

1                                   **CHAPTER 23 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES**

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3                                   **ARTICLE V. PUBLIC RIGHTS-OF-WAY OBSTRUCTIONS**

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5                                   **Section 23-104. Definitions.**

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

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

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12                                   **Site plan** means a graphic depiction of the work location and proposed project. The level of  
13 detail required shall be commensurate with the nature and extent of the work, subject to  
14 acceptance by the Public Works Director or designee.

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16                                   **Section 23-105. Applicability.**

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

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24                                   **Section 23-106. Exemptions.**

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

- 26 A. Any person or entity that obstructs a right-of-way pursuant to another city permit that  
27 authorizes the obstruction within the right-of-way, including but not limited to parades,  
28 filming, news racks, sidewalk cafes, or special events.
- 29 B. Right-of-way obstructions anticipated to last for less than one hour.
- 30 C. Right-of-way obstructions made by any person or entity in response to a natural disaster,  
31 man-made disaster, or similar emergency.
- 32 D. Right-of-way obstructions made by any utility use of the right-of-way, which shall be  
33 regulated and permitted under Chapter 23, Article VI of the Code of Ordinances.
- 34 E. Right-of-way obstructions made by the city, its agents, or contractors performing work on  
35 behalf of the city, unless the Public Works Department notifies the city's agent or  
36 contractor that a written permit is required due to past performance. The Public Works  
37 Department shall be notified in the event of a disruption of pavement, sidewalks,  
38 hardscape, or planted landscaping.

**Section 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.

- 1 3. Fixed-tower cranes may only be permitted in the right-of-way if the Public Works  
2 Director or designee finds that both of the following conditions are met:
- 3 a. No suitable alternative exists; and
- 4 b. Submission of sufficient plans and specifications to ensure that both the crane and  
5 its foundation are adequate, and that such use will not endanger the public health  
6 and safety.
- 7 G. *Restoration of public rights-of-way.* Permittees shall immediately after right-of-way  
8 obstructions restore the public rights-of-way to as good a condition as existed immediately  
9 prior to commencement of the permitted obstruction. Restoration shall be completed in  
10 accordance with applicable city standards. If such restoration is not performed in a  
11 reasonable and satisfactory manner within 30 calendar days after the completion of the  
12 obstruction, the city may after written notice to the permittee cause the restoration to be  
13 made with the total cost being charged to and paid for by the permittee upon demand, and  
14 the city may charge the costs against any security the permittee provided in accordance  
15 with this article. For one year following completion of any work permitted under this  
16 section, the permittee shall guarantee its restoration work and shall correct at its sole  
17 expense any restoration work that does not satisfy the requirements of this article. Where  
18 excavations or repairs are made in any hard-surfaced or brick-paved streets, all  
19 excavations may be done by the city at its discretion, at the sole cost and expense of the  
20 applicant.
- 21 H. *Indemnification.* Any person or entity receiving a permit under this article shall, at its sole  
22 cost and expense, indemnify, hold harmless, and defend the city and its officers, employees,  
23 and agents from all liabilities, damages, losses, claims, suits, causes of action, and costs or  
24 expenses of any kind or nature, including but not limited to reasonable attorneys' fees, for  
25 personal injury, death, property damage, or any other losses that arise from or are in any  
26 way connected with the right-of-way obstruction, whether any act or omission complained  
27 of is authorized, allowed, or prohibited by this article or any permit issued hereunder,  
28 except to the extent that such claims are caused by the sole negligence of the city.
- 29 1. The permittee shall undertake, at its sole expense, the defense of any such claims, even  
30 if the claim is groundless, false, or fraudulent, and the permittee shall assume and  
31 defend not only itself but also the city, provided the city shall retain the right to  
32 participate by its own counsel and to select counsel of its own choosing.
- 33 2. This indemnification obligation is not limited in any way by a limitation of the amount or  
34 type of damages or compensation payable by or for the permittee under workers'  
35 compensation, disability, or other employee benefit acts, or the acceptance of insurance  
36 certificates required under this article, or the terms, applicability, or limitations of any  
37 insurance held by the permittee. The city does not waive any rights against the  
38 permittee that it may have by reason of this indemnification because of the city's  
39 acceptance of permittee's insurance policies required under this article, and this  
40 indemnification shall apply to all damages and claims for damages of any kind suffered  
41 regardless of whether such insurance policies shall have been determined to be

- 1 applicable to any such damages or claims for damages.
- 2 3. Nothing contained in this provision shall be interpreted as a waiver of the city's  
3 sovereign immunity as provided in Section 768.28, Florida Statutes, or as denying the  
4 city or permittee any remedy or defense available at law.
- 5 4. These indemnification requirements shall survive and be in full force and effect after  
6 any termination or cancellation of any permit.
- 7 I. *Insurance.* Permittees shall provide, pay for, and maintain satisfactory to the city the types  
8 of insurance policies and coverage limits described here. Policies shall be issued by  
9 companies authorized to do business in the State of Florida and shall have an A.M. Best,  
10 latest edition, financial strength rating of at least A+ and financial size category of at least  
11 VIII. All policies shall name the city as an additional insured with respect to all activities  
12 under this article. At least 30 calendar days' advance written notice shall be given to the city  
13 of any cancellation, intent not to renew, or reduction in the policy coverage, which notice  
14 shall be sent by registered or certified mail. The city's Risk Management Director may  
15 reasonably raise or lower the amount of insurance required, and may allow a permittee to  
16 be self-insured for one or more lines of insurance coverage.
- 17 1. *Comprehensive general liability.* Commercial general liability insurance including  
18 premises/operations; independent contractors; contractual liability;  
19 products/completed operations; XCU coverage; and personal injury and property  
20 damage coverage for limits of no less than \$1,000,000 per occurrence combined single  
21 limit and \$2,000,000 in the aggregate.
- 22 2. *Commercial automobile liability.* Commercial automobile liability coverage for all  
23 owned, non-owned, and hired vehicles for limits of no less than \$1,000,000 per  
24 occurrence combined single limit.
- 25 3. *Worker's compensation and employer's liability.* Worker's compensation in an amount  
26 not less than the statutory limit and employer's liability insurance with limits of not less  
27 than \$1,000,000.
- 28 4. *Commercial excess or umbrella liability.* Commercial excess or umbrella liability  
29 coverage may be used in combination with primary coverage to achieve the required  
30 limits of liability.
- 31 J. *Security.* If any excavation is made within a public right-of-way, or if there is any risk of  
32 damage or detriment to the premises of a public right-of-way, then the applicant shall  
33 provide security to the city to ensure that the right-of-way is restored to the same or  
34 better condition than existed when the permit was issued and to ensure payment for any  
35 damage to public property or trash and debris removal as a result of such permit issuance.  
36 Applicants shall provide security enforceable by and payable to the city, in any combination  
37 of the types provided below, in an amount reasonably corresponding to the nature and  
38 extent of the work to be performed within the right-of-way as determined by the Public  
39 Works Director or designee. An applicant who intends to apply for multiple permits in a  
40 calendar year may provide the city with security in an amount acceptable to the Public

1 Works Director or designee sufficient to adequately cover the estimated obstructions and  
2 excavations to be performed during that calendar year. The deposit shall be used by the  
3 city only in the event that the applicant fails to repair damage or remove trash and debris  
4 resulting from the activity. The city shall return any cash deposit no later than 15 calendar  
5 days after notice to the city of right-of-way obstruction completion unless there is damage  
6 to city property or other costs incurred by the city, including but not limited to relining the  
7 right-of-way to the same or better condition that existed when the permit was issued.  
8 This requirement does not apply to public agencies.

9 1. *Surety bond.* A surety bond executed by a surety company authorized to do business in  
10 the State of Florida with a minimum rating of A-VII as rated by A.M. Best Company, Inc.  
11 The surety bond shall be approved by the City Attorney as to form and legality, and shall  
12 provide the following: "This bond may not be canceled, or allowed to lapse, until 60  
13 calendar days after receipt by the City of Gainesville, by certified mail, return receipt  
14 requested, of a written notice from the issuer of the bond of intent to cancel or not to  
15 renew."

16 2. *Letter of credit.* An irrevocable and unconditional letter of credit issued by a Florida  
17 bank, in a form and by a financial institution acceptable to the City Attorney.

18 3. *Cash deposit.* A cash deposit with the city, held in an account where interest earned on  
19 the cash deposit shall be for the account and to the credit of the person making such  
20 deposit.

21 K. *Due care.* Permittees shall exercise due care and follow all safety practices required by  
22 applicable law or accepted industry practices when operating in accordance with a permit  
23 issued under this article, including the use of suitable barricades, flags, lights, flares, or  
24 other devices as are required by the Manual on Uniform Traffic Control Devices (FDOT) or  
25 any requirements of the city to protect the public.

26 L. *Hazardous conditions.* If the city at any time reasonably determines that a permittee has  
27 caused a condition that is hazardous or harmful to the public health, safety, or welfare, the  
28 permittee, at its own expense and without liability to or recourse against the city, shall  
29 remedy all such conditions after being provided reasonable notice. If the city at any time  
30 reasonably determines that an emergency situation exists and the permittee is not  
31 immediately available or is unable to immediately provide the necessary remedy, then the  
32 city shall have the right to remedy the situation with the total cost being charged to and  
33 paid for by the permittee upon demand, and the city may charge the costs against any  
34 security the permittee provided in accordance with this article.

35 M. *Compliance with law.* Permittees shall at all times be in full compliance with and abide by  
36 all applicable provisions of federal, state, or local laws, codes, and regulations, including but  
37 not limited to Chapter 556, Florida Statutes, as may be amended from time to time.

38 N. *Right of inspection.* The city shall have the right to inspect any work as it finds necessary to  
39 ensure compliance with this article or any applicable law or regulation.

- 1 O. *Police powers.* Any permit issued under this article shall be subject to the city’s lawful  
2 exercise of its police power, and applicants and permittees shall comply with any  
3 requirements or policies that the city finds reasonably necessary to protect the public  
4 health, safety, and welfare, and the Public Works Director or designee may establish  
5 reasonable conditions in the permit to protect the public health, safety, and welfare.
- 6 P. *Permit inactivity.* The permit may be revoked by the city if there is no activity performed  
7 by the applicant at the location specified in the site plan for 15 consecutive calendar days  
8 after the city provided the applicant with written notice of such inactivity.
- 9 Q. *Violations.* Upon providing written notice to any person or entity receiving a permit under  
10 this article of a violation of any of the requirements or conditions of the permit, the  
11 permit shall be revoked and become null and void if the permittee fails to cure the  
12 violation within the reasonable cure period provided in the notice.

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14 **Section 23-108. Penalties.**

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