, plats, construction documents, and drawings. The
15 permittee shall provide such plans in digitized format showing the two-dimensional
16 location of the utilities based on the city's geographical database data or other format
17 acceptable to the city.

18 (c) *Restoration of public rights-of-way.* Immediately after the completion of any
19 permitted work or phase thereof, permittees shall at its own expense restore the
20 public rights-of-way to as good a condition as existed immediately prior to
21 commencement of work. Restoration must be completed in accordance with
22 applicable city standards. If such restoration is not performed in a reasonable and
23 satisfactory manner within 30 calendar days after the completion of work, the city
24 may after written notice to the permittee cause the restoration to be made with the
25 total cost being charged to and paid for by the permittee upon demand, and the city
26 may charge the costs against any security the permittee provided in accordance with
27 this article. For 18 months following completion of any work permitted under this
28 article, the permittee shall guarantee its restoration work and shall correct at its sole
29 expense any restoration work that does not satisfy the requirements of this article.

30 (d) *Damage to property or public road.* Permittees shall not in any way displace, damage,
31 or destroy any utilities, facilities, or other property within the public rights-of-way, and
32 shall be liable for the costs of such damage. In addition, permittees shall be
33 responsible for any damage resulting from the issuance of the permit, including
34 damage to any public road in accordance with F.S. § 337.402. After sufficient written
35 notice and opportunity to cure and in accordance with applicable law, the city may
36 cause any necessary work to be done to remedy the damage with the total cost being
37 charged to and paid for by the permittee upon demand, and the city may charge the
38 costs against any security the permittee provided in accordance with this article.

39 (e) *Interference caused by utility.* Permittees shall, at no cost to the city and in accordance
40 with F.S. §§ 337.403 and 337.404, move or remove any utility at the request of the city
41 if the city finds that the utility interferes with any work the city performs within, on,

1 over, or under any public right-of-way or interferes in any way with the convenient,
2 safe, or continuous use or maintenance of same. After sufficient written notice and
3 opportunity to cure and in accordance with applicable law, the city may cause any
4 necessary work to be done to remedy the interference with the total cost being
5 charged to and paid for by the permittee upon demand, and the city may charge the
6 costs against any security the permittee provided in accordance with this article.

7 (f) *Temporary relocations of facilities for other users of public rights-of-way.* No later than
8 30 calendar days after receiving written notice from any other permittee that has
9 received a permit from the city to use the public rights-of-way, permittees shall
10 temporarily move or relocate its utilities to allow for the permitted use. Any expense
11 shall be paid by the permittee requesting the temporary relocation, and the permittee
12 receiving the request shall have the authority to require such payment in advance.

13 (g) *Conversion from aboveground to underground.* If the city has adopted an
14 undergrounding requirement that prohibits aboveground utilities or structures in
15 public rights-of-way or requires the conversion of such utilities or facilities to
16 underground, any permittees of aboveground utilities or structures shall, at its sole
17 expense, convert to underground or relocate as may be allowable and permitted
18 under this article. For small wireless facility collocations previously permitted under
19 this article on aboveground utility infrastructure, the city must either: 1) allow the
20 existing small wireless facilities to remain in place subject to any applicable pole
21 attachment agreement; or 2) require the applicable wireless infrastructure provider or
22 wireless services provider to replace the associated pole within 50 feet of the prior
23 location in accordance with the requirements of this article.

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

32 (i) *Maintenance.* Permittees shall maintain any utility permitted under this article in a
33 safe, neat, and clean condition, including but not limited to a condition reasonably
34 free of grease, rust, corrosion, excessive dirt, faded or damaged paint, or graffiti.

35 (j) *Hazardous conditions.* If the city at any time reasonably determines that a utility has
36 caused a condition that is hazardous or harmful to the public health, safety, or
37 welfare, the permittee of such utility, at its own expense and without liability to or
38 recourse against the city, shall remedy all such conditions after being provided
39 reasonable notice. If the city at any time reasonably determines that an emergency
40 situation exists and the permittee is not immediately available or is unable to
41 immediately provide the necessary remedy, then the city may remedy the situation
42 with the total cost being charged to and paid for by the permittee upon demand, and

1 the city may charge the costs against any security the permittee provided in
2 accordance with this article.

3 (k) *Compliance with law.* Permittees shall at all times be in full compliance with and abide
4 by all applicable provisions of federal, state, or local laws, codes, and regulations,
5 including but not limited to F.S. Ch. 333, and all federal regulations pertaining to
6 airport airspace protections, as well as all applicable historic preservation zoning
7 regulations.

8 (l) *Right of inspection.* The city may inspect any work or utilities as it finds necessary to
9 ensure compliance with this article or any applicable law or regulation.

10 (m) *Police powers.* Any public rights-of-way use by utilities and any permit issued under
11 this article is subject to the city's lawful exercise of its police power, and applicants
12 and permittees shall comply with any requirements or policies adopted by the city
13 manager, including but not limited to any provisions included in ~~a public rights-of-way~~
14 ~~use manual~~ an engineering design and construction manual referenced in this article
15 and any other conditions that the city manager or designee finds reasonably necessary
16 to protect the public health, safety, and welfare.

17 (n) *No property right.* Permits issued under this article do not create any property right or
18 other vested interest, or in any way limit the city's authority to otherwise manage or
19 vacate any portion of the public rights-of-way. In addition, the city reserves the right
20 to place and maintain, and permit to be placed or maintained, any utility, facility, or
21 improvement that the city deems necessary or proper in any public rights-of-way.

22 (o) *Indemnification.* Permittees shall, at its sole cost and expense, indemnify, hold
23 harmless, and defend the city and its officers, employees, and agents from all
24 liabilities, damages, losses, claims, suits, causes of action, and costs or expenses of any
25 kind or nature, including but not limited to reasonable attorneys' fees, for personal
26 injury, death, property damage, or any other losses that arise from or are in any way
27 connected with the construction, maintenance, occupation, placement, repair,
28 relocation, removal, or operation of the permittee's utilities or facilities, whether any
29 act or omission complained of is authorized, allowed, or prohibited by this article or
30 any permit issued hereunder, except to the extent that such claims are caused by the
31 negligence or willful conduct of the city.

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

36 (2) This indemnification obligation is not limited in any way by a limitation of the
37 amount or type of damages or compensation payable by or for the permittee
38 under workers' compensation, disability, or other employee benefit acts, or the
39 acceptance of insurance certificates required under this article, or the terms,
40 applicability, or limitations of any insurance held by the permittee. The city does
41 not waive any rights against the permittee that it may have by reason of this

1 indemnification because of the city's acceptance of permittee's insurance policies
2 required under this article, and this indemnification shall apply to all damages and
3 claims for damages of any kind suffered regardless of whether such insurance
4 policies shall have been determined to be applicable to any such damages or
5 claims for damages.

6 (3) Nothing contained in this provision shall be interpreted as a waiver of the city's
7 sovereign immunity as provided in F.S. § 768.28, or as denying the city or
8 permittee any remedy or defense available at law.

9 (4) These indemnification requirements shall survive and be in full force and effect
10 after any termination or cancellation of any registration or permit.

11 (p) *Insurance*. Permittees shall provide, pay for, and maintain satisfactory to the city the
12 types of insurance policies and coverage limits described here. Policies shall be issued
13 by companies authorized to do business in the State of Florida and shall have an A.M.
14 Best, latest edition, financial strength rating of at least A+ and financial size category
15 of at least VIII. All policies must name the city as an additional insured with respect to
16 all activities under this article. The required coverage must be evidenced by properly
17 executed certificates of insurance, which shall be manually signed by the authorized
18 representative of the insurance company and provided to the city at least annually. At
19 least 30 calendar days' advance written notice must be given to the city of any
20 cancellation, intent not to renew, or reduction in the policy coverage, which notice
21 must be sent by registered or certified mail. The city may, in its sole discretion and
22 only under extraordinary circumstances, allow a permittee to be self-insured for one
23 or more lines of insurance coverage. A permittee's insurance coverage and limits must
24 include at least the following, and the city reserves the right to reasonably increase or
25 decrease the following policy limits upon providing each permittee with at least 30
26 calendar days' written notice:

27 (1) *Comprehensive general liability*. Commercial general liability insurance including
28 premises/operations; independent contractors; contractual liability;
29 products/completed operations; XCU coverage; and personal injury and property
30 damage coverage for limits of no less than \$3,000,000 per occurrence combined
31 single limit and \$5,000,000 in the aggregate.

32 (2) *Commercial automobile liability*. Commercial automobile liability coverage for all
33 owned, non-owned, and hired vehicles for limits of no less than \$1,000,000 per
34 occurrence combined single limit.

35 (3) *Worker's compensation and employer's liability*. Worker's compensation in an
36 amount not less than the statutory limit and employer's liability insurance with
37 limits of not less than \$1,000,000.

38 (4) *Commercial excess or umbrella liability*. Commercial excess or umbrella liability
39 coverage may be used in combination with primary coverage to achieve the
40 required limits of liability.

1 (q) *Security*. Within 30 calendar days after completing any work permitted under this
2 article, permittees shall restore the public rights-of-way to as good a condition as
3 existed immediately prior to commencement of the permitted work. Restoration must
4 be completed in accordance with applicable city standards. For 18 months following
5 permittee's completion of any work permitted under this article, the permittee shall
6 guarantee its restoration work and shall correct at its sole expense any restoration
7 work that does not satisfy the requirements of this article.

8 For 18 months following a permittee's completion of any work permitted under this
9 article, the permittee shall provide security enforceable by and payable to the city, in
10 any combination of the types provided below, to secure performance and compliance
11 with the requirements, duties, and obligations imposed by this section. Security must
12 be provided in an amount established by the city manager or designee that is
13 reasonably proportional to the city-verified total cost of construction for the
14 permitted work within the public rights-of-way. In the event a permittee fails to
15 perform any requirement, duty, or obligation imposed by this section, the city may
16 recover from the security, jointly and severally, any damages or loss suffered by the
17 city a result, including but not limited to the full amount of any compensation or costs
18 related to the construction or restoration of the public rights-of-way. Should the city
19 draw upon the security, the permittee shall within 30 calendar days of written notice
20 from the city restore the security to full required amount.

21 (1) *Surety bond*. A surety bond executed by a surety company authorized to do
22 business in the United States with a minimum rating of A-VII as rated by A.M. Best
23 Company, Inc., provided that a claim against the surety bond may be made by
24 electronic means. The surety bond must be approved by the city attorney as to
25 form and legality, and must provide the following: "This bond may not be
26 canceled, or allowed to lapse, until 60 calendar days after receipt by the City of
27 Gainesville, by certified mail, return receipt requested, of a written notice from the
28 issuer of the bond of intent to cancel or not to renew."

29 (2) *Letter of credit*. An irrevocable and unconditional letter of credit issued by a
30 company authorized to do business in the United States, provided that a claim
31 against the letter of credit may be made by electronic means.

32 (r) *Transfers*. If a permittee transfers or assigns its registration or permit incident to a sale
33 or other transfer of assets, the transferee or assignee shall be obligated to comply
34 with the terms of this article. Written notice of any transfer, sale, or assignment must
35 be provided to the city within 30 calendar days of the effective closing date of the
36 transfer, sale, or assignment. For the transfer of registration and permitting to be
37 effective, the transferee or assignee shall comply with all requirements under this
38 article.

39 (s) *Abandonment*. Upon abandonment of a utility within the public rights-of-way, the
40 permittee or owner of the utility shall notify the city within 90 calendar days. In
41 addition, the city may provide notice of abandonment of a utility in the public rights-
42 of-way to the permittee or owner via certified mail at the address provided on the

1 registration. If, within 30 calendar days after the date the city provided notice, the
2 permittee or owner does not respond to such notice and provide information to
3 demonstrate that the utility is not abandoned, the utility will be deemed abandoned.
4 The city may require that the permittee or owner of an abandoned utility remove all
5 or any portion of the same, or the city may determine that such non-removal will be in
6 the best interest of the public health, safety, and welfare. If the permittee fails to
7 remove all or any portion of an abandoned utility as directed by the city within a
8 reasonable time period as may be required by the city, the city may perform such
9 removal and charge the costs against any security provided in accordance with this
10 article. In the event that the city does not direct the removal of the abandoned utility
11 by the permittee or owner, then such permittee or owner will be deemed to consent
12 to the alteration or removal of all or any portion of the utility as directed by the city or
13 to the transfer of ownership of the abandoned utility to the city, without further
14 obligation on the part of the city.

15
16 **Section 23-115. Compensation.**

- 17 (a) *Permit fees.* Permit applications must include any applicable permit fees set forth in
18 Appendix A. However, the city has elected not to require permit fees from
19 communications services providers that remit communications services taxes pursuant
20 to F.S. Ch. 202, for communications services provided within the city.
- 21 (b) *Small wireless facility collocation.* The rate to collocate a small wireless facility on a
22 city utility pole is \$150.00 per pole annually.
- 23 (c) *Pass-through providers.* Pass-through providers shall annually pay to the city \$500.00
24 per linear mile or portion thereof of any communications facility that is placed or
25 maintained in the public rights-of-way. Pass-through providers shall annually submit to
26 the city a notarized statement identifying the total number of such linear miles, and
27 upon request by the city shall provide reasonable access to maps of pass-through
28 facilities located in the public rights-of-way. The amounts charged pursuant to this
29 section must be based on the linear miles of public rights-of-way where a
30 communications facility is placed, not based on a summation of the lengths of
31 individual cables, conduits, strands, or fibers. The city shall discontinue charging such
32 amounts to a person that has ceased to be a pass-through provider, and any annual
33 amounts charged must be reduced for a prorated portion of any 12-month period
34 during which the person remits communication services taxes imposed by the city
35 pursuant to F.S. Ch. 202.
- 36 (d) *General use charges.* The city shall require the maximum compensation allowed under
37 applicable law for use and occupancy of the public rights-of-way, which is in addition
38 to any compensation or fees for attaching or collocating small wireless facilities on city
39 utility poles or otherwise using infrastructure or property owned by the city.

1 **Section 23-116. Permit Application and Review Procedure.**

2 (a) *Permit required.* It is unlawful for any person to place, install, locate, relocate,
3 construct, maintain, repair, operate, or remove any utilities under, on, over, across, or
4 within the public rights-of-way without first obtaining a written permit from the city in
5 accordance with this article, with certain exemptions as described below in this
6 subsection. Permits issued shall: 1) apply only to the areas of the public rights-of-way
7 specifically identified in the permit; 2) include and be subject to all conditions
8 provided in section 23-114; and 3) remain effective for at least one year, but may be
9 extended by the city manager or designee for good cause or if the permittee remains
10 in compliance with this article.

11 (1) *Emergency conditions.* In the case of an emergency condition that affects the
12 public health, safety, or welfare, including an unplanned service interruption, an
13 owner or agent of a utility existing in the public rights-of-way may take immediate
14 action to remedy the emergency and shall within 30 calendar days provide notice
15 and information to the city detailing the work performed. The city may require an
16 after-the-fact permit for work that would otherwise have required a permit under
17 this article.

18 (2) *Routine maintenance.* A person may perform routine maintenance on a utility
19 existing in the public rights-of-way without a new permit for such work, provided
20 the work does not involve any excavation, closure of a sidewalk, or closure of a
21 vehicle or parking lane. However, such person shall provide to the city reasonable
22 advance written notice identifying the areas where the maintenance will occur,
23 scope of work, and the dates and duration of the work to be performed.

24 (3) *Facility replacement.* A person may replace a facility existing in the public rights-of-
25 way without a new permit for such work, provided: 1) the replacement facility is
26 substantially similar or of the same or smaller size; and 2) the work does not
27 involve any excavation, closure of a sidewalk, or closure of a vehicle or parking
28 lane. However, such person shall provide to the city reasonable advance written
29 notice identifying the areas where the work will occur, scope of work, and the
30 dates and duration of the work to be performed.

31 (4) *Micro wireless facilities.* A communications services provider that has been
32 permitted under this article to occupy the public rights-of-way and that is
33 remitting communications service taxes imposed by the city pursuant to F.S. Ch.
34 202, may without a new permit for such work install, place, maintain, or replace a
35 micro wireless facility that is suspended on cables strung between existing utility
36 poles in compliance with this article.

37 (b) *Voluntary pre-submittal conference.* Prior to submitting a permit application, the
38 applicant is encouraged to schedule a pre-submittal conference with the city to
39 coordinate submittal and compliance with this article. This provision is not mandatory.

40 (c) *Permit application.* Applicants shall submit a complete permit application or complete
41 consolidated permit application on forms or in a format as may be required by the

1 city. A consolidated permit application is a single permit application for the collocation
2 of up to 30 small wireless facilities within the public rights-of-way in accordance with
3 this article. Applications must include the following:

- 4 (1) *Registration.* Current and valid registration information must be provided and
5 maintained in accordance with section 23-113, and updated information must be
6 provided to the city within 90 calendar days of any change.
- 7 (2) *Communications services statement.* A statement describing whether the applicant
8 provides or intends to provide communications services within the city; whether
9 the applicant is a pass-through provider or intends to have its communications
10 facilities pass through the city; and whether the applicant leases or intends to
11 lease its facilities to others who will be providing communications services within
12 the city.
- 13 (3) *Collocation agreement.* Applications for small wireless facility collocations on a city
14 utility pole must include an executed collocation agreement, on a form provided
15 by the city. Applications for small wireless facility collocations on any utility pole
16 other than a city utility pole must include a copy of a valid agreement for such
17 collocation. In lieu of the entire agreement, the applicant may provide the first
18 page and the signature page of such agreement or a notarized letter of
19 authorization from the owner of the utility pole, providing adequate identifying
20 information and indicating the applicant is authorized to collocate.
- 21 (4) *Compensation.* Applications must include all applicable compensation as provided
22 in section 23-115.
- 23 (5) *Engineering and construction plans.* Applications must include the following:
- 24 a. The proposed dates, times, and locations for utility installation or work,
25 including a description of the type, size, and number of proposed utilities or
26 facilities.
 - 27 b. A description of the manner in which the utility will be installed or modified,
28 including anticipated construction methods or techniques, and an engineering
29 plan with drawings, photographs, and cross-section schematics prepared by a
30 licensed engineer or person exempt from licensing under F.S. § 471.003, that is
31 consistent with the city's ~~engineering design manual and public rights-of-way~~
32 ~~use manual~~ engineering design and construction manual, and that includes: 1)
33 the type and location of proposed utilities, including the approximate size and
34 linear mileage of utilities, facilities and equipment; 2) the type of installation or
35 work proposed for the subject utilities; 3) maps showing the routing of new
36 construction or any work that involves any alteration to the public right-of-
37 way; 4) maps showing the locations of any known utilities located above, on, or
38 below the subject public rights-of-way located within 50 feet of all work
39 proposed; 5) maps showing the subject utility with distances in relation to
40 utilities, facilities, pavement, sidewalks, driveways, ramps, trees, or other
41 structures located within 50 feet of all work proposed in the public rights-of-

1 way; and 6) engineering certification attesting that the proposed location of
2 the utility work is structurally sufficient and otherwise appropriate for the
3 proposed work. The city, at its sole discretion, may require the applicant to
4 have the engineering and construction plans certified by an independent
5 licensed engineer or person exempt from licensing under F.S. § 471.003, as
6 selected by the city.

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

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

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

13 (6) *Compliance with review criteria.* Applications must include evidence demonstrating
14 compliance with the review criteria provided in section 23-117, which may include
15 information the city manager or designee finds reasonably necessary to
16 demonstrate the application's compliance with such review criteria, including but
17 not limited to a survey showing that the area is within the public rights-of-way and
18 that the city has the appropriate authority to issue a permit under this article.

19 (d) *Permit review procedure.* An application for a permit must be reviewed as follows: The
20 city manager or designee may separately address small wireless facility collocation
21 requests that were submitted under a consolidated permit application for which
22 incomplete information has been received or which are denied.

23 (1) *Notice of application deficiency.* Within 14 calendar days after the date of filing an
24 application, unless mutually extended by the city and applicant, the city manager
25 or designee shall determine whether the application is complete. If an application
26 is deemed incomplete, the city manager or designee shall notify the applicant by
27 electronic mail and specifically identify the missing information. An application will
28 be deemed complete if the city manager or designee fails to notify the applicant
29 otherwise within 14 calendar days after the date of filing an application.

30 (2) *Small wireless facilities—Request for alternative location.* Within 14 calendar days
31 after the date of filing an application to collocate a small wireless facility on a city
32 utility pole, the city manager or designee may request that the proposed location
33 of the small wireless facility be moved to another location and be placed on an
34 alternative city utility pole. The city and applicant may negotiate the alternative
35 location for 30 calendar days after the date of the request. At the conclusion of
36 this negotiation period, if the alternative location is accepted by the applicant, the
37 applicant shall notify the city of such acceptance and the application will be
38 deemed granted as it relates to any new location for which there is agreement and
39 all other locations in the application. If an agreement is not reached, the applicant
40 shall notify the city of such non-agreement and the city shall grant or deny the

1 original application within 90 calendar days after the date the application was
2 filed. All notices must be in writing provided by electronic mail.

3 (3) *Application review period.* Within 60 calendar days after the date of filing an
4 application, unless mutually extended by the city and the applicant, the city
5 manager or designee shall approve or deny the application, and a complete
6 application is deemed approved if the city fails to approve or deny the application
7 within this timeframe.

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

20
21 **Section 23-117. Review Criteria.**

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

28 (a) *General provisions.* All applications must meet the following criteria:

- 29 (1) Must not materially interfere with the safe operation of traffic control equipment.
30 (2) Must not materially interfere with sight lines or clear zones for transportation,
31 pedestrians, or public safety purposes, as provided in the city's ~~public works design~~
32 manual engineering design and construction manual.
33 (3) Must not materially interfere with compliance with the Americans with Disabilities
34 Act, or similar federal or state standards regarding pedestrian access or
35 movement.
36 (4) Must not materially fail to comply with the ~~2017~~ current edition of the Florida
37 Department of Transportation Utility Accommodation Manual.
38 (5) Must comply with applicable provisions of the Florida Building Code.

- 1 (6) Must comply with applicable federal, state, and city regulations pertaining to
2 airport airspace protections.
- 3 (7) Must comply with applicable historic preservation zoning regulations.
- 4 (8) Must 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
7 23-114, including indemnity, insurance, and security.
- 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 may limit or prohibit the placement of new or additional
11 utilities within the public rights-of-way in order to safeguard the public health,
12 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
16 determined by the city to be in the public interest.
- 17 (b) *Undergrounding*. All installations of new utilities or facilities permitted under this
18 article must be installed underground in accordance with the criteria in this
19 subsection. However, the undergrounding requirements of this subsection has the
20 following two limited exemptions whereby the installation of new utilities or facilities
21 permitted under this article may be completed on aboveground utility infrastructure
22 that at the time of application already exists in the public rights-of-way: 1) the
23 addition of wireline facilities; and 2) small wireless facility collocation as provided in
24 this section, including the installation of a new utility pole when the applicant
25 demonstrates that it is not reasonably able to provide wireless service by collocating
26 on an existing aboveground utility pole or wireless support structure.
- 27 (1) All work must be in accordance with applicable city policies and engineering
28 standards, including the ~~public works design manual, any city public rights-of-way~~
29 ~~use manual, engineering design and construction manual~~ and any city dig-once
30 policy.
- 31 (2) Utilities must be collocated underground in exiting conduit when applicable or, if
32 unavailable, space must be made available in any new conduit for other applicants
33 consistent with federal requirements.
- 34 (3) All work must be in accordance with all applicable standards and requirements of
35 the following:
- 36 a. The Florida Department of Transportation Utilities Accommodation Guide.
- 37 b. The State of Florida Manual of Uniform Minimum Standards for Design
38 Construction and Maintenance for Streets and Highways.

- 1 c. The Trench Safety Act, F.S. Ch. 553.
- 2 d. The Underground Facility Damage Prevention and Safety Act, F.S. Ch. 556.
- 3 e. The National Electrical Code or the ANSI National Electric Safety Code.
- 4 f. The "Safety Rules for the Installation and Maintenance of Electrical Supply and
- 5 Communication Lines" established by the Department of Commerce, Bureau of
- 6 Standards of the United States.
- 7 g. Appropriate participation in the applicable notification system for subsurface
- 8 installations, such as Sunshine State One-Call or any successor alert and
- 9 warning system.
- 10 (c) *Small wireless facility collocation.* Provided the application meets the criteria provided
- 11 in subsections (a), (b), and (c), small wireless facilities may be collocated as follows: 1)
- 12 on city utility poles, as that term is defined in this article, or city wireless support
- 13 structures that at the time of application already exist in the public rights-of-way; 2)
- 14 on existing utility poles that are not city utility poles, such as utility poles owned by
- 15 Gainesville Regional Utilities (GRU) or privately-owned utility poles, provided that such
- 16 collocation is at the sole discretion of and has the permission of the utility pole owner;
- 17 and 3) on an installation of a new utility pole when the applicant demonstrates that it
- 18 is not reasonably able to provide wireless service by collocating on an existing
- 19 aboveground utility pole or wireless support structure, provided the new utility pole
- 20 meets the substantive requirements of the make-ready work provisions below:
- 21 (1) *Design standards.* Small wireless facilities must meet the following standards:
- 22 a. Collocation is allowed on utility poles with a height of greater than 15 feet, and
- 23 may not be allowed on any horizontal structure to which signal lights or other
- 24 traffic control devices are attached.
- 25 b. Small wireless facilities and all associated equipment may not be installed at
- 26 ground level but must be installed either underground or at least eight feet
- 27 above the ground-level of the supporting pole or structure.
- 28 c. A small wireless facility, including any attached antennas, may not extend in
- 29 height greater than ten feet above the utility pole or structure upon which it is
- 30 to be collocated.
- 31 d. A slim design must be used wherein the top mounted antenna does not exceed
- 32 the diameter of the supporting pole or structure at the level of the antenna
- 33 attachment by more than three inches on any edge, and any side-mounted
- 34 enclosures do not extend more than 30 inches beyond the exterior dimensions
- 35 of the supporting pole or structure measured from the edge of the pole or
- 36 structure to the outermost surface of the side-mounted enclosure.
- 37 e. Small wireless facilities and all associated equipment must be: 1) located within
- 38 the utility pole or wireless support structure; or 2) covered with a shroud that
- 39 conforms to the pole or structure's design, texture, and color.

- 1 f. No signage may be located on small wireless facilities unless provided for in the
2 sign regulations in the city's Land Development Code, which allows for public
3 safety-based information such as emergency contact information.
- 4 g. Small wireless facilities must have no lights or illumination, unless required by
5 federal, state, or local law. This provision does not apply to lights that are
6 otherwise associated with a supporting utility pole and that exist separately
7 from the small wireless facility, including street lights.

8 (2) *Make-ready work.*

- 9 a. For a city utility pole, the city shall provide a good faith estimate for any make-
10 ready work necessary to enable the pole to support the requested collocation,
11 including necessary pole replacement, within 60 calendar days after receipt of
12 a complete application. Make-ready work, including any pole replacement,
13 must be completed within 60 calendar days after written acceptance of the
14 good faith estimate by the applicant. Alternatively, the city may require the
15 applicant to provide a make-ready estimate at the applicant's expense for the
16 work necessary to support the small wireless facility, including pole
17 replacement, and perform the make-ready work. The city shall not condition or
18 restrict the manner in which the applicant obtains, develops, or provides the
19 estimate or conducts the make-ready work subject to usual construction
20 restoration standards for work in the public right-of-way.
- 21 b. If pole replacement is required to support collocation, the scope of the make-
22 ready estimate must be limited to the design, fabrication, and installation of a
23 utility pole that is substantially similar in color and composition. Any
24 replacement pole required may be no taller than the tallest existing utility pole
25 located in the same public right-of-way within 500 feet of the replaced pole; if
26 there are no existing utility poles located within 500 feet, then the replacement
27 pole may be no taller than 50 feet. If the original utility pole was the property
28 of the city, then the replaced or altered utility pole must remain the property
29 of the city.
- 30 c. All make-ready work must be in accordance with applicable city policies and
31 engineering standards, including the ~~public works design manual, any city~~
32 ~~public rights-of-way use manual, city's engineering design and construction~~
33 manual and any city one-touch make-ready policy or dig-once policy, as
34 permitted by law.

35
36 **Section 23-118. Appeals.**

- 37 (a) Final decisions of the city manager or designee denying, revoking, or suspending any
38 permit under this article may be appealed by filing a written notice of appeal, together
39 with the applicable fee established by the city commission, within 25 calendar days of
40 the date of the city manager or designee's written decision. The applicant shall file the

1 notice of appeal with the city manager with a copy to the city attorney, and shall state
2 the decision that is being appealed, the grounds for appeal, and a brief summary of
3 the relief that is sought. Any appeal not timely filed will be waived.

4 (b) The city and the appellant shall mutually agree on a mediator. The matter must be set
5 for mediation within 30 calendar days of the date of the notice of appeal, unless
6 extended by mutual agreement of the parties. The city manager or designee shall
7 notify any party who has filed a written request for such notification of the date when
8 the matter will be presented to the mediator.

9 (c) The parties shall provide the mediator with any materials considered relevant to the
10 city manager or designee's decision, and the mediator may seek additional relevant
11 information. The mediator shall make a decision using the appeal criteria for
12 administrative decisions provided in section 30-3.57 of the City of Gainesville Code of
13 Ordinances. The decision of the mediator must be rendered in writing no later than
14 ten calendar days after the conclusion of the hearing, and must be an order
15 recommending that the city manager or designee's decision be affirmed, reversed, or
16 modified.

17 (d) The city manager or designee shall consider the decision of the mediator and shall
18 make a final decision in writing no later than five calendar days after the date of the
19 written order of the mediator. The decision of the city manager or designee will be
20 final and may be subject to judicial review as provided in law.

21
22 **Section 23-119. Enforcement.**

23 (a) *Generally.* Any person who violates any provision of this article is subject to
24 punishment as provided in section 1-9 of this Code of Ordinances.

25 (b) *Permit revocation.*

26 (1) The city manager may revoke a permit issued under this article and the right to
27 own, operate, or maintain a utility under, on, over, across, or within a public rights-
28 of-way, for the following reasons:

- 29 a. A federal or state authority denies or revokes a permittee's applicable
30 certification or license, including a certificate of authorization, public
31 convenience and necessity, or other applicable certifications or licenses issued
32 by the Florida Public Service Commission, the Florida Department of State, the
33 Federal Communications Commission, or other federal authority.
- 34 b. The permittee's utility has caused a condition that is hazardous or harmful to
35 the public health, safety, or welfare and the permittee has failed to remedy the
36 danger promptly after receipt of written notice.
- 37 c. Substantive and material violations of any of the provisions of this article,
38 including but not limited to:

- 1 i. An evasion or attempt to evade any provision of this article, an attempt at
2 any fraud or deceit upon the city, or any material misrepresentation of fact.
- 3 ii. The repeated failure to provide any updated registration information to the
4 city.
- 5 iii. The failure to maintain the required indemnification, insurance, or security.
- 6 iv. The failure to properly restore the public rights-of-way.
- 7 v. The failure to properly remedy damage or interference, or the failure to
8 relocate or remove utilities pursuant to this article and applicable law.
- 9 vi. Conducting work in the public rights-of-way without a permit.
- 10 (2) Prior to permit revocation, the city shall make a written demand upon the
11 permittee to remedy such violation and state that the continued violation may be
12 cause for permit revocation. The city manager or designee may place additional or
13 revised conditions on the permittee.
- 14 (3) Within 30 calendar days of the city's written notification, the permittee shall
15 remedy the violation or submit to the city manager or designee a plan for
16 correction. The permittee's failure to remedy the violation or to submit a
17 correction plan acceptable to the city manager or designee or to implement an
18 approved plan will be cause for permit revocation. A final determination to revoke
19 a permit may be appealed in accordance with this article.
- 20 (4) If a permit is revoked, the permittee shall: 1) reimburse the city for the city's
21 reasonable costs, including restoration costs and administrative costs; and 2) in
22 accordance with this article and as otherwise may be provided in state law, notify
23 the city of the assumption or anticipated assumption by another permittee of
24 ownership of the permittee's utilities in the public rights-of-way, or provide the
25 city with an acceptable plan for disposition of its utilities in the public rights-of-
26 way. If a permittee fails to comply with this subsection, the utilities will be deemed
27 abandoned and the city may exercise any remedies or rights it has under this
28 article or at law.
- 29 (c) *Force majeure*. In the event a person's performance of or compliance with any of the
30 provisions of this article is prevented by a cause or event not within the person's
31 control, such inability to perform or comply will be deemed excused and no penalties
32 or sanctions may be imposed as a result thereof; provided, however, that such person
33 uses all practicable means to expeditiously cure or correct any such inability to
34 perform or comply. For purposes of this article, causes or events not within a person's
35 control include, without limitation, acts of God, floods, earthquakes, landslides,
36 hurricanes, fires, and other natural disasters, acts of public enemies, riots or civil
37 disturbances, sabotage, strikes and restraints imposed by order of a governmental
38 agency or court. Causes or events within a person's control, and thus not falling within
39 this provision, include, without limitation, financial inability to perform or comply,

1 economic hardship, and misfeasance, malfeasance or nonfeasance by any of the
2 person's directors, officers, employees, contractors, or agents.

3
4
5 **SECTION 2.** It is the intent of the City Commission that the provisions of Section 1 of this
6 ordinance become and be made a part of the Code of Ordinances of the City of Gainesville,
7 Florida, and that the sections and paragraphs of the Code of Ordinances may be renumbered or
8 relettered in order to accomplish such intent.

9 **SECTION 3.** If any word, phrase, clause, paragraph, section, or provision of this ordinance or the
10 application hereof to any person or circumstance is held invalid or unconstitutional, such finding
11 will not affect the other provisions or applications of this ordinance that can be given effect
12 without the invalid or unconstitutional provision or application, and to this end the provisions of
13 this ordinance are declared severable.

14 **SECTION 4.** All ordinances or parts of ordinances in conflict herewith are to the extent of such
15 conflict hereby repealed.

16 **SECTION 5.** This ordinance will become effective immediately upon adoption.

17
18 **PASSED AND ADOPTED** this _____ day of _____, 2023.

19
20 _____
21 HARVEY L. WARD

22 MAYOR
23
24
25
26

1 Attest:

Approved as to form and legality:

2

3

4

5 KRISTEN BRYANT

DANIEL M. NEE

6 INTERIM CITY CLERK

CITY ATTORNEY

7

8 This ordinance passed on first reading this ____ day of _____, 2023.

9 This ordinance passed on second reading this ____ day of _____, 2023.