

**ORDINANCE NO. 090288**  
**0-09-50**

AN ORDINANCE AMENDING CHAPTER 27 UTILITIES, GAINESVILLE CODE OF ORDINANCES; AMENDING SECTION 27-6, TERMS OF WITHHOLDING SERVICE; AMENDING SECTION 27-7, FREQUENCY OF CREDITS FOR UTILITY DEPOSITS; AMENDING SUBSECTION 27-15(d), AMENDING THE NORMAL BUSINESS HOURS; REPEALING SECTIONS 27-17 AND 27-18 RELATING TO ALACHUA COUNTY PRIVILEGE FEE; AMENDING SECTION 27-21, DEFINITIONS, BY ADDING AND MODIFYING DEFINITIONS; PROVIDING A REPEALING CLAUSE; PROVIDING DIRECTIONS TO THE CODIFIER; PROVIDING A SEVERABILITY CLAUSE; AND, PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, at least ten (10) days notice has been given of the public hearings once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of the public hearings in the City Commission meeting room, first floor, City Hall, City of Gainesville; and

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

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

**Section 1.** Section 27-6 of the Gainesville Code of Ordinances is hereby amended to read as follows:

**Section 27-6 Utility service--Application; period of service; transfer of service; authority to determine type of service; withholding service for prior indebtedness or misrepresentation of facts, authorized.**

- (a) It shall be unlawful for any consumer to use any city utility service without first making application to the city and paying all charges and fees required therefore. Application for service shall be made in such manner (whether written, verbal, telephonic, electronic or otherwise) as approved by the general manager for utilities or his/her designee and shall constitute an agreement by the consumer with the city to abide by the rules of the city with regard to its utility service. Applications for service by firms, partnerships, associations and corporations shall be made only by their duly authorized agents and the official title of such parties shall be provided to the city at the time of application. Utility service at a given service address shall be provided in the name of one consumer only. By applying for and accepting service the consumer agrees to pay an

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1 additional charge equal to the cost of collection, including collection agency or attorney's fees  
2 and court costs if this account is placed in the hands of an agency or attorney for collection or  
3 legal action because of default in payment of any amount due.

4 (b) Liability for service shall begin on the day the consumer is connected to the city's service wires,  
5 lines and/or pipes and shall continue thereafter, unless disconnected for nonpayment or other  
6 cause, until written notice is given the city by the consumer of his/her desire to terminate the  
7 service.

8 (c) Applications for transfer of service shall be made by the consumer to the city not less than 24  
9 hours before such transfer is desired and failure on the part of the consumer to make such  
10 application and to pay the service charge shall render the consumer liable for the minimum  
11 monthly charge for such service.

12 (d) The general manager for utilities or his/her designee shall have the authority to determine the  
13 type of service to be rendered by the city to each consumer. If, at any time, more than one rate  
14 classification is applicable to the consumer's service, the general manager for utilities or his/her  
15 designee shall, at the consumer's request, assist in determining the rate believed to be most  
16 favorable to the consumer. Another rate, if applicable to the service, may at any time be  
17 substituted, at the consumer's option, for the rate under which service is rendered, provided that  
18 not more than one substitution of a rate may be made within a year and that such change shall  
19 not be retroactive.

20 (e) The general manager for utilities or his/her designee may withhold or discontinue service  
21 rendered under application made by any member or agent of the family, household, organization  
22 or business unless all prior indebtedness to the city of such family, household, organization or  
23 business for service has been paid in full. The general manager for utilities or his/her designee  
24 may also withhold or discontinue service if the general manager or his/her designee reasonably  
25 believes that service is, or was, being obtained or sought to be obtained by the misrepresentation  
26 of material facts by the applicant, customer or others on their behalf. A person having a  
27 delinquent account relocating to reside with his or her own family household whose account is in  
28 good standing shall not constitute cause for denial or discontinuance of service to said family  
29 household.

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31 **Section 2.** Section 27-7 of the Gainesville Code of Ordinances is hereby amended to read as  
32 follows:

33  
34 **Section 27-7. Same--Deposits.**

35  
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1 (a) Applicability. Prior to initiating utility service, the city shall, except as otherwise provided  
2 herein, require a deposit from all utility service consumers as determined by the general manager  
3 for utilities or his/her designee. Application for service by whatever means (written, verbal,  
4 telephonic, electronic or otherwise) and the payment of the deposit by the consumer constitute  
5 the consumer's agreement that the deposit is advance payment for future utility services which  
6 may be applied as otherwise provided in this section.

7 (1) Residential service. All residential utility service consumers' deposit requirements shall  
8 be evaluated based upon their payment record with the city or evidence of a satisfactory credit  
9 history from another utility. No deposit shall be required from a consumer who a) has a  
10 satisfactory payment record for utility service with the city or as evidenced in a letter of  
11 satisfactory credit from another utility or b) enrolls in a payment plan approved by the general  
12 manager for utilities or his/her designee. For purposes of this section satisfactory payment record  
13 for utility service is defined as no order for termination of service for nonpayment having been  
14 issued nor more than two returned checks or other payments not honored by a financial  
15 institution within the immediately preceding 12 months. Customers who are required to pay a  
16 deposit will pay the standard residential deposit amount(s) specified in Appendix A to this Code  
17 of Ordinances based on utility service(s) provided.

18 (2) Nonresidential service. For all nonresidential consumers the required deposit shall be  
19 an amount equal to two times the estimated average monthly combined utility bill of the  
20 consumer, as determined by the general manager for utilities or his/her designee; except  
21 however, that no deposit for service shall be required for a nonresidential consumer who is an  
22 existing customer who has a satisfactory payment record for utility service, or, under rules  
23 promulgated by the general manager or his/her designee, provides other assurance of payment,  
24 including, but not limited to, surety bond, irrevocable letter of credit, or guarantee, in lieu of the  
25 deposit.

26 (3) Short-term service. No deposit shall be required for utility service for short-term service,  
27 herein defined as service not to exceed 90 days, provided the service is required by an existing  
28 utility consumer with a satisfactory payment record.

29 (b) Additional deposit. An additional deposit may be required for unsatisfactory payment history  
30 or for accounts for which the city has an insufficient utility deposit, as determined by the general  
31 manager for utilities or his/her designee. Written notice of the additional deposit requirement  
32 shall be provided to the consumer. The consumer may appeal such requirement in an informal  
33 hearing with the general manager for utilities or his/her designee.

34 (c) Interest; unclaimed deposits. Except as provided below, the deposit shall be held by the city  
35 until final settlement of the consumer's account, at which time the deposit shall be applied

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1 against any utility bill due the city for such service. Any unused balance shall be refunded when  
2 the account is settled and closed. All deposits which have remained with the city for at least six  
3 months shall earn simple interest, accrued from the date tendered and calculated to the nearest  
4 day. Interest shall accrue at a rate comparable to the utility's interest earnings for the period, as  
5 determined by the general manager for utilities or his/her designee, and shall be credited to the  
6 consumer ~~annually~~monthly. In the event any deposit is unclaimed for a period of 12 months after  
7 the service is discontinued, such unclaimed deposit and any accrued interest thereon shall be  
8 turned over to the state department of banking and finance in accordance with Florida law  
9 following 30 days' written notice to such consumer mailed to the address shown on the  
10 application for service.

11 (d) Refund of deposit. Deposits for residential service shall be credited to the consumer at the  
12 end of two years provided that the consumer has maintained a satisfactory payment record as  
13 determined by the general manager for utilities or his/her designee.

14 (e) Exemptions. The United States of America, the State of Florida, and all political  
15 subdivisions, agencies, boards, commissions and instrumentalities thereof are exempt from any  
16 deposit requirements under this section. In addition, no deposit shall be required from any public  
17 utility supplying the public with electricity, gas, water, wastewater, transportation, telephone, or  
18 telegraph service.

19 (f) Bond in lieu of deposit. If a consumer required to make a deposit so elects, he/she may post  
20 a surety bond or other financial assurance in lieu of the cash deposit. Such bond or financial  
21 assurance shall be issued by a surety authorized to do business in the State of Florida in an  
22 amount approved by the general manager for utilities or his/her designee and shall be on a form  
23 approved by the city which shall fully protect the city against any loss as a result of any  
24 nonpayment of utility bills rendered by the city to the consumer.

25  
26 **Section 3.** Subsection 27-15(d) of the Gainesville Code of Ordinances is hereby amended to read  
27 as follows:

28 (d). *Field visit; reconnection of utility service.* No service charge shall be assessed for reconnection  
29 of utility service(s) if disconnection of such service(s) was due to system requirements. However, if service  
30 was disconnected because of delinquent payments, unauthorized connection, or consumer request and  
31 service reconnection is requested and/or made after normal working hours (~~8:00 a.m. to 7:00 p.m.~~ as  
32 promulgated by the general manager or his/her designee, Monday through Friday, excluding city holidays), an  
33 additional service charge in accordance with the schedule set out in appendix A shall be assessed and paid  
34 to the city before any service is reconnected.

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1           **Section 4.** Section 27-17 of the Gainesville Code of Ordinances is hereby repealed in its entirety as  
2 follows:

3 **~~Sec. 27-17. Exception to Alachua County electric utility privilege fee; findings.~~**

4           ~~(a) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
5 ~~within the corporate limits of the city is detrimental to and in conflict with the city's policies and goals relating~~  
6 ~~to economic development and in support thereof makes the following findings of fact:~~

7           ~~(1) The city has established an office of economic development, and has expended over \$2.2 million~~  
8 ~~in the past three years, including the construction of a "spec" building, to attract new business to the city.~~

9           ~~(2) The city is currently marketing property in its airport industrial park in order to generate revenue~~  
10 ~~and to attract new business, commerce and employment to the area.~~

11           ~~(3) The privilege fee will be assessed on all retail electric customers, including government agencies~~  
12 ~~such as the city, the Alachua County School District and the Alachua County Library District that do not pay~~  
13 ~~property taxes and consequently will not experience any corresponding reduction in expenses to make up for~~  
14 ~~the increase in electric costs.~~

15           ~~(4) Payment of the privilege fee will cause these local governments to cut back other expenses or~~  
16 ~~increase their own ad valorem tax rates.~~

17           ~~(5) When a business evaluates alternative new locations, the total bill for utilities and taxes is a very~~  
18 ~~important factor in its analysis.~~

19           ~~(6) The privilege fee will increase the estimated electric bill for any business considering locating with~~  
20 ~~the city, making the city less attractive to potential new businesses.~~

21           ~~(7) The privilege fee will cause the increase in property taxes from governmental agencies other than~~  
22 ~~the county, and will result in greater overall expenses for both the business and its employees, making the~~  
23 ~~city less attractive to potential new businesses and its employees.~~

24           ~~(b) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
25 ~~within the corporate limits of the city is detrimental to and in conflict with the city's policies and goals relating~~  
26 ~~to infill and in support thereof makes the following findings of fact:~~

27           ~~(1) Objective 2.4 of the future land use element of the city's comprehensive plan sets the goal of~~  
28 ~~promoting infill and redevelopment consistent with state planning objectives against urban sprawl.~~

29           ~~(2) Certain areas of the city have been designated as enterprise zones by the State of Florida,~~  
30 ~~allowing the city to provide incentives for establishing new and expanded businesses in those areas.~~

31           ~~(3) Three areas of the city, including the downtown and older neighborhoods close to downtown,~~  
32 ~~have been designated as community redevelopment areas, where tax increment money is earmarked for~~  
33 ~~projects to help redevelopment of those areas.~~

34           ~~(4) Infill and redevelopment depend upon the growth of small businesses and residences in the city,~~

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1 most often as tenants of commercial buildings, and multi-family residential buildings.

2 ~~(5) Business and residential tenants will not directly receive any benefit of lower property taxes, but~~  
3 ~~will immediately be faced with higher utility bills due to the privilege fee, making location within the city less~~  
4 ~~attractive.~~

5 ~~(c) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
6 ~~within the corporate limits of the city is detrimental to and in conflict with the welfare of the students and~~  
7 ~~persons living on fixed income who are residents of the city, and in support thereof makes the following~~  
8 ~~findings of fact:~~

9 ~~(1) A large percentage of the residents of the city are students at the University of Florida or Santa Fe~~  
10 ~~Community College, living in rental property off-campus.~~

11 ~~(2) These students will be charged the privilege fee, but will not receive any direct benefit from a~~  
12 ~~reduction in property tax, making it more expensive to attend their colleges.~~

13 ~~(3) Both the University of Florida and Santa Fe Community College will be subject to the privilege fee,~~  
14 ~~requiring them to decrease other expenses, get more state funding, or raise tuition rates.~~

15 ~~(4) Many residents of the city live in modest homes on fixed incomes, and will be charged the~~  
16 ~~privilege fee, resulting in an increase in their living expenses.~~

17 ~~(5) As a result of the effect of the economic impact of the privilege fee, many businesses will be~~  
18 ~~paying more taxes and fees overall, resulting in their having to raise prices for such necessities as groceries,~~  
19 ~~books and clothing.~~

20 ~~(6) Residents whose homesteads are assessed at \$25,000.00 or less are paying no property taxes~~  
21 ~~now and will therefore receive no tax relief to compensate for the increase in living expenses caused by the~~  
22 ~~privilege fee.~~

23 ~~(d) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
24 ~~within the corporate limits of the city illegally and unconstitutionally prevents the city from providing electric~~  
25 ~~service and is therefore detrimental to and in conflict with the welfare of all of the businesses and residents of~~  
26 ~~the city, and in support thereof makes the following findings of fact:~~

27 ~~(1) The state legislature has given the city the power to provide local public utilities both within and~~  
28 ~~without the city limits both by special act (chapter 75-375, Laws of Florida), and by the city charter (chapter~~  
29 ~~90-394, Laws of Florida).~~

30 ~~(2) The provision of electric power to residents and businesses by municipalities has been deemed a~~  
31 ~~public purpose for over 100 years.~~

32 ~~(3) The city has provided electric power to its residents and businesses since 1912, and has~~  
33 ~~acquired, and paid for, permits to locate electric facilities in county rights-of-way during these years.~~

34 ~~(4) The privilege fee ordinance provides that any utility with any facility whatsoever in a county right-~~  
35 ~~of-way must pay a percentage of its gross revenues from customers within the county to the county for use of~~

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1 these rights-of-way.

2 (5) Due to the location of various county roads within city limits, it would be geographically impossible  
3 to supply electricity to many residents and businesses without having some facilities located in the county  
4 rights-of-way.

5 (6) The city's utility cannot avoid collection and payment of the privilege fee to the county according to  
6 the terms of the privilege fee ordinance because the utility must cross or traverse county rights-of-way in  
7 order to serve its customers as authorized by state law.

8 (7) The privilege fee ordinance would prohibit the city from performing its state-authorized public  
9 purpose of supplying electricity to its customers unless the city utility pays a percentage of its revenues to the  
10 county for use of county rights-of-way, despite the city already having received and paid for permits to use the  
11 county rights-of-way.

12 (8) Unilaterally requiring additional payment for use of rights-of-way when permits for the rights-of-  
13 way have already been acquired and paid for is a taking and an interference with contractual rights in  
14 violation of state and U.S. Constitutional provisions.

15 (9) The city has for many years conveyed over eight linear miles of right-of-way to Alachua County at  
16 no cost, for use as county right-of-way.

17 (10) The county has no authority to levy a privilege fee as provided in Ordinance No. 97-12 on any  
18 utility for the use of its right-of-way.

19 (11) Unilaterally requiring the city, its utility and its customers to make additional payment for use of  
20 rights-of-way is illegal, fundamentally unfair and inequitable.

21 (e) The city commission finds that the imposition of the Alachua County electric utility privilege fee  
22 within the corporate limits of the city constitutes an unauthorized tax, which is detrimental to and in conflict  
23 with the welfare of all of the businesses and residents of the city, and in support thereof makes the following  
24 findings of fact:

25 (1) Under the provisions of the Florida Constitution and Florida Statutes, a county may only impose  
26 those taxes which the Florida legislature has specifically authorized it to impose.

27 (2) There is no provision in either the Florida Constitution or Florida Statutes authorizing a county to  
28 levy a tax for use of its rights-of-way.

29 (3) The privilege fee ordinance states that it imposes a "fee" rather than a "tax," for the special  
30 privilege of using county right-of-way to provide electricity.

31 (4) The Florida Supreme Court, in the case State v. City of Port Orange, 650 So.2d 1 (1994), stated  
32 that a fee is "paid by choice, in that the party paying the fee has the option of not utilizing the governmental  
33 service and thereby avoiding the charge."

34 (5) The city geographically can not avoid crossing the county right-of-way in order to provide  
35 electricity to its residents; it has no option.

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1           ~~(6) The privilege fee ordinance does not require an electric utility that uses facilities in the county~~  
2 ~~right-of-way for distribution solely to customers outside the county to pay the privilege fee for use of the~~  
3 ~~county rights-of-way, even if the utility puts in its own facilities.~~

4           ~~(7) The privilege fee ordinance requires any electric utility that provides service to a customer in the~~  
5 ~~city to pay a fee for use of the county rights-of-way, even though the utility is using another utility's facilities~~  
6 ~~and therefore itself does not have any permit to use county right-of-way.~~

7           ~~(8) The privilege "fee" is based totally on sales and not on use of right-of-way, it is actually a tax and~~  
8 ~~not a fee at all.~~

9           ~~(9) Under the law, a "fee" should be rationally related to the amount of service provided by the~~  
10 ~~government imposing it.~~

11           ~~(10) No evidence was presented to the board of county commissioners of costs to the county for~~  
12 ~~procuring, maintaining or regulating its right-of-ways.~~

13           ~~(11) The privilege fee is not based on any cost or impact for the use of the right-of-way to the county.~~  
14 ~~For the city's utility, the fee will amount to over \$80,000.00 per year for every mile of right-of-way used within~~  
15 ~~the city limits. The right-of-way includes over eight linear miles of county right-of-way conveyed to the county~~  
16 ~~for free by the city. The amount of the fee varies with utility revenues generated from customers in the county,~~  
17 ~~not with the extent of the right-of-way usage or even with the number of customers served by facilities that~~  
18 ~~are on county right-of-way.~~

19           ~~(12) The privilege fee bears no rational relationship to the use of the right of way for electric facilities.~~

20           ~~(13) The county commission on August 12, 1997, adopted Resolution No. 97-80 expressing its intent~~  
21 ~~to give back any money paid by the Alachua County School District to the district, and to set up a program to~~  
22 ~~aid low-income residents harmed by the fee, in direct contradiction to the county's stated purpose of making~~  
23 ~~everyone pay for usage of the rights-of-way.~~

24           ~~(14) The privilege fee must, by its own terms, be passed on to the utility customers (i.e. "the public"),~~  
25 ~~in contradiction of the ordinance's stated purpose of making the utilities pay "fair rental" for the public's right-~~  
26 ~~of-way.~~

27           ~~(15) The fee is therefore really an illegal tax, not authorized by any constitutional or statutory~~  
28 ~~provision.~~

29           ~~(f) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
30 ~~within the corporate limits of the city arbitrarily and illegally exempts utilities from paying for county right-of-~~  
31 ~~way in a city if the city imposes a franchise fee, and in support thereof makes the following findings of fact:~~

32           ~~(1) By its own terms, the purpose of the privilege fee ordinance is to collect rent for use of county~~  
33 ~~right-of-way and to maximize "the effective and efficient use of County Rights-of-Way for their primary~~  
34 ~~purposes of supporting traffic circulation and control on the County Road System." (Article 1, section 1.02(G)~~  
35 ~~of the privilege fee ordinance.)~~

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1           ~~(2) The privilege fee owed by an electric utility is calculated as a percentage of gross revenues from~~  
2 ~~all customers served by that utility in the county, as long as the utility has at least one electric facility in the~~  
3 ~~county right-of-way.~~

4           ~~(3) The privilege fee ordinance exempts from the calculation of the privilege fee any revenue which is~~  
5 ~~subject to a franchise fee by a municipality.~~

6           ~~(4) The existence of a municipal franchise fee has no impact whatsoever on the county regulation or~~  
7 ~~control of its right-of-way within the municipality.~~

8           ~~(5) There is therefore no rational basis to exempt from calculation of the privilege fee amounts that~~  
9 ~~are subject to a municipal franchise fee.~~

10           ~~(g) The city commission finds that the imposition of the Alachua County electric utility privilege fee~~  
11 ~~within the corporate limits of the city illegally requires the city to bill and collect money from its customers, and~~  
12 ~~in support thereof makes the following findings of fact:~~

13           ~~(1) The City of Gainesville is a municipal corporation of the State of Florida. It has constitutional~~  
14 ~~home rule power within the boundaries of the city, as implemented by the Municipal Home Rule Powers Act.~~

15           ~~(2) Section 1.04(l) of the Charter of the City of Gainesville provides that the city has the power to~~  
16 ~~supply utility service to its inhabitants.~~

17           ~~(3) The city has established Gainesville Regional Utilities (GRU) as its electric, water, wastewater,~~  
18 ~~natural gas and telecommunications utilities system. GRU is not a legal entity; it is a part of the city. The city~~  
19 ~~commission is its board of directors; its general manager is appointed by, and serves at the will of, the city~~  
20 ~~commission.~~

21           ~~(4) The privilege fee ordinance mandates that electric utilities bill for and collect the privilege fee from~~  
22 ~~their customers.~~

23           ~~(5) This in effect mandates that the city collect money for Alachua County from its customers.~~

24           ~~(6) Florida Statutes, Ch. 163, provide that local governments can agree to share responsibilities by~~  
25 ~~use of interlocal agreements. In addition, certain statutes (for example s. 205.043) permit one government to~~  
26 ~~collect taxes for another.~~

27           ~~(7) There is no statute or interlocal agreement giving Alachua County the authority to have the city bill~~  
28 ~~for or collect a county privilege fee from its utilities customers.~~

29           ~~(8) Alachua County has no unilateral authority under Florida Statutes or the Florida Constitution to~~  
30 ~~mandate that the city bill for and collect fees for the county.~~

31           ~~(h) The city commission finds that it is necessary, and a public purpose, to enact this ordinance in~~  
32 ~~conflict with the privilege fee ordinance in order to protect the welfare of the community, and the residents~~  
33 ~~and economic viability of businesses of the city.~~

34           **Section 5.** Section 27-18 of the Gainesville Code of Ordinances is hereby repealed in its entirety as  
35 follows:

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1 **Sec. 27-18. Same--Conflict.**

2 ~~(a) No electric utility shall certify an amount due or pay any privilege fee imposed by the Alachua~~  
3 ~~County electric utility privilege fee ordinance on revenue received from customers located within~~  
4 ~~the city limits of the city; nor shall the utility be liable for payment of such fee or subject to any~~  
5 ~~penalty or court action for failure to pay such fee.~~

6 ~~(b) No electric utility shall assess, or collect from, customers located within the city limits of the~~  
7 ~~city any amount for a privilege fee imposed by the Alachua County electric utility privilege fee~~  
8 ~~ordinance.~~

9 ~~(c) No electric utility customer within the city limits of the city shall be responsible or liable for any~~  
10 ~~amount imposed by the Alachua County electric utility privilege fee ordinance, or subject to any~~  
11 ~~penalty or court action for failure of any electric utility to pay the fee.~~

12 **Section 6.** Section 27-21, Definitions, of the Gainesville Code of Ordinances is hereby  
13 amended to read as follows:

14 **Sec. 27-21 Definitions:**

15 For the purpose of this article, the following words and phrases shall have the meanings  
16 respectively ascribed to them in this section:

17  
18 AC Power shall mean electrical power of the type distributed by the electric utility distribution  
19 system and delivered for consumption to the customer's meter. AC power is created by  
20 systems that utilize time-varying electrical current ("alternating current").

21  
22 Business partners rate discount rider shall mean that written agreement in accordance with  
23 Appendix A, Utilities (1)1. between the city and certain nonresidential electric service  
24 customers whereunder the retail rates otherwise applicable to such customers are discounted  
25 in exchange for a long term, electric service commitment by the customer. The rider shall be  
26 available to only the following retail customer rate classes: general service non-demand,  
27 general service demand, or large power.

28  
29 Consumer shall mean any person or entity that receives and utilizes electric service at a  
30 specific location.

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Customer shall mean the person or entity responsible for payment for all electric, natural gas, water or wastewater services used at a specific location, and further defined as that person who has applied for and requested that services be made available at the specific location and has agreed to pay for all usage of such services occurring at the location. The customer and the consumer may be one and the same.

Curtailed electric service rider shall mean all nonresidential electric customers who are eligible for large power electric service. Customers on this rate agree that the city may curtail at least 500 kW of power demand and must enter into an agreement designating the city as the customer's exclusive supplier of electricity for a minimum initial term of ten years. This rider may be applied to service that is a verifiable amount of electric power demand that can be reduced or interrupted upon request of the city but solely at the discretion of the customer.

DC Power shall mean electrical power of the type stored in batteries. DC power is generated by systems that utilize electrical current that does not vary over time ("direct current"). One important example of such a system is a photovoltaic solar array which converts sunlight into DC power. DC power must be converted to AC power before it can be distributed by the utility electrical distribution system.

Demand shall mean the greatest average amount of electric power measured in kilowatts required by a consumer throughout any 30-minute interval during each billing month.

Developer shall mean any person or entity with ownership or control of a development that can contract with the utility for the construction of electrical facilities.

Distributed Generation shall mean small, modular, decentralized, grid-connected or off-grid energy systems located in or near the place where energy is used. For purposes of Net Metering, the generation is connected to the customers' premises behind the electric revenue meter. For purposes of Feed-In-Tariff, the generation may be independent of an existing utility customer account or may be at an existing customer premise and connected to the grid beyond the electric revenue meter. A solar photovoltaic distributed resource will be referred to as SPDR in Appendix A. The nameplate capacity of SPDRs is stated in direct current (DC) and is referred to as such in the solar industry, therefore all references to solar capacity are

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1 intended to be interpreted as DC values.

2  
3 Feed-in-Tariff shall mean the provision by which the utility may purchase renewable electric  
4 energy and the associated renewable energy credits or other environmental attributes from a  
5 customer or entity within the utility's electric service area pursuant to the Standard Offer  
6 Contract.

7  
8 General service shall mean:

9 (1) Non-demand. All nonresidential electric service where a demand of 50 kilowatts or  
10 greater has not been established. When a customer on this rate establishes a demand of 50  
11 kilowatts, or greater, the appropriate demand rate will be applied for the current billing month  
12 plus a minimum of 11 succeeding billing months. All energy supplied shall be through a single  
13 meter and a single point of delivery. Customers operating multi-family dwellings with residential  
14 electric service supplied through a single meter and a single point of delivery may enter into an  
15 agreement for service under this schedule. During the period beginning May 15 and ending  
16 October 15 each year, customers with an established billing demand of 50 kilowatts or greater  
17 may enter into an agreement for service under this schedule if their maximum demand  
18 established during peak periods does not exceed a demand of 49 kilowatts anytime within 12  
19 consecutive billing months. Peak periods are defined in Appendix A, Utilities, Subsection  
20 (1)f.1.(ii)(B), residential service, time-of-use rate. General service demand customers who wish  
21 to enter into an agreement for service under this schedule by metering demand during peak  
22 periods will pay a one-time meter installation charge in accordance with the schedule set out in  
23 Appendix A.

24 (2) Demand. All nonresidential electric service with an established billing demand of 50 but  
25 less than 1,000 kilowatts per month. Customers on this rate will be changed to the non-  
26 demand rate for the current billing month at such time as their demand has been below 50  
27 kilowatts for 12 consecutive billing months following the effective date of this subsection.  
28 Customers with a nonresidential electric service demand of 50 kilowatts or less may enter into  
29 an agreement for service under this schedule. All energy supplied shall be through a single  
30 meter and a single point of delivery.

31  
32 Interruptible electric service rider shall mean all nonresidential electric customers who are  
33 eligible for either large power electric service.

34 Customers on this rate agree that the city may interrupt at least 500 kW of power demand and  
35 must enter into an agreement designating the city as the customer's exclusive supplier of

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1 electricity for a minimum initial term of ten years. This rider may be applied to service that is  
2 electric power demand at a single metering point that can be totally interrupted either  
3 automatically or manually at the discretion of the city.

4  
5 Large power service shall mean all nonresidential electric service with a 12-month rolling  
6 average demand of 1,000 kilowatts per month or over. Customers on this rate will be changed  
7 to the applicable general service rate for the current billing month at such time as their 12-  
8 month rolling average demand falls below 1,000 kilowatts.. All energy supplied shall be through  
9 a single meter and a single point of delivery.

10  
11 Meter tampering shall mean when any person shall willfully alter, injure, or knowingly suffer to  
12 be injured any electric meter or meter seal or other apparatus or device belonging to the city in  
13 such a manner as to cause loss or damage or to prevent any such meter installed for  
14 registering electricity, from registering the quantity which otherwise would pass through the  
15 same; or to alter the index or break the seal of any such meter; or in any way to hinder or  
16 interfere with the proper action or just registration of any such meter or device or make or  
17 cause to be made any connection of any wire or appurtenance in such a manner as to use,  
18 without the consent of the city, any electricity without such electric service being reported for  
19 payment or such electricity passing through a meter provided by the city and used for  
20 measuring and registering the quantity of electricity passing through the same.

21  
22 Metering point, as distinguished from point of delivery, shall mean the point at which the  
23 instrument is installed to meter the flow of electric energy from the city to the consumer. The  
24 city shall have the option to meter any service on either the primary or secondary side of the  
25 transformer.

26  
27 Month shall mean an interval between successive meter reading dates, which interval may be  
28 30 days, more or less.

29  
30 Net Metering shall mean where a retail customer has installed a photovoltaic or other approved  
31 distributed generation system on the customer's side of the electric revenue meter, and  
32 payment for the excess kilowatt hours delivered to the utility shall be credited against the  
33 customer's billing account. The excess kilowatt hours produced by the distributed generation  
34 system and delivered to the utility shall be credited at the prevailing rate in Appendix A, Section  
35 Utilities (1) Electricity, i. 1. (A). the kilowatt hours output by the distributed generation system

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1 ~~shall be credited against the kilowatt hours used by the customer. The net of the kilowatt~~  
2 ~~hours used by the customer less the kilowatt hours produced by the distributed generation~~  
3 ~~system shall be the number of hours that the customer is billed at the applicable retail rate.~~

4  
5 Point of delivery shall mean the point where the city's wires or apparatus are connected with  
6 those of the consumer.

7  
8 Residential service shall mean service to a single living unit located in a single-family or  
9 multiple-family dwelling or a living unit consisting of a sorority, fraternity, cooperative housing  
10 unit of a college or university or other nonprofit group living unit. A living unit shall be a place  
11 where people reside on a nontransient basis containing a room or rooms comprising the  
12 essential elements of a single housekeeping unit. Each separate facility for the preparation,  
13 storage and keeping of food for consumption within the premises shall cause a housekeeping  
14 unit to be construed as a single living unit. All energy supplied shall be through a single meter  
15 at a single point of delivery. This definition is intended to define a rate class. This definition is  
16 not to be construed as a definition of service conductors or related service entrance  
17 equipment.

18  
19 Related civil infrastructure shall mean all components required to construct an underground  
20 duct system in addition to the conduit and concrete equipment foundations. These components  
21 include but are not limited to cable pull boxes, manholes, vaults, transition boxes, pedestals  
22 and miscellaneous parts (i.e. couplings, bellends, pulling eyes and similar hardware).

23  
24 Retained, expanded or attracted load service rider shall mean at the sole discretion of the city,  
25 this rider may be made applicable to nonresidential electric service provided under either of the  
26 following retail rate schedules: general service demand, or large power. This rider may only be  
27 applied to service that is either retained, expanded or attracted load, as described below:

28 (a) Retained load shall be continued service to a previously existing, creditworthy customer  
29 facing definite cessation of local operations or a customer having a documented alternative  
30 source of electric supply either from relocation, self-generation or a third-party supplier.  
31 Retention of such load and/or customer must be determined by the city commission to be in  
32 the best interest of the city.

33 (b) Expanded load shall be a minimum of 100 kW of additional verifiable service, within the  
34 same site, provided to a previously existing customer. The additional load cannot result from  
35 load shifted from another site or facility within the city's utility service area. Such expansion of

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1 load and/or facilities must be determined by the city commission to be in the best interest of the  
2 city.

3 (c) Attracted load shall be new service of at least 100 kW that locates within the city's utility  
4 service area after having demonstrably considered sites within other feasible locations, not  
5 within the city's utility service area. Such new service, customer and facilities must be  
6 determined by the city commission to be in the best interest of the city.

7 (d) The determination that approval of this retained, expanded or attracted load service rider  
8 is in the best interest of the city, shall be based upon the following minimal criteria:

9 (1) Application of the rider is demonstratively necessary to either retain, expand, or attract  
10 electrical load;

11 (2) Revenues foregone by the city under this rider, together with the fiscal cost of all other  
12 financial incentives to be offered by the city to the applicant coincidentally with this rider, shall  
13 not outweigh the long term quantitative and qualitative benefits to the city's taxpayers and utility  
14 rate payers.

15 (3) The business activity associate with the retained, expanded, or attracted load shall be  
16 consistent with, but not limited to, the city's goals, objectives and policies regarding the  
17 following:

18 Land Use and Zoning

19 Consistency with existing policies and plans

20 Ability to obtain requisite approvals if any

21 Effect upon recreation

22 Sites within target re-development areas

23 Environmental Impacts

24 Water and air emissions

25 Characteristics of solid waste generated and related control methods

26 Stormwater

27 History of environmental compliance

28 Energy efficiency

29 Economic Development Objectives

30 Improving underemployment

31 Industrial diversification

32 Job creation/retention

33 Workforce enhancement

34 Quality of jobs

35 Employee fringe benefits

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- 1 Impact on existing business
- 2 Transportation Infrastructure
- 3 Level of service
- 4 Public transportation access

5  
6 Service shall include, in addition to all electric energy required by consumer, the readiness and  
7 ability on the part of the city to furnish electric energy to the consumer; thus, the maintenance  
8 by the city at the point of delivery of approximately the agreed voltage and frequency shall  
9 constitute the rendering of service irrespective of whether consumer makes any use thereof.

10  
11 Service leads shall mean the portion of the consumer's installation to which the city connects  
12 its service wires.

13  
14 Service wires shall mean the wires of the city to which are connected the service leads of the  
15 consumer.

16  
17 Standard Offer Contract shall mean the terms and conditions promulgated by the general  
18 manager for utilities for customers and non-customers qualifying under the provisions of  
19 Appendix A, Section Utilities (1) Electricity, i. 1. (B).

20  
21 **Section 7.** All ordinances in conflict herewith are to the extent of such conflict hereby repealed.

22  
23 **Section 8.** It is the intention of the City Commission that the provisions of Sections 1, 2, 3 and 6 of this  
24 Ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and  
25 that the Sections and Paragraphs of this Ordinance may be renumbered or re-lettered in order to accomplish  
26 such intentions.

27  
28 **Section 9.** If any word, phrase, clause, paragraph, section or provision of this ordinance or the  
29 application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect  
30 the other provisions or applications of the ordinance which can be given effect without the invalid or  
31 unconstitutional provisions or application, and to this end the provisions of this ordinance are declared  
32 severable.

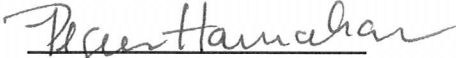
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**Section 10.** This ordinance shall take effect immediately upon its adoption.

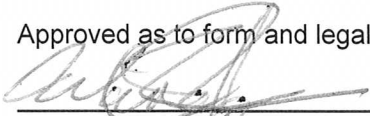
PASSED and ADOPTED this 17<sup>th</sup> day September, 2009.

  
\_\_\_\_\_  
Pegéen Hanrahan  
Mayor

ATTEST:

  
\_\_\_\_\_  
Kurt M. Lannon, Jr.  
Clerk of the Commission

Approved as to form and legality

  
\_\_\_\_\_  
Marion J. Radson  
City Attorney

SEP 17 2009

This ordinance passed on first reading this 3<sup>rd</sup> day of September, 2009.

This ordinance passed on second reading this 17<sup>th</sup> day of September, 2009.

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