

ARTICLE V. - PUBLIC RIGHTS-OF-WAY OBSTRUCTIONS^[5]

Footnotes:

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Editor's note— Ord. No. [170786](#), § 2, adopted March 1, 2018, repealed §§ 23-104—23-116, which pertained to communications service facilities and wireless support structures in the public right-of-way. See Code Comparative Table for complete derivation. Section 4 of such ordinance added a new article V to read as herein set out.

Sec. 23-104. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Obstruct means to impede, block, hinder, stifle, retard, restrain, interfere, repair, dig, excavate, or intermeddle with movement of vehicular or pedestrian traffic.

Right-of-way means public ways, public highways, streets, alleys, sidewalks, thoroughfares, medians, or walkways of which the city has jurisdiction.

Site plan means a graphic depiction of the work location and proposed project. The level of detail required shall be commensurate with the nature and extent of the work, subject to acceptance by the public works director or designee.

(Ord. No. [170786](#), § 4, 3-1-18)

Sec. 23-105. - Applicability.

It shall be unlawful for any person or entity to obstruct any right-of-way in the City of Gainesville, including temporarily obstructing the general movement of vehicular or pedestrian traffic and including any digging or excavation in the public rights-of-way, without first obtaining a permit from the public works department. All obstructions within any public right-of-way not permitted in accordance with this article are hereby declared to be nuisances and shall be abated and removed in accordance with law.

(Ord. No. [170786](#), § 4, 3-1-18)

Sec. 23-106. - Exemptions.

The requirements of this article shall not apply to the following:

- (a) Any person or entity that obstructs a right-of-way pursuant to another city permit that authorizes the obstruction within the right-of-way, including but not limited to parades, filming, news racks, sidewalk cafes, or special events.
- (b) Right-of-way obstructions anticipated to last for less than one hour.
- (c) Right-of-way obstructions made by any person or entity in response to a natural disaster, man-made disaster, or similar emergency.
- (d) Right-of-way obstructions made by any utility use of the right-of-way, which shall be regulated and permitted under chapter 23, article VI of the Code of Ordinances.

- (e) Right-of-way obstructions made by the city, its agents, or contractors performing work on behalf of the city, unless the public works department notifies the city's agent or contractor that a written permit is required due to past performance. The public works department shall be notified in the event of a disruption of pavement, sidewalks, hardscape, or planted landscaping.

(Ord. No. [170786](#), § 4, 3-1-18)

Sec. 23-107. - Review procedures and criteria.

Applications for a permit under this article shall be submitted in a form approved by the public works department, and shall be submitted together with any applicable application fees. The public works department shall approve and issue permits for right-of-way obstructions no later than 15 calendar days after receiving a complete application, provided the application meets all of the requirements and conditions provided in this section. The public works director or designee may issue permits under this article for a total duration or applicable hours that, in the public works director or designee's sole discretion, is most appropriate for the particular situation and is most protective of the public health, safety, and welfare.

- (a) *Site plan and MOT plan.* The applicant shall submit a site plan and maintenance-of-traffic (MOT) plan in compliance with the requirements of the Federal Highway Administration and the Florida Department of Transportation. The site plan shall indicate the exact location of the right-of-way to be obstructed, the estimated duration of the obstruction, the safety measures that will be used to protect the public health and safety, and the reason for the obstruction.
- (b) *Emergency contact.* The applicant must provide the phone number for an emergency contact who will be available 24 hours a day, if the work is anticipated to last longer than one day.
- (c) *Police/fire rescue.* Before issuing a permit, the public works director or designee shall inform the city's police department and fire rescue department of the proposed obstruction. The public works director or designee shall deny the permit if either of those agencies determines the obstruction will be a danger to public health or safety.
- (d) *Metered parking.* If metered parking spaces will be obstructed, then the applicant shall pay a fee at the time of application in an amount that the public works director or designee determines will compensate the city for the lost parking revenue, unless the city is otherwise prohibited by law from levying such a fee. This requirement does not apply to public agencies.
- (e) *Waste.* Large tree limbs, tree butts, stumps, logs, plaster, earth, construction debris, industrial waste or other matter in bulk shall not be classified as trash and no person shall place or cause the same to be placed in the streets of the city or along the parkways adjacent to the street.
- (f) *Cranes and mechanical equipment.* The use of cranes, hoists, and other mechanical apparatus within the right-of-way are subject to the following additional conditions and restrictions:
 - (1) The maximum duration for such apparatus to operate or be maintained in a right-of-way shall be 15 calendar days, unless extended by the public works director or designee for good cause shown.
 - (2) Full-tracked vehicles, including but not limited to bulldozers and skidsteers, shall not be off-loaded, on-loaded, walked, or operated in a paved city right-of-way.
 - (3) Fixed-tower cranes may only be permitted in the right-of-way if the public works director or designee finds that both of the following conditions are met:
 - a. No suitable alternative exists; and
 - b. Submission of sufficient plans and specifications to ensure that both the crane and its foundation are adequate, and that such use will not endanger the public health and safety.

- (g) *Restoration of public rights-of-way.* Permittees shall immediately after right-of-way obstructions restore the public rights-of-way to as good a condition as existed immediately prior to commencement of the permitted obstruction. Restoration shall be completed in accordance with applicable city standards. If such restoration is not performed in a reasonable and satisfactory manner within 30 calendar days after the completion of the obstruction, the city may after written notice to the permittee cause the restoration to be made with the total cost being charged to and paid for by the permittee upon demand, and the city may charge the costs against any security the permittee provided in accordance with this article. For one year following completion of any work permitted under this section, the permittee shall guarantee its restoration work and shall correct at its sole expense any restoration work that does not satisfy the requirements of this article. Where excavations or repairs are made in any hard-surfaced or brick-paved streets, all excavations may be done by the city at its discretion, at the sole cost and expense of the applicant.
- (h) *Indemnification.* Any person or entity receiving a permit under this article shall, at its sole cost and expense, indemnify, hold harmless, and defend the city and its officers, employees, and agents from all liabilities, damages, losses, claims, suits, causes of action, and costs or expenses of any kind or nature, including but not limited to reasonable attorneys' fees, for personal injury, death, property damage, or any other losses that arise from or are in any way connected with the right-of-way obstruction, whether any act or omission complained of is authorized, allowed, or prohibited by this article or any permit issued hereunder, except to the extent that such claims are caused by the sole negligence of the city.
- (1) The permittee shall undertake, at its sole expense, the defense of any such claims, even if the claim is groundless, false, or fraudulent, and the permittee shall assume and defend not only itself but also the city, provided the city shall retain the right to participate by its own counsel and to select counsel of its own choosing.
 - (2) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for the permittee under workers' compensation, disability, or other employee benefit acts, or the acceptance of insurance certificates required under this article, or the terms, applicability, or limitations of any insurance held by the permittee. The city does not waive any rights against the permittee that it may have by reason of this indemnification because of the city's acceptance of permittee's insurance policies required under this article, and this indemnification shall apply to all damages and claims for damages of any kind suffered regardless of whether such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
 - (3) Nothing contained in this provision shall be interpreted as a waiver of the city's sovereign immunity as provided in F.S. § 768.28, or as denying the city or permittee any remedy or defense available at law.
 - (4) These indemnification requirements shall survive and be in full force and effect after any termination or cancellation of any permit.
- (i) *Insurance.* Permittees shall provide, pay for, and maintain satisfactory to the city the types of insurance policies and coverage limits described here. Policies shall be issued by companies authorized to do business in the State of Florida and shall have an A.M. Best, latest edition, financial strength rating of at least A+ and financial size category of at least VIII. All policies shall name the city as an additional insured with respect to all activities under this article. At least 30 calendar days' advance written notice shall be given to the city of any cancellation, intent not to renew, or reduction in the policy coverage, which notice shall be sent by registered or certified mail. The city's risk management director may reasonably raise or lower the amount of insurance required, and may allow a permittee to be self-insured for one or more lines of insurance coverage.
- (1) *Comprehensive general liability.* Commercial general liability insurance including premises/operations; independent contractors; contractual liability; products/completed

operations; XCU coverage; and personal injury and property damage coverage for limits of no less than \$1,000,000 per occurrence combined single limit and \$2,000,000 in the aggregate.

- (2) *Commercial automobile liability.* Commercial automobile liability coverage for all owned, non-owned, and hired vehicles for limits of no less than \$1,000,000 per occurrence combined single limit.
 - (3) *Worker's compensation and employer's liability.* Worker's compensation in an amount not less than the statutory limit and employer's liability insurance with limits of not less than \$1,000,000.
 - (4) *Commercial excess or umbrella liability.* Commercial excess or umbrella liability coverage may be used in combination with primary coverage to achieve the required limits of liability.
- (j) *Security.* If any excavation is made within a public right-of-way, or if there is any risk of damage or detriment to the premises of a public right-of-way, then the applicant shall provide security to the city to ensure that the right-of-way is restored to the same or better condition than existed when the permit was issued and to ensure payment for any damage to public property or trash and debris removal as a result of such permit issuance. Applicants shall provide security enforceable by and payable to the city, in any combination of the types provided below, in an amount reasonably corresponding to the nature and extent of the work to be performed within the right-of-way as determined by the public works director or designee. An applicant who intends to apply for multiple permits in a calendar year may provide the city with security in an amount acceptable to the public works director or designee sufficient to adequately cover the estimated obstructions and excavations to be performed during that calendar year. The deposit shall be used by the city only in the event that the applicant fails to repair damage or remove trash and debris resulting from the activity. The city shall return any cash deposit no later than 15 calendar days after notice to the city of right-of-way obstruction completion unless there is damage to city property or other costs incurred by the city, including but not limited to relining the right-of-way to the same or better condition that existed when the permit was issued. This requirement does not apply to public agencies.
- (1) *Surety bond.* A surety bond executed by a surety company authorized to do business in the State of Florida with a minimum rating of A-VII as rated by A.M. Best Company, Inc. The surety bond shall be approved by the city attorney as to form and legality, and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 calendar days after receipt by the City of Gainesville, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."
 - (2) *Letter of credit.* An irrevocable and unconditional letter of credit issued by a Florida bank, in a form and by a financial institution acceptable to the city attorney.
 - (3) *Cash deposit.* A cash deposit with the city, held in an account where interest earned on the cash deposit shall be for the account and to the credit of the person making such deposit.
- (k) *Due care.* Permittees shall exercise due care and follow all safety practices required by applicable law or accepted industry practices when operating in accordance with a permit issued under this article, including the use of suitable barricades, flags, lights, flares, or other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) or any requirements of the city to protect the public.
- (l) *Hazardous conditions.* If the city at any time reasonably determines that a permittee has caused a condition that is hazardous or harmful to the public health, safety, or welfare, the permittee, at its own expense and without liability to or recourse against the city, shall remedy all such conditions after being provided reasonable notice. If the city at any time reasonably determines that an emergency situation exists and the permittee is not immediately available or is unable to immediately provide the necessary remedy, then the city shall have the right to remedy the

situation with the total cost being charged to and paid for by the permittee upon demand, and the city may charge the costs against any security the permittee provided in accordance with this article.

- (m) *Compliance with law.* Permittees shall at all times be in full compliance with and abide by all applicable provisions of federal, state, or local laws, codes, and regulations, including but not limited to F.S. Ch. 556, as may be amended from time to time.
- (n) *Right of inspection.* The city shall have the right to inspect any work as it finds necessary to ensure compliance with this article or any applicable law or regulation.
- (o) *Police powers.* Any permit issued under this article shall be subject to the city's lawful exercise of its police power, and applicants and permittees shall comply with any requirements or policies that the city finds reasonably necessary to protect the public health, safety, and welfare, and the public works director or designee may establish reasonable conditions in the permit to protect the public health, safety, and welfare.
- (p) *Permit inactivity.* The permit may be revoked by the city if there is no activity performed by the applicant at the location specified in the site plan for 15 consecutive calendar days after the city provided the applicant with written notice of such inactivity.
- (q) *Violations.* Upon providing written notice to any person or entity receiving a permit under this article of a violation of any of the requirements or conditions of the permit, the permit shall be revoked and become null and void if the permittee fails to cure the violation within the reasonable cure period provided in the notice.

(Ord. No. [170786](#), § 4, 3-1-18)

Sec. 23-108. - Penalties.

Any person who violates any provision of this article shall be subject to punishment as provided in section 1-9 of this Code of Ordinances. The city may seek any legal remedies available in law or equity.

(Ord. No. [170786](#), § 4, 3-1-18)