

ORDINANCE NO. 2024-167

An ordinance of the City of Gainesville, Florida, amending Chapter 23 Article VI – *Public Rights-of-Way Use by Utilities* of the Code of Ordinances to delete a provision exempting Gainesville Regional Utilities from the applicable regulations and to update references to the Engineering Design and Construction Manual; amending Appendix A – *Schedule of Fees, Rates and Charges* relating to public rights-of-way obstruction permits and 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.

**WHEREAS**, the City of Gainesville, Florida (“City”) is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and the Municipal Home Rule Powers Act; and

**WHEREAS**, the Municipal Home Rule Powers Act, Chapter 166, Florida Statutes, secures for municipalities the broad exercise of home rule powers granted by Article VIII, Section 2 of the Florida Constitution, including the exercise of any power for municipal purposes not expressly prohibited by law; and

**WHEREAS**, at least ten days’ notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings to be held by the City Commission of the City of Gainesville; and

**WHEREAS**, public hearings were held pursuant to the notice described above at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

**WHEREAS**, the City Commission has determined that this ordinance serves a valid public purpose and is in the best interest of the public health, safety, and general welfare of the City of Gainesville and its residents.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE,**

**FLORIDA:**

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

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

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

**Section 23-109. Definitions.**

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

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

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

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

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

*As-built plans* means a set of drawings in a format as specified by the city submitted by the applicant upon completion of a project, which drawings reflect all changes to original plans

1 made during the construction process and show the exact dimensions, geometry, and  
2 location of all elements of the work completed under the permit.

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

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

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

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

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

28 (a) Information services.

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

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

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

32 (e) Bad check charges.

33 (f) Late payment charges.

34 (g) Billing and collection services.

35 (h) Internet access service, as defined in Section 1105(5) of the Internet Tax Freedom Act,  
36 47 U.S.C. Section 151 note, as amended by Pub. L. No. 110-108, electronic mail  
37 service, electronic bulletin board service, or similar online computer services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (b) All other wireless equipment associated with the facility is cumulatively no more than  
38 28 cubic feet in volume. The following types of associated ancillary equipment are not  
39 included in the calculation of equipment volume: electric meters; concealment

elements; telecommunications demarcation boxes; ground-based enclosures; grounding equipment; power transfer switches; cutoff switches; vertical cable runs for the connection of power and other services; and utility poles or other support structures.

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

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

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

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

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

(b) Wireline backhaul facilities; or

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

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

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

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

*Wireless support structure* means a freestanding structure, such as a monopole or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole, pedestal, or other

1 support structure for ground-based equipment not mounted on a utility pole and less than  
2 five feet in height.

3 *Wireline facilities* means a wireline aerial or below-grade facility used to provide  
4 communications services. The term includes backhaul facilities associated with a wireless  
5 facility and coaxial or fiber-optic cable that is between wireless structures or utility poles or  
6 that is otherwise not immediately adjacent to or directly associated with a particular antenna  
7 of a wireless facility.

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

#### 10 **Section 23-110. Purpose.**

11 The city recognizes that the public rights-of-way are a unique and physically limited resource  
12 requiring proper and thoughtful management to maximize safety, aesthetics, and economic  
13 vitality for the public, and these factors must be reasonably balanced in any decision to use or  
14 manage the public rights-of-way. The intent of this article is to accommodate the demand for  
15 utility infrastructure and communications facilities, while also protecting the safety,  
16 aesthetics, and economic vitality inherent in the public rights-of-way, by providing reasonable  
17 regulations for the placement and maintenance of utility infrastructure and communication  
18 facilities within the public rights-of-way in accordance with applicable law, including F.S. §  
19 337.401, as amended, the provisions of the Federal Telecommunications Act of 1996, and  
20 other applicable federal and state law.

#### 22 **Section 23-111. Applicability.**

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

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

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

#### 37 **Section 23-112. Authority to Implement Article.**

38 The city manager is authorized to implement this article and is authorized to develop, if  
39 deemed necessary by the city manager, ~~a public rights-of-way use manual that provides~~

1 implementing regulations, ~~including that include~~ engineering requirements, policies, or  
2 procedures that must be followed in applying for and issuing permits under this article. ~~The~~  
3 ~~public rights-of-way use manual must be adopted by the city commission.~~ Regulations  
4 promulgated pursuant to this section must be adopted by the city commission within the  
5 city's engineering design and construction manual.

### 7 **Section 23-113. Registration.**

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

17 (a) The name under which the registrant transacts business in the city and, if different, in  
18 the State of Florida.

19 (b) The address and telephone number of the registrant's principle place of business in  
20 the State of Florida and any branch office located in the city or, if none, the name,  
21 address, and telephone number of the registrant's national headquarters and its  
22 registered agent in the State of Florida.

23 (c) The name, address, electronic mail address, and telephone number of the registrant's  
24 primary contact person and, if different, the person to contact in case of an  
25 emergency.

26 (d) Plans and maps describing all utilities and associated structures or facilities that are  
27 owned or used by the registrant and that are existing in the public rights-of-way at the  
28 time of registration, not including any information that has previously been provided  
29 to the city. Information shall include the location of such utilities, facilities, or  
30 structures with maps and geographical information systems or Global Positioning  
31 System (GPS) coordinates, and shall be provided in digitized format showing the two-  
32 dimensional location of the facilities based on the city's geographical database data or  
33 other format acceptable to the city. This provision does not apply to communications  
34 services providers.

35 (e) A copy of the registrant's current certificate of authorization, public convenience and  
36 necessity, or other applicable certifications or licenses issued by the Florida Public  
37 Service Commission, the Florida Department of State, the Federal Communications  
38 Commission, or other federal authority.

39 (f) The registrant's federal employer identification number.



1 (g) A statement of whether the registrant is a pass-through provider as defined in this  
2 article.

3 (h) Evidence that the registrant complies with the insurance coverage required under this  
4 article.

5  
6 **Section 23-114. General Conditions.**

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

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

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

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

35 (d) *Damage to property or public road.* Permittees shall not in any way displace, damage,  
36 or destroy any utilities, facilities, or other property within the public rights-of-way, and  
37 shall be liable for the costs of such damage. In addition, permittees shall be  
38 responsible for any damage resulting from the issuance of the permit, including  
39 damage to any public road in accordance with F.S. § 337.402. After sufficient written  
40 notice and opportunity to cure and in accordance with applicable law, the city may

1 cause any necessary work to be done to remedy the damage with the total cost being  
2 charged to and paid for by the permittee upon demand, and the city may charge the  
3 costs against any security the permittee provided in accordance with this article.

4 (e) *Interference caused by utility.* Permittees shall, at no cost to the city and in accordance  
5 with F.S. §§ 337.403 and 337.404, move or remove any utility at the request of the city  
6 if the city finds that the utility interferes with any work the city performs within, on,  
7 over, or under any public right-of-way or interferes in any way with the convenient,  
8 safe, or continuous use or maintenance of same. After sufficient written notice and  
9 opportunity to cure and in accordance with applicable law, the city may cause any  
10 necessary work to be done to remedy the interference with the total cost being  
11 charged to and paid for by the permittee upon demand, and the city may charge the  
12 costs against any security the permittee provided in accordance with this article.

13 (f) *Temporary relocations of facilities for other users of public rights-of-way.* No later than  
14 30 calendar days after receiving written notice from any other permittee that has  
15 received a permit from the city to use the public rights-of-way, permittees shall  
16 temporarily move or relocate its utilities to allow for the permitted use. Any expense  
17 shall be paid by the permittee requesting the temporary relocation, and the permittee  
18 receiving the request shall have the authority to require such payment in advance.

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

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

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

- 1 (j) *Hazardous conditions.* If the city at any time reasonably determines that a utility has  
2 caused a condition that is hazardous or harmful to the public health, safety, or  
3 welfare, the permittee of such utility, at its own expense and without liability to or  
4 recourse against the city, shall remedy all such conditions after being provided  
5 reasonable notice. If the city at any time reasonably determines that an emergency  
6 situation exists and the permittee is not immediately available or is unable to  
7 immediately provide the necessary remedy, then the city may remedy the situation  
8 with the total cost being charged to and paid for by the permittee upon demand, and  
9 the city may charge the costs against any security the permittee provided in  
10 accordance with this article.
- 11 (k) *Compliance with law.* Permittees shall at all times be in full compliance with and abide  
12 by all applicable provisions of federal, state, or local laws, codes, and regulations,  
13 including but not limited to F.S. Ch. 333, and all federal regulations pertaining to  
14 airport airspace protections, as well as all applicable historic preservation zoning  
15 regulations.
- 16 (l) *Right of inspection.* The city may inspect any work or utilities as it finds necessary to  
17 ensure compliance with this article or any applicable law or regulation.
- 18 (m) *Police powers.* Any public rights-of-way use by utilities and any permit issued under  
19 this article is subject to the city's lawful exercise of its police power, and applicants  
20 and permittees shall comply with any requirements or policies adopted by the city  
21 manager, including but not limited to any provisions included in ~~a public rights-of-way~~  
22 ~~use manual~~ an engineering design and construction manual referenced in this article  
23 and any other conditions that the city manager or designee finds reasonably necessary  
24 to protect the public health, safety, and welfare.
- 25 (n) *No property right.* Permits issued under this article do not create any property right or  
26 other vested interest, or in any way limit the city's authority to otherwise manage or  
27 vacate any portion of the public rights-of-way. In addition, the city reserves the right  
28 to place and maintain, and permit to be placed or maintained, any utility, facility, or  
29 improvement that the city deems necessary or proper in any public rights-of-way.
- 30 (o) *Indemnification.* Permittees shall, at its sole cost and expense, indemnify, hold  
31 harmless, and defend the city and its officers, employees, and agents from all  
32 liabilities, damages, losses, claims, suits, causes of action, and costs or expenses of any  
33 kind or nature, including but not limited to reasonable attorneys' fees, for personal  
34 injury, death, property damage, or any other losses that arise from or are in any way  
35 connected with the construction, maintenance, occupation, placement, repair,  
36 relocation, removal, or operation of the permittee's utilities or facilities, whether any  
37 act or omission complained of is authorized, allowed, or prohibited by this article or  
38 any permit issued hereunder, except to the extent that such claims are caused by the  
39 negligence or willful conduct of the city.
- 40 (1) The permittee shall undertake, at its sole expense, the defense of any such claims,  
41 even if the claim is groundless, false, or fraudulent, and the permittee shall assume

1 and defend not only itself but also the city, provided the city shall retain the right  
2 to participate by its own counsel and to select counsel of its own choosing.

3 (2) This indemnification obligation is not limited in any way by a limitation of the  
4 amount or type of damages or compensation payable by or for the permittee  
5 under workers' compensation, disability, or other employee benefit acts, or the  
6 acceptance of insurance certificates required under this article, or the terms,  
7 applicability, or limitations of any insurance held by the permittee. The city does  
8 not waive any rights against the permittee that it may have by reason of this  
9 indemnification because of the city's acceptance of permittee's insurance policies  
10 required under this article, and this indemnification shall apply to all damages and  
11 claims for damages of any kind suffered regardless of whether such insurance  
12 policies shall have been determined to be applicable to any such damages or  
13 claims for damages.

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

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

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

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

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

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

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

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

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

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

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

- (r) *Transfers*. If a permittee transfers or assigns its registration or permit incident to a sale or other transfer of assets, the transferee or assignee shall be obligated to comply with the terms of this article. Written notice of any transfer, sale, or assignment must be provided to the city within 30 calendar days of the effective closing date of the transfer, sale, or assignment. For the transfer of registration and permitting to be effective, the transferee or assignee shall comply with all requirements under this article.
- (s) *Abandonment*. Upon abandonment of a utility within the public rights-of-way, the permittee or owner of the utility shall notify the city within 90 calendar days. In addition, the city may provide notice of abandonment of a utility in the public rights-of-way to the permittee or owner via certified mail at the address provided on the registration. If, within 30 calendar days after the date the city provided notice, the permittee or owner does not respond to such notice and provide information to demonstrate that the utility is not abandoned, the utility will be deemed abandoned. The city may require that the permittee or owner of an abandoned utility remove all or any portion of the same, or the city may determine that such non-removal will be in the best interest of the public health, safety, and welfare. If the permittee fails to remove all or any portion of an abandoned utility as directed by the city within a reasonable time period as may be required by the city, the city may perform such removal and charge the costs against any security provided in accordance with this article. In the event that the city does not direct the removal of the abandoned utility by the permittee or owner, then such permittee or owner will be deemed to consent to the alteration or removal of all or any portion of the utility as directed by the city or to the transfer of ownership of the abandoned utility to the city, without further obligation on the part of the city.

#### **Section 23-115. Compensation.**

- (a) *Permit fees*. Permit applications must include any applicable permit fees set forth in Appendix A. However, the city has elected not to require permit fees from communications services providers that remit communications services taxes pursuant to F.S. Ch. 202, for communications services provided within the city.
- (b) *Small wireless facility collocation*. The rate to collocate a small wireless facility on a city utility pole is \$150.00 per pole annually.
- (c) *Pass-through providers*. Pass-through providers shall annually pay to the city \$500.00 per linear mile or portion thereof of any communications facility that is placed or maintained in the public rights-of-way. Pass-through providers shall annually submit to the city a notarized statement identifying the total number of such linear miles, and upon request by the city shall provide reasonable access to maps of pass-through facilities located in the public rights-of-way. The amounts charged pursuant to this section must be based on the linear miles of public rights-of-way where a communications facility is placed, not based on a summation of the lengths of

individual cables, conduits, strands, or fibers. The city shall discontinue charging such amounts to a person that has ceased to be a pass-through provider, and any annual amounts charged must be reduced for a prorated portion of any 12-month period during which the person remits communication services taxes imposed by the city pursuant to F.S. Ch. 202.

- (d) *General use charges.* The city shall require the maximum compensation allowed under applicable law for use and occupancy of the public rights-of-way, which is in addition to any compensation or fees for attaching or collocating small wireless facilities on city utility poles or otherwise using infrastructure or property owned by the city.

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

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

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

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

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

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

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

10 (c) *Permit application.* Applicants shall submit a complete permit application or complete  
11 consolidated permit application on forms or in a format as may be required by the  
12 city. A consolidated permit application is a single permit application for the collocation  
13 of up to 30 small wireless facilities within the public rights-of-way in accordance with  
14 this article. Applications must include the following:

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

18 (2) *Communications services statement.* A statement describing whether the applicant  
19 provides or intends to provide communications services within the city; whether  
20 the applicant is a pass-through provider or intends to have its communications  
21 facilities pass through the city; and whether the applicant leases or intends to  
22 lease its facilities to others who will be providing communications services within  
23 the city.

24 (3) *Collocation agreement.* Applications for small wireless facility collocations on a city  
25 utility pole must include an executed collocation agreement, on a form provided  
26 by the city. Applications for small wireless facility collocations on any utility pole  
27 other than a city utility pole must include a copy of a valid agreement for such  
28 collocation. In lieu of the entire agreement, the applicant may provide the first  
29 page and the signature page of such agreement or a notarized letter of  
30 authorization from the owner of the utility pole, providing adequate identifying  
31 information and indicating the applicant is authorized to collocate.

32 (4) *Compensation.* Applications must include all applicable compensation as provided  
33 in section 23-115.

34 (5) *Engineering and construction plans.* Applications must include the following:

- 35 a. The proposed dates, times, and locations for utility installation or work,  
36 including a description of the type, size, and number of proposed utilities or  
37 facilities.
- 38 b. A description of the manner in which the utility will be installed or modified,  
39 including anticipated construction methods or techniques, and an engineering  
40 plan with drawings, photographs, and cross-section schematics prepared by a



1 licensed engineer or person exempt from licensing under F.S. § 471.003, that is  
2 consistent with the city's ~~engineering design manual and public rights-of-way~~  
3 ~~use manual~~ engineering design and construction manual, and that includes: 1)  
4 the type and location of proposed utilities, including the approximate size and  
5 linear mileage of utilities, facilities and equipment; 2) the type of installation or  
6 work proposed for the subject utilities; 3) maps showing the routing of new  
7 construction or any work that involves any alteration to the public right-of-  
8 way; 4) maps showing the locations of any known utilities located above, on, or  
9 below the subject public rights-of-way located within 50 feet of all work  
10 proposed; 5) maps showing the subject utility with distances in relation to  
11 utilities, facilities, pavement, sidewalks, driveways, ramps, trees, or other  
12 structures located within 50 feet of all work proposed in the public rights-of-  
13 way; and 6) engineering certification attesting that the proposed location of  
14 the utility work is structurally sufficient and otherwise appropriate for the  
15 proposed work. The city, at its sole discretion, may require the applicant to  
16 have the engineering and construction plans certified by an independent  
17 licensed engineer or person exempt from licensing under F.S. § 471.003, as  
18 selected by the city.

- 19 c. Any trees or landscaping that may be impacted by the work proposed, which  
20 shall be regulated under applicable provisions of the city's Code of Ordinances.
- 21 d. Maintenance of traffic or temporary sidewalk closure plan for any disruption of  
22 the public rights-of-way.
- 23 e. A restoration plan and good faith estimate of the cost to restore the public  
24 rights-of-way to the condition it was in prior to proposed work.

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

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

35 (1) *Notice of application deficiency.* Within 14 calendar days after the date of filing an  
36 application, unless mutually extended by the city and applicant, the city manager  
37 or designee shall determine whether the application is complete. If an application  
38 is deemed incomplete, the city manager or designee shall notify the applicant by  
39 electronic mail and specifically identify the missing information. An application will  
40 be deemed complete if the city manager or designee fails to notify the applicant  
41 otherwise within 14 calendar days after the date of filing an application.

1 (2) *Small wireless facilities—Request for alternative location.* Within 14 calendar days  
2 after the date of filing an application to collocate a small wireless facility on a city  
3 utility pole, the city manager or designee may request that the proposed location  
4 of the small wireless facility be moved to another location and be placed on an  
5 alternative city utility pole. The city and applicant may negotiate the alternative  
6 location for 30 calendar days after the date of the request. At the conclusion of  
7 this negotiation period, if the alternative location is accepted by the applicant, the  
8 applicant shall notify the city of such acceptance and the application will be  
9 deemed granted as it relates to any new location for which there is agreement and  
10 all other locations in the application. If an agreement is not reached, the applicant  
11 shall notify the city of such non-agreement and the city shall grant or deny the  
12 original application within 90 calendar days after the date the application was  
13 filed. All notices must be in writing provided by electronic mail.

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

19 (4) *Notice of approval or denial.* The city manager or designee shall approve an  
20 application unless it is incomplete or it does not comply with the requirements of  
21 this article, and notice of approval must be provided to the applicant by electronic  
22 mail. If an application is denied, the city manager or designee shall notify the  
23 applicant by electronic mail on the day the application is denied with specification  
24 as to the basis of denial, including the specific code provisions on which the denial  
25 is based. The applicant may cure the deficiencies identified and resubmit the  
26 application within 30 calendar days after notice of the denial is sent to the  
27 applicant. The city manager or designee shall approve or deny the revised  
28 application within 30 calendar days after receipt or the application is deemed  
29 approved. The review of a revised application is limited to the deficiencies cited in  
30 the denial.

### 32 **Section 23-117. Review Criteria.**

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

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

40 (1) Must not materially interfere with the safe operation of traffic control equipment.

- 1 (2) Must not materially interfere with sight lines or clear zones for transportation,  
2 pedestrians, or public safety purposes, as provided in the city's ~~public works design~~  
3 ~~manual~~ engineering design and construction manual.
- 4 (3) Must not materially interfere with compliance with the Americans with Disabilities  
5 Act, or similar federal or state standards regarding pedestrian access or  
6 movement.
- 7 (4) Must not materially fail to comply with the ~~2017~~ current edition of the Florida  
8 Department of Transportation Utility Accommodation Manual.
- 9 (5) Must comply with applicable provisions of the Florida Building Code.
- 10 (6) Must comply with applicable federal, state, and city regulations pertaining to  
11 airport airspace protections.
- 12 (7) Must comply with applicable historic preservation zoning regulations.
- 13 (8) Must comply with the requirements and conditions of this article, including but not  
14 limited to: 1) the registration requirements under section 23-113; and 2)  
15 documentation agreeing to and providing the general permit conditions in section  
16 23-114, including indemnity, insurance, and security.
- 17 (9) Power to restrict area. With the exception of small wireless facility collocation as  
18 provided in this section and to the extent consistent with applicable law, the city  
19 manager or designee may limit or prohibit the placement of new or additional  
20 utilities within the public rights-of-way in order to safeguard the public health,  
21 safety, and welfare, including but not limited to each of the following situations:
- 22 a. When there is insufficient space to accommodate a request.
- 23 b. To protect existing utilities in the public rights-of-way.
- 24 c. To allow for city plans for public improvements or development projects  
25 determined by the city to be in the public interest.
- 26 (b) *Undergrounding*. All installations of new utilities or facilities permitted under this  
27 article must be installed underground in accordance with the criteria in this  
28 subsection. However, the undergrounding requirements of this subsection has the  
29 following two limited exemptions whereby the installation of new utilities or facilities  
30 permitted under this article may be completed on aboveground utility infrastructure  
31 that at the time of application already exists in the public rights-of-way: 1) the  
32 addition of wireline facilities; and 2) small wireless facility collocation as provided in  
33 this section, including the installation of a new utility pole when the applicant  
34 demonstrates that it is not reasonably able to provide wireless service by collocating  
35 on an existing aboveground utility pole or wireless support structure.
- 36 (1) All work must be in accordance with applicable city policies and engineering  
37 standards, including the ~~public works design manual, any city public rights of way~~  
38 ~~use manual,~~ engineering design and construction manual and any city dig-once  
39 policy.

1 (2) Utilities must be collocated underground in exiting conduit when applicable or, if  
2 unavailable, space must be made available in any new conduit for other applicants  
3 consistent with federal requirements.

4 (3) All work must be in accordance with all applicable standards and requirements of  
5 the following:

6 a. The Florida Department of Transportation Utilities Accommodation Guide.

7 b. The State of Florida Manual of Uniform Minimum Standards for Design  
8 Construction and Maintenance for Streets and Highways.

9 c. The Trench Safety Act, F.S. Ch. 553.

10 d. The Underground Facility Damage Prevention and Safety Act, F.S. Ch. 556.

11 e. The National Electrical Code or the ANSI National Electric Safety Code.

12 f. The "Safety Rules for the Installation and Maintenance of Electrical Supply and  
13 Communication Lines" established by the Department of Commerce, Bureau of  
14 Standards of the United States.

15 g. Appropriate participation in the applicable notification system for subsurface  
16 installations, such as Sunshine State One-Call or any successor alert and  
17 warning system.

18 (c) *Small wireless facility collocation.* Provided the application meets the criteria provided  
19 in subsections (a), (b), and (c), small wireless facilities may be collocated as follows: 1)  
20 on city utility poles, as that term is defined in this article, or city wireless support  
21 structures that at the time of application already exist in the public rights-of-way; 2)  
22 on existing utility poles that are not city utility poles, such as utility poles owned by  
23 Gainesville Regional Utilities (GRU) or privately-owned utility poles, provided that such  
24 collocation is at the sole discretion of and has the permission of the utility pole owner;  
25 and 3) on an installation of a new utility pole when the applicant demonstrates that it  
26 is not reasonably able to provide wireless service by collocating on an existing  
27 aboveground utility pole or wireless support structure, provided the new utility pole  
28 meets the substantive requirements of the make-ready work provisions below:

29 (1) *Design standards.* Small wireless facilities must meet the following standards:

30 a. Collocation is allowed on utility poles with a height of greater than 15 feet, and  
31 may not be allowed on any horizontal structure to which signal lights or other  
32 traffic control devices are attached.

33 b. Small wireless facilities and all associated equipment may not be installed at  
34 ground level but must be installed either underground or at least eight feet  
35 above the ground-level of the supporting pole or structure.

36 c. A small wireless facility, including any attached antennas, may not extend in  
37 height greater than ten feet above the utility pole or structure upon which it is  
38 to be collocated.

- d. A slim design must be used wherein the top mounted antenna does not exceed the diameter of the supporting pole or structure at the level of the antenna attachment by more than three inches on any edge, and any side-mounted enclosures do not extend more than 30 inches beyond the exterior dimensions of the supporting pole or structure measured from the edge of the pole or structure to the outermost surface of the side-mounted enclosure.
- e. Small wireless facilities and all associated equipment must be: 1) located within the utility pole or wireless support structure; or 2) covered with a shroud that conforms to the pole or structure's design, texture, and color.
- f. No signage may be located on small wireless facilities unless provided for in the sign regulations in the city's Land Development Code, which allows for public safety-based information such as emergency contact information.
- g. Small wireless facilities must have no lights or illumination, unless required by federal, state, or local law. This provision does not apply to lights that are otherwise associated with a supporting utility pole and that exist separately from the small wireless facility, including street lights.

(2) *Make-ready work.*

- a. For a city utility pole, the city shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 calendar days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 calendar days after written acceptance of the good faith estimate by the applicant. Alternatively, the city may require the applicant to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. The city shall not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the public right-of-way.
- b. If pole replacement is required to support collocation, the scope of the make-ready estimate must be limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. Any replacement pole required may be no taller than the tallest existing utility pole located in the same public right-of-way within 500 feet of the replaced pole; if there are no existing utility poles located within 500 feet, then the replacement pole may be no taller than 50 feet. If the original utility pole was the property of the city, then the replaced or altered utility pole must remain the property of the city.
- c. All make-ready work must be in accordance with applicable city policies and engineering standards, including the ~~public works design manual, any city public rights-of-way use manual,~~ city's engineering design and construction

1           manual and any city one-touch make-ready policy or dig-once policy, as  
2           permitted by law.

3  
4   **Section 23-118. Appeals.**

5       (a) Final decisions of the city manager or designee denying, revoking, or suspending any  
6       permit under this article may be appealed by filing a written notice of appeal, together  
7       with the applicable fee established by the city commission, within 25 calendar days of  
8       the date of the city manager or designee's written decision. The applicant shall file the  
9       notice of appeal with the city manager with a copy to the city attorney, and shall state  
10      the decision that is being appealed, the grounds for appeal, and a brief summary of  
11      the relief that is sought. Any appeal not timely filed will be waived.

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

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

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

29  
30   **Section 23-119. Enforcement.**

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

33      (b) *Permit revocation.*

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

37              a. A federal or state authority denies or revokes a permittee's applicable  
38              certification or license, including a certificate of authorization, public  
39              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.
- b. The permittee's utility has caused a condition that is hazardous or harmful to the public health, safety, or welfare and the permittee has failed to remedy the danger promptly after receipt of written notice.
- c. Substantive and material violations of any of the provisions of this article, including but not limited to:
- i. An evasion or attempt to evade any provision of this article, an attempt at any fraud or deceit upon the city, or any material misrepresentation of fact.
  - ii. The repeated failure to provide any updated registration information to the city.
  - iii. The failure to maintain the required indemnification, insurance, or security.
  - iv. The failure to properly restore the public rights-of-way.
  - v. The failure to properly remedy damage or interference, or the failure to relocate or remove utilities pursuant to this article and applicable law.
  - vi. Conducting work in the public rights-of-way without a permit.
- (2) Prior to permit revocation, the city shall make a written demand upon the permittee to remedy such violation and state that the continued violation may be cause for permit revocation. The city manager or designee may place additional or revised conditions on the permittee.
- (3) Within 30 calendar days of the city's written notification, the permittee shall remedy the violation or submit to the city manager or designee a plan for correction. The permittee's failure to remedy the violation or to submit a correction plan acceptable to the city manager or designee or to implement an approved plan will be cause for permit revocation. A final determination to revoke a permit may be appealed in accordance with this article.
- (4) If a permit is revoked, the permittee shall: 1) reimburse the city for the city's reasonable costs, including restoration costs and administrative costs; and 2) in accordance with this article and as otherwise may be provided in state law, notify the city of the assumption or anticipated assumption by another permittee of ownership of the permittee's utilities in the public rights-of-way, or provide the city with an acceptable plan for disposition of its utilities in the public rights-of-way. If a permittee fails to comply with this subsection, the utilities will be deemed abandoned and the city may exercise any remedies or rights it has under this article or at law.
- (c) *Force majeure*. In the event a person's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the person's control, such inability to perform or comply will be deemed excused and no penalties or sanctions may be imposed as a result thereof; provided, however, that such person

1 uses all practicable means to expeditiously cure or correct any such inability to  
2 perform or comply. For purposes of this article, causes or events not within a person's  
3 control include, without limitation, acts of God, floods, earthquakes, landslides,  
4 hurricanes, fires, and other natural disasters, acts of public enemies, riots or civil  
5 disturbances, sabotage, strikes and restraints imposed by order of a governmental  
6 agency or court. Causes or events within a person's control, and thus not falling within  
7 this provision, include, without limitation, financial inability to perform or comply,  
8 economic hardship, and misfeasance, malfeasance or nonfeasance by any of the  
9 person's directors, officers, employees, contractors, or agents.

10  
11  
12 **SECTION 2.** Appendix A – *Schedule of Fees, Rates and Charges* of the City of Gainesville Code  
13 of Ordinances is amended as follows. Except as amended herein, the remainder of Appendix A  
14 remains in full force and effect.

15 **APPENDIX A – SCHEDULE OF FEES, RATES AND CHARGES**

16 RIGHT-OF-WAY (PUBLIC) OBSTRUCTION PERMITS (Chapter 23, Article V):

17 Permit Fees:

18 (1) Base review and processing .....\$137.75

19 (2) Per each bore/trench/segment for infrastructure (from and to each UJB, pedestal, valve  
20 package, manhole, inlet, etc.): .....

21 a. Under roadway/longitudinal run (generally parallel to roadway) .....\$55.25

22 b. Under roadway/crossings (generally perpendicular to roadway) .....\$33.00

23 (3) Per each roadway cut location .....\$275.75

24 (4) Per each 500 linear feet of underground infrastructure (rounded to nearest 500 foot  
25 interval) .....\$38.50

26 (5) Per each 100 sq. ft. sidewalk construction/demolition/replacements .....\$27.50

27 (6) MOT sidewalk/multi-use path closure, per ~~week~~month .....\$110.25

28 (7) MOT within roadway: .....

29 a. Full road or lane closure (requires detours), per week \$800.00 or per month \$2,205.00,  
30 whichever is less ~~per month~~.....\$2,205.00

31 b. Single lane closure (requires flaggers or similar to maintain the flow of traffic), per  
32 ~~week~~month .....\$275.75



(8) Permit time extension (maximum 3 months per request as approved by the Public Works Department, limit 2 extensions prior to a new permit being required and applied for) .....\$69.00

(9) Penalty for work without a permit: .....

a. First offense: Double the total application fee (base fee plus all other applicable fees). .....

b. Second offense\*: Double the total application fee + \$525.00. ....

c. Third offense\*\*: Double the total application fee + \$1,575.00. ....

\* Within a one-year period from the first offense.

\*\* Within a three-year period from the second offense and no additional permits issued to offending company/group/corporation for a period of two years from time of third offense. This permit shall only be issued to allow for the complete removal of unpermitted work and to return the ROW to as good a condition prior to the unpermitted work beginning and Public Works Department acceptance.

#### RIGHT-OF-WAY (PUBLIC) USE BY UTILITIES (Chapter 23, Article VI):

(1) Permit fees (communications services providers that remit communications services taxes pursuant to F.S. Ch. 202, for communications services provided within the city are exempt from paying permit fees): .....

a. Base review and processing .....\$137.75

b. Per each bore/trench/segment for infrastructure (from and to each UJB, pedestal, valve package, manhole, inlet, etc.): .....

1. Under roadway/longitudinal run (generally parallel to roadway) .....\$55.25

2. Under roadway/crossing (generally perpendicular to roadway) .....\$33.00

c. Per each roadway cut location .....\$275.75

d. Per each 500 linear feet of underground infrastructure (rounded to nearest 500 foot interval) .....\$38.50

e. Per each 100 sq. ft. sidewalk construction/demolition/replacements .....\$27.50

f. MOT sidewalk/multi-use path closure, per week~~month~~ .....\$110.25

g. MOT within roadway: .....

1. Full road or lane closure (requires detours), per week \$800.00 or per month \$2,205.00, whichever is less ~~per month .....\$2,205.00~~

2. Single lane closure (requires flaggers or similar to maintain the flow of traffic), per week~~month~~ .....\$275.75

1 h. Permit time extension (maximum 3 months per request as approved by the Public  
2 Works Department, limit 2 extensions prior to a new permit being required and  
3 applied for) .....\$69.00

4 i. Penalty for work without a permit: .....

5 1. First offense: Double the total application fee (base fee plus all other applicable  
6 fees). .....

7 2. Second offense\*: Double the total application fee + \$525.00. ....

8 3. Third offense\*\*: Double the total application fee + \$1,575.00. ....

9 \* Within a one-year period from the first offense.

10 \*\* Within a three-year period from the second offense and no additional permits issued to  
11 offending company/group/corporation for a period of two years from time of third  
12 offense. This permit shall only be issued to allow for the complete removal of unpermitted  
13 work and to return the ROW to as good a condition prior to the unpermitted work  
14 beginning and Public Works Department acceptance.

15  
16  
17 **SECTION 3.** It is the intent of the City Commission that the provisions of Sections 1 and 2 of this  
18 ordinance become and be made a part of the Code of Ordinances of the City of Gainesville,  
19 Florida, and that the sections and paragraphs of the Code of Ordinances may be renumbered or  
20 relettered in order to accomplish such intent.

21 **SECTION 4.** If any word, phrase, clause, paragraph, section, or provision of this ordinance or the  
22 application hereof to any person or circumstance is held invalid or unconstitutional, such finding  
23 will not affect the other provisions or applications of this ordinance that can be given effect  
24 without the invalid or unconstitutional provision or application, and to this end the provisions of  
25 this ordinance are declared severable.

26 **SECTION 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of such  
27 conflict hereby repealed.

28 **SECTION 6.** This ordinance will become effective immediately upon adoption.

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**PASSED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
HARVEY L. WARD, JR.  
MAYOR

Attest: Approved as to form and legality:

\_\_\_\_\_  
KRISTEN BRYANT  
CITY CLERK

\_\_\_\_\_  
DANIEL M. NEE  
CITY ATTORNEY

This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2024.  
This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2024.