



MEMORANDUM

Office of the City Attorney

Legistar No. 001358

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: June 11, 2001
FIRST READING

FROM: City Attorney


SUBJECT: Ordinance No. 0-01-32

An ordinance of the City of Gainesville, Florida, relating to communications services; amending definitions, provisions for fees, and registration requirements in Article VI of Chapter 23 of the Code of Ordinances concerning registration requirements for use of public rights-of-way by communications services providers and other wireline users of rights-of-way; amending Article II of Chapter 25 of the Code of Ordinances to remove references to a public service tax on telecommunications service to be effective October 1, 2001; creating and adding Article V of Chapter 25 of the Code of Ordinances levying a local communications services tax beginning October 1, 2001 in accordance with chapter 202, Florida Statutes; providing a severability clause; providing a repealing clause; and providing effective dates.

Recommendation: The City Commission (1) hear a presentation from City staff and (2) adopt the proposed ordinance.

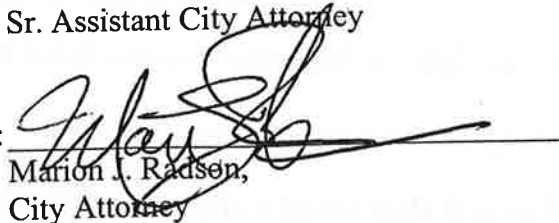
The City Commission at its meeting of May 29, 2001, authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance relating to the communications services tax. The City Commission also requested staff make a presentation about the new state statute on this subject.

Prepared by:



Patricia M. Carter,
Sr. Assistant City Attorney

Approved and
Submitted by:



Marion J. Radson,
City Attorney

MJR:PMC:sw

Ordinance No. 0-01-32

An ordinance of the City of Gainesville, Florida, relating to communications services; amending definitions, provisions for fees, and registration requirements in Article VI of Chapter 23 of the Code of Ordinances concerning registration requirements for use of public rights-of-way by communications services providers and other wireline users of rights-of-way; amending Article II of Chapter 25 of the Code of Ordinances to remove references to a public service tax on telecommunications service to be effective October 1, 2001; creating and adding Article V of Chapter 25 of the Code of Ordinances levying a local communications services tax beginning October 1, 2001 in accordance with chapter 202, Florida Statutes; providing a severability clause; providing a repealing clause; and providing effective dates.

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing 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. Article VI of Chapter 23 of the Code of Ordinances is amended as shown in Attachment A, which is included here by reference and incorporated herein as if set out in full.

Section 2. Article II of Chapter 25 of the Code of Ordinances is amended as shown in Attachment B, which is included here by reference and incorporated herein as if set out in full. The changes shown in Attachment B shall become effective on October 1, 2001.

Section 3. Article V of Chapter 25 of the Code of Ordinances is created and added to the

D R A F T

6-6-01

1 Code of Ordinances to read as shown in Attachment C, which is included here by
2 reference and incorporated herein as if set out in full.

3 **Section 4.** . It is the intention of the City Commission that the provisions of Sections 1
4 through 3 of this ordinance shall become and be made a part of the Code of Ordinances
5 of the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance
6 may be renumbered or relettered in order to accomplish such intentions.

7 **Section 5.** If any section, sentence, clause or phrase of this ordinance is held to be
8 invalid or unconstitutional by any court of competent jurisdiction, then said holding shall
9 in no way affect the validity of the remaining portions of this ordinance.

10 **Section 5.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
11 such conflict hereby repealed.

12 **Section 7.** Except as otherwise stated, this ordinance shall become effective immediately
13 upon final adoption.

14 **PASSED AND ADOPTED** this _____ day of _____, 2001.

15
16
17 _____
18 THOMAS D. BUSSING
19 MAYOR

20
21
22 ATTEST: Approved as to form and legality

23
24 _____
25 KURT M. LANNON
26 CLERK OF THE COMMISSION

27 _____
MARION J. RADSON
CITY ATTORNEY

27 This Ordinance passed on first reading this _____ day of _____, 2001.

28 This Ordinance passed on second reading this _____ day of _____,
29 2001.

30
31

ATTACHMENT A

CHAPTER 23

Article VI. Registration Requirements for Use of Public Rights-of-Way by Communications Services Providers and other Wireline Users of Rights-of-Way for Private Communications Systems

Sec. 23.104. Definitions.

For the purpose of this article, the following terms, phrases, words and derivations shall have the following meanings unless otherwise specifically provided in this article, unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the city commission.

Cable means any conductor or lightwave guide with or without insulation, including cables composed of single or multiple components. The term cable includes telephone cable, coaxial cable, fiber optic cable, cable messenger wire, span wire and similar lines used for telephone, telegraph, signal, data, alarm, control, cable television and other similar purposes.

Cable television systems service means ~~a non-broadcast facility consisting of a set of transmission paths with associated signal generation, reception and control equipment, under common ownership and control, which distributes or is designed to distribute to owners, uses, or subscribers, the signals of one or more televisions broadcast stations and the transmission of video, audio, or other programming service to purchasers, and the purchaser interaction, if any, required for the selection or use of any such programming service, regardless of whether the programming is transmitted over facilities owned or operated by the cable service provider or over facilities owned or operated by one or more other providers of communications services. The term other subscriber services, including audio includes point-to-point and/or point-to-multipoint distribution services by which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but does not include direct-to-home satellite service. The term includes but is not limited to basic, extended, premium, pay-per-view, digital, and music services.~~

Communications facility means the plant, equipment and property, including but not limited to, any and all such conduits, cables, poles, wires, supports, ducts, fiber optics, antenna and other structures, equipment, appurtenances and pathways as may be reasonably necessary to be used to provide communications services.

Conduit means a structure containing one or more duct. The term conduit includes single or multiple ducts of any common material.

1 *Communications services provider* means any person providing communications services
2 as defined in Section 202.11 Florida Statutes and having customers inside the corporate
3 limits of the City of Gainesville. ~~Such definition does not include any part of a federal,~~
4 ~~state, county or local government owned communications system.~~

5
6 *Person* means any person, individual, firm, copartnership, joint venture, association,
7 corporation, partnership, society, club, estate, trust, business trust, receiver, syndicate, or
8 other group or combination acting as a unit, and shall include the state and any political
9 subdivision, municipality, state agency, bureau, board, commission, instrumentality or
10 department, or any combination thereof, and the plural as well as the singular number.

11
12 ~~*Private communications system* means any system of communication lines, cable,~~
13 ~~equipment, towers or other facilities, which are used to provide a telephone, video, data,~~
14 ~~telemetry, intercom or telecommunications service, that in any manner occupies public~~
15 ~~rights-of-way within the corporate limits of the City, as now or in the future may exist.~~
16 ~~Private communications system does not include any part of a state or municipally~~
17 ~~franchised local exchange telephone company or part of a cable television system or~~
18 ~~telephone system franchised by the city or any part of a federal, state, county or local~~
19 ~~government owned communications system.~~

20
21 *Public rights-of-way* means public ways or public highways, streets or alleys, whether
22 presently owned by or dedicated to the city or hereafter acquired or dedicated, or for
23 which the city holds a property interest and exercises right of management or control; and
24 includes the surface, the air space over the surface and the area below the surface of all
25 public roads, streets, highways, alleys, boulevards, bridges, tunnels, and public utility
26 easements where such easement can be used for purposes of a communications system
27 utility.

28
29 **Sec. 23-105. Registration required for communications facilities or other wireline**
30 **occupants of services lines within public rights-of-way.**

31
32 (a) Cable shall be treated as a single unit for permitting purposes if it occupies one
33 attachment point on an aerial structure or a single conduit in an underground application
34 and all attaches at the attachment point and all cables within a single conduit are owned
35 by the same person, organization or firm. No person, organization or firm, whether
36 private or not-for-profit, shall construct, operate, maintain, repair, rebuild or replace a
37 ~~communications route~~ that occupies public rights-of-way within the city without having
38 registered to use the rights-of-way, unless that entity is a franchised cable company of the
39 city.

40
41 (b) All users of the rights-of-way shall pay for use of the rights-of-way according to the
42 following schedule:

43 (1) ~~For franchised users of the rights-of-way and cable service providers,~~
44 payments shall be made in accordance with existing franchise agreements until
45 October 1, 2001 or, if no franchise agreement exists but a cable provider has
46 customers inside the corporate limits, payment shall be based on 5% of gross

1 revenues derived inside the corporate limits of the City of Gainesville. Such
2 payments must be received by the last day of the month for amounts billed the
3 previous month. This section is repealed October 1, 2001.

4
5 (2) Communications services providers other than cable providers shall pay,
6 between January 1, 2001 and October 1, 2001, in accordance with the following:

7
8 a. Local exchange communications and telecommunications service
9 providers, as used in Chapter 337.401 Florida Statutes, shall pay 1% of
10 local recurring revenues for the use of the rights-of-way, if such service
11 provider is actually providing service inside the corporate limits of the
12 City. Such amounts shall be levied on services provided inside the
13 corporate limits of the City of Gainesville, and shall conform in all
14 respects to the requirements of Chapter 337.401 F.S. Such payments shall
15 be made monthly by the close of business on the last day of each month
16 for amounts billed the preceding month. This section shall be repealed
17 October 1, 2001.

18
19 b. Any communications services provider other than cable providers and
20 other than local exchange service providers as defined in (2)a. above,
21 which is providing service inside the corporate limits of the City and
22 having customers inside the corporate limits of the City of Gainesville
23 shall pay \$500 annually per linear mile or portion thereof for the use of the
24 rights-of-way. This section shall be repealed October 1, 2001.

25
26 ~~c. Communications services providers having no customers inside the~~
27 ~~corporate limits of the City of Gainesville shall pay \$500 annually per~~
28 ~~linear mile or portion thereof for the use of the rights of way.~~

29
30
31 ~~(3) Cable providers that have no customers inside the corporate limits of the City~~
32 ~~of Gainesville and all users of the rights of way other than communications~~
33 ~~services providers shall pay \$500 annually per linear mile or portion thereof for~~
34 ~~the use of the rights of way.~~

35
36 ~~(4) Payments under subsection (2)(b) and (c) and subsection (3) shall be due the~~
37 ~~last day of each month on a prorated annual basis, or may be paid annually in~~
38 ~~advance.~~

39
40 (3) All wireline users of rights-of-way other than communications service
41 providers shall pay \$500 annually per linear mile or portion thereof for the use of
42 the rights-of-way. Such payments will be made annually in advance and will be
43 prorated for any partial year occupancy. So long as ownership of cable and/or
44 conduit remains vested in an entity other than a communications services provider
45 or wirelines are not used for purposes of providing communications services as

1 defined in Chapter 202, fees under this section will be due for occupancy of the
2 rights-of-way.

3
4 (4) A government-owned wireline occupant of the rights-of-way shall make
5 payments in the same way as any other wireline occupant of the rights-of way.
6 Payments will be computed as of January 1, 2001.

7
8 (c) The City Manager or designee is hereby authorized to implement rules and
9 procedures to effect and enforce the registration process and the collection of amounts
10 due.

11
12 (d) The registrant has the sole responsibility for identifying and obtaining any and all
13 other necessary approvals, permits or agreements; and the registration hereunder does
14 not, in any way, eliminate the registrant's obligation to obtain such approvals, permits or
15 agreements from the city. No construction can be conducted without obtaining proper
16 construction permits and approvals from the City Manager or designee. All such
17 construction will be subject to a fee of \$100 for each permit application and/or each
18 project. Such permit fees shall be waived for all communications services providers in
19 accordance with Chapter 202, Florida Statutes.

20
21 (e) Aerial communications facilities eable of a private communications system attached
22 to poles on existing permitted attachment points owned by another registrant shall be
23 required to register and pay the annual fee required in subsection (b)(2). In addition,
24 whenever aerial facilities are erected and the process obstructs one or more sidewalks or
25 city streets for a total of more than four hours, the attachment must be permitted in
26 accordance with the process outlined in (d) above.

27
28 (f) The initial registration shall be accompanied by a map, or maps, in form acceptable to
29 the city manager or designee, reflecting all of registrant's existing infrastructure in place
30 in or upon public rights-of-way, property or easements. Registrants must provide, in
31 condensed form, the best available information about infrastructure in place prior to 1990
32 from their existing records. The city manager or designee is authorized to specify the
33 information format for infrastructure put in place subsequent to 1990. Subsequent
34 registrations shall be required every ~~three~~ two years and shall be accompanied by a map
35 or maps sufficient to fully reflect any additions to or deletions from the registrant's
36 infrastructure in place in the City's rights-of-way. The submission of the map or maps
37 hereunder constitutes a condition precedent to the approval of either the initial or any
38 renewal registration but does not relieve a registrant from the duty to provide maps for
39 any subsequent project and/or construction for which a construction permit is required.
40 Registrants shall be notified in writing when their registrations are considered complete
41 and become effective and the next required renewal date. If the city manager or designee
42 determines that the registration is not complete, applicant will be notified in writing as to
43 the process necessary to complete the registration.

44
45 (g) The acceptance of any payment required by this section shall not be construed as an
46 acknowledgment that the amount paid is the correct amount due, nor shall such

1 acceptance of payment be construed as a release of any claim which the city may have for
2 additional sums due and payable.

3
4 (1) All amounts due to the City from any communications services provider
5 occupying the rights-of-way, whether or not such user is properly registered, shall
6 be subject to audit by the City for amounts due and payable through September
7 30, 2001, and assessment or refund will be made if the payment is found to be in
8 error.

9
10 (2) All amounts due to the City from any occupant of the rights-of-way other
11 than a communications services provider, whether or not such user is properly
12 registered, shall be subject to audit by the City, for amounts due and payable
13 through September 30, 2001, and Assessment or refund will be made if the
14 payment is found to be in error.

15
16 (h) Nothing in this article shall be construed to limit the liability of the registrant for all
17 applicable federal, state and local taxes and regulatory fees. In addition, nothing in this
18 article shall be construed to imply that the City cannot exercise its franchise rights
19 regarding cable services companies for all rights and privileges existing under applicable
20 federal law, except those which have been preempted by the State of Florida pursuant to
21 the Unitary Tax on Communications Service Providers.

22
23 (i) Any registrant proposing to install any facilities in or underground, shall, prior to
24 causing such installation, be a member of and utilize Sunshine One Call (1-800-432-
25 4770) or any successor alert and warning system to protect and locate their underground
26 facilities.

27
28 (j) Any misrepresentation of a material fact that has the effect of reducing or avoiding the
29 payment of fees is expressly prohibited and will be cause for revocation of the
30 registration, as well as subject the registrant to prosecution and penalties as provided by
31 section ~~1-9~~ 23-109 of this Code.

32
33 (k) A registrant may cancel a registration upon written notice to the city stating that it
34 will no longer place or maintain any communications facilities in the public rights-of-way
35 within the city and will no longer need to obtain permits to perform work in public rights-
36 of-way. A registrant cannot cancel a registration if the registrant continues to own, place
37 or maintain any communications facilities in public rights-of-way.

38
39 (l) A registrant whose infrastructure is wholly aboveground must provide an annual
40 certificate of general liability insurance to the city for a minimum of \$1 million if the
41 registrant has total infrastructure less than one mile in length and \$3 million if the
42 registrant has total infrastructure at least one mile in length. A registrant whose
43 infrastructure is wholly or partially belowground must provide an annual certificate of
44 general liability insurance to the city for a minimum of \$1 million if the registrant has
45 total infrastructure less than one mile in length and \$5 million if the registrant has total
46 infrastructure at least one mile in length. Contractors who install cable and/or conduit on

1 behalf of registrants must either be covered under the registrant's insurance; provide a
 2 bond for 100% of the cost of the work being performed and any estimated costs of street
 3 or other repairs; or must provide insurance in the same amounts as is required of
 4 registrants. Thirty days advance written notice by registered mail must be given to the
 5 city of any cancellation of, intent not to renew or reduction in policy coverages. The
 6 insurance requirements may be satisfied by evidence of self-insurance, provided that
 7 adequate information is available to the city to ensure that the self-insurance program is
 8 capable of providing the coverages required in this section.

9
 10 **Sec. 23-106. Registration terms.**

11
 12 (a) ~~Any approved registration shall confer upon the user a nonexclusive right to use the~~
 13 ~~City of Gainesville public rights-of-way. An approved registration does not establish a~~
 14 right to place or maintain, or priority for the placement or maintenance of, a
 15 communications facility in City rights-of-way.

16
 17 (b) Any registration shall continue in full force and effect so long as the registrant is in
 18 compliance with this article and all applicable federal, state and local ordinances and
 19 regulations, and the space occupied is not needed for a public purpose. If the space is
 20 needed for a public purpose, the registrant shall cooperate in moving its system at the sole
 21 expense of the registrant in a timely manner so as not to delay any public project.

22
 23 (c) In the event any registration is revoked, the subject ~~private communications~~ facilities
 24 ~~system~~ shall, at the option of the city, be removed from the public rights-of-way at the
 25 sole expense of the registrant.

26
 27 (d) In the event that a communications facility ~~private communications system~~ owned by
 28 a registrant or franchisee is abandoned or the applicable registration or franchise is
 29 revoked, the subject facility ~~private communications system~~ shall become the property of
 30 the city and, at the option of the city, be removed from the public rights-of-way at the
 31 sole expense of the registrant. Should the registrant or franchisee fail to remove its
 32 facilities within 180 days of notice from the city to remove the same, the City may either
 33 take possession and operate the facilities for its benefit, or remove, or cause the removal
 34 of said facilities and the registrant or franchisee shall be fully and solely responsible for
 35 payment of the cost of the removal. So long as the ~~private communications~~ facilities
 36 ~~system~~ remains in place on public rights-of-way and the city has not taken possession of
 37 them, the registrant or franchisee shall continue to pay all applicable fees.

38
 39 **Sec. 23-107. Registration locations.**

40
 41 Any registration shall apply only to the location or locations stated on the registration and
 42 accompanying maps. Additions to or deletions from the system located on the City's
 43 public rights-of-way shall be identified at the time the rights-of-way user applies for the
 44 construction permit to accomplish the change. Each construction permit application shall
 45 clearly state the nature of and change in the system.

46
 Code: text underlined is added; text ~~stricken~~ is deleted.

1 **Sec. 23-108. Use of public rights-of-way.**

2
3 (a) Before commencing construction of a communications facilities private
4 ~~communications system~~ in, above, over, under, across, through or in any way connected
5 with the public rights-of-way of the city, the registrant shall first obtain the written
6 approval of, and other necessary permits from, the city. Applications for such approval
7 shall be made in the form prescribed by the city.

8
9 (b) The registrant shall give the city written notice of proposed construction, within a
10 reasonable time, but in no event shall such notice be given less than ten days before
11 commencement of such construction, for each and every instance in which a construction
12 permit is required, unless the situation is an emergency. At any time when a contractor is
13 conducting the work on behalf of the registrant, such contractor must be authorized by a
14 responsible official of the registrant, ~~and registrant must agree in writing that the~~
15 ~~registrant's indemnification of the City is extended by the registrant to the contractor.~~
16 Such authorization by the owner of the facility must be specifically made in writing for
17 each and every project and permit. Any registrant or any contractor applying for a
18 construction permit on behalf of a registrant must identify on the permit application each
19 and every owner of the facility eable or conduit to be installed. Construction permits
20 shall not be granted for any work on a facility eable, conduit or other system whose
21 owner is not registered. It shall be a violation of this article and punishable in accordance
22 with Section ~~4-9~~ 23-109 for any registrant to cause to be installed, or any contractor to
23 knowingly install, any facility eable for any firm, person or organization without having
24 identified such firm, person or organization on the construction permit application.

25
26 (c) The registrant must also obtain separate agreements for the use of existing utility
27 poles and conduits, if applicable, with the owner(s) of such facilities affected by the
28 proposed construction of the private communications system. The city is not responsible
29 for negotiating such agreements on behalf of registrants.

30
31 (d) It shall be unlawful for the registrant or any other person to open or otherwise disturb
32 the surface of any street, sidewalk, driveway, public way or other public place, or to
33 obstruct public streets or sidewalks as described in section 23-105(e), for any purpose
34 whatsoever without obtaining approval as in subsections (a) and (b) above or to use
35 utility poles and conduits without an agreement as in (c) above.

36
37 (e) The registrant shall restore any street or sidewalk it has disturbed in accordance with
38 the provisions of the city code and shall, at its own expense, restore and replace any other
39 property disturbed or damaged, or pay the fair market value of such property to its owner,
40 or shall make such other repairs or restorations as outlined in the approved construction
41 permit.

42
43 (f) The registrant shall, at its own expense, protect, support, temporarily disconnect,
44 relocate in the same street or other public place, or remove from such street or other
45 public place, any of its property when required to do so by the city because of street or
46 other public excavation, construction, repair, regrading, or grading; traffic conditions,

1 installation of sewers, drains, water pipes, city owned power or signal lines,
2 undergrounding of city facilities; vacation or relocation of streets or any other type of
3 structure or improvement of a public agency, or any type of improvement necessary for
4 the public health, safety or welfare, or upon termination or expiration of the registration.

5
6 (g)The registrant shall maintain all wires, conduits, cable, and other real and personal
7 property and facilities subject to the registration in good condition, order and repair. The
8 ~~registrant shall provide indemnity insurance with the City as named payee and~~
9 ~~performance bonds or demonstrate financial responsibility, as required by the City~~
10 ~~Manager or designee, and shall comply with all rules and regulations issued by the~~
11 ~~appropriate city departments governing the construction and installation in the City's~~
12 ~~rights of way.~~

13
14 (h) The registrant shall agree at the time of registration that it is the owner of all facilities
15 ~~eable and/or conduit~~ installed under the terms of the registration, and must agree to retain
16 responsibility for any such facilities ~~eable and/or conduit~~ in place until the registrant has
17 notified the City that the ownership has changed and the new owner has agreed to assume
18 responsibility therefor. The responsible party shall always be the owner of the facility
19 ~~conduit,~~ who shall be deemed the owner for purposes of indemnifying the City,
20 regardless of whether the facility, space or any transmission or other capacity of the
21 facility inside the conduit is leased to other users.

22
23
24 **Sec. 23-109. Violation; penalty.**

25
26 (a) Any person who shall carry on or conduct any business or occupation or profession
27 for which registration is required by this article without first registering shall be
28 considered to be in violation of this chapter and, upon conviction, be subject to penalty as
29 provided in section 1-9 of this Code. Any person who has facilities ~~lines~~ under or over
30 city property, rights-of-way or easements and who does not register timely under the
31 terms of this article shall pay a late penalty of 12 percent per annum.

32
33 (b) Failure of the city to enforce any requirements of this ordinance shall not constitute a
34 waiver of the city's right to enforce that violation or subsequent violations of the same
35 type or to seek appropriate enforcement remedies.

36
37 **Sec. 23-110. Transfers and assignments.**

38
39 (a) The registrant shall not transfer or assign its interest in any registration issued in
40 accordance herewith, other than a general assignment of the registrant's entire assets or a
41 pledge of the assets as collateral on a loan, except as stated in Section 23-108(h) above.
42 For purposes of this section, a merger or consolidation of the registrant with another
43 company shall not be deemed a transfer or assignment.

1 **Sec. 23-111. Existing communications facilities systems.**

2
3 ~~Persons, organizations or firms occupying the City's public rights of way as of the date~~
4 ~~of adoption of this ordinance shall have until February 1, 2001 to register, unless they~~
5 ~~have a franchise agreement currently in effect with the City of Gainesville. Existing~~
6 ~~franchisees shall not be required to register until their current franchise expires or they no~~
7 ~~longer have customers inside the corporate limits of the City of Gainesville, whichever~~
8 ~~occurs sooner. This obligation to register does not relieve any person, organization or~~
9 ~~firm company of the previously existing requirements to obtain a telecommunications~~
10 ~~permit or a valid registration under ordinances adopted in 1996 and 2000, where~~
11 ~~applicable, and does not waive prior period penalties or fees for failure to obtain such~~
12 ~~permits and/or to register, as applicable, between subsequent to July 1, 1996 and~~
13 ~~December 31, 2000.~~
14
15

ATTACHMENT B

CHAPTER 25

Article II. Public Service Tax

Sec. 25-16. Definitions.

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

Fuel oil as used in this article, shall include Fuel Oil Grade Nos. 1,2,3,4,5, and 6, kerosene, and coal oil.

Purchaser shall include any person, firm, corporation, partnership, society, club or association of persons acting together as a unit who purchase or cause to be purchased for consumption utility service within the corporate limits of the city.

Seller shall include any person, individual, firm, copartnership, joint venture, association, corporation, partnership, society, club, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and shall include the state and any political subdivision, municipality, agency, bureau, board, commission, instrumentality or department, or any combination thereof, and the plural as well as the singular number. The University of Florida shall not be deemed a seller of any item otherwise taxable hereunder when such item is provided to university residences incidental to the provision of educational services.

~~*Telecommunication service* shall mean:~~

~~(1) Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter or computer exchange service, or private communication service;~~

~~or~~

~~(2) Cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; but does not include services or equipment incidental to telecommunication services enumerated in this paragraph such as maintenance of customer premises equipment, whether owned by the customer or not, or equipment sales or rental for which charges are separately stated, itemized, or described on the bill, or invoice.~~

Utility service shall mean electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), ~~telephone service~~, water service, and fuel oil, sold, purchased, delivered or received within the boundaries of the city.

1
2 **Sec. 25-17. Levy.**
3

4 (a) There is hereby levied by the city on each and every purchase in the city of
5 electricity, metered or bottled gas (natural, liquefied petroleum gas, or manufactured),
6 and water service, a tax of ten percent of the charge made by the seller of such service or
7 commodity. There is hereby levied by the city on each and every purchase in the city of
8 fuel oil a tax of four cents per gallon. These taxes shall in each case be paid by the
9 purchaser thereof for the use of the city to the seller of such electricity, metered or bottled
10 gas (natural, liquefied petroleum gas, or manufactured), water service, and fuel oil at the
11 time of paying the charge therefore, but not less than monthly.
12

13
14 (b) The tax hereby levied on purchases of utility service shall be collected only once
15 upon the same commodity or service and after the commodity or service has lost its
16 interstate character.
17

18 ~~(c) Telecommunications service. There is hereby levied by the city, on each and every~~
19 ~~purchase within the city of telecommunication service as defined by section 25-16 of this~~
20 ~~Code that originates and terminates in this state, a tax of seven percent of the total~~
21 ~~amount charged for such service provided within the city or, if the location of the~~
22 ~~telecommunications service cannot be determined as part of the billing process, the total~~
23 ~~amount billed for such telecommunications service to a telephone number or device, a~~
24 ~~service address, or a customer's billing address located within the city, excluding public~~
25 ~~telephone charges collected on-site, charges for any foreign exchange service or any~~
26 ~~private line service except when such services are used or sold as a substitute for any~~
27 ~~telephone company switched service or dedicated facility by which a telephone company~~
28 ~~provides a communication path, access charges and any customer access line charges~~
29 ~~paid to a local telephone company. Purchases of telecommunications services as defined~~
30 ~~is section 25-16 of this Code shall be taxed only on the monthly recurring customer~~
31 ~~service charges, excluding variable usage charges.~~
32

33 **Sec. 25-18. [No change to this section.]**
34

35 **Sec. 25-19. Collection from purchaser; compensation to seller.**
36

37 (a) It shall be the duty of every seller of electricity, metered or bottled gas (natural,
38 liquefied petroleum gas, or manufactured), ~~telecommunications service~~, water service,
39 and fuel oil, within the corporate limits of the city to collect from the purchaser thereof
40 for the use of the city, the tax levied by section 25-17 at the time of collecting the selling
41 price thereof, and to report and pay over on or before the 20th day of each calendar month
42 to the city manager or designee, all such taxes levied and collected during the preceding
43 calendar month. It shall be unlawful for any seller to collect for any utility service
44 without at the same time collecting the tax hereby levied unless such seller shall elect to
45 assume and pay such tax without collecting the same from the purchaser. Any seller
46 failing to collect such tax at the time of collecting for any such utility service where the

Code: text underlined is added; text ~~stricken~~ is deleted.

1 seller has not elected to assume and pay such tax shall be liable to the city for the amount
2 of such tax; provided, however, that the seller shall not be liable for the payment of such
3 tax upon uncollected bills. If any purchaser shall fail, neglect or refuse to pay for such
4 utility service, including the tax hereby imposed, the seller shall have the right and is
5 hereby authorized and empowered to immediately discontinue further service to such
6 purchaser until the tax and the seller's bill shall have been paid in full.

7
8 ~~(b) For the purpose of compensating the seller of telecommunication service, the seller~~
9 ~~shall be allowed one percent of the amount of the tax collected in the form of a deduction~~
10 ~~from the amount collected.~~

11
12 **Sec. 25-20. Records; monthly statements; payment to city.**

13
14 (a) Records. Each seller of services that are taxable under section 25-17 shall preserve
15 applicable records relating to such taxes until the expiration of the time within which the
16 city may make an assessment with respect to that tax. The city may, during the seller's
17 normal business hours at the official location of the seller's books and records, audit the
18 records of any seller of a service that is taxable under section 25-17, for the purpose of
19 ascertaining whether taxable services have been provided or the correctness of any return
20 that has been filed or payment that has been made. Each such seller must provide to the
21 city, upon 60-days' written notice of intent to audit, access to applicable records for such
22 service, except an extension of this 60-day period shall be granted if reasonably requested
23 by the seller. The seller may at its option waive the 60-day notice requirement.

24
25 (b) *Monthly statements; payments.*

26
27 (1) Every seller is hereby required to sign and file not later than the 20th day of
28 each month in the office of the city manager or designee, a statement setting forth
29 the amount of the tax to which the city became entitled under the provisions of
30 this article on account of bills paid by purchasers during the preceding month, and
31 to pay the amount of the tax to the city manager or designee, to be deposited to
32 the credit of such funds of the city as may have been provided by the city
33 commission.

34
35 (2) Statements and payments shall be accepted as timely if postmarked on or
36 before the 20th day of the month; if the 20th day falls upon a Saturday, Sunday, or
37 federal or state holiday, statements and remittances shall be accepted as timely if
38 postmarked on the next succeeding workday. ~~The deduction allowed by section~~
39 ~~25-19(b) shall not be allowed in the event of any untimely return, unless the seller~~
40 ~~has in writing requested and been granted an extension of time for filing such~~
41 ~~return for reasonable cause shown.~~

42
43 (c) ~~Exception from monthly payment. The city manager or designee may establish a~~
44 ~~written policy allowing less frequent payment of telecommunication tax amounts due~~
45 ~~when such amounts are projected to be less than \$2,500.00 per year.~~

1 **Sec. 25-21. Monthly payment; forms; rules and regulations.**

2

3 (a) In all cases where the seller of utility service collects the price thereof at monthly
4 periods the tax hereby levied may be computed on the aggregate amount of the sales
5 during such period provided that the amount of tax to be collected shall be the nearest
6 whole ~~cent~~ dollar to the amount computed.

7 (b) The city manager or designee shall prescribe, prepare and furnish forms for the
8 reporting and return of the tax levied and collected under the terms of this article and
9 sellers of utility service shall make all returns of the taxes collected by them on such
10 forms. ~~A seller of telecommunications services may use its own form, provided the form
11 identifies the name and address of the seller, the period of the return, the amount
12 collected from the sale of taxable services, any collection allowance taken, the amount of
13 tax remitted with the return, and the name and telephone number of a person authorized
14 by the seller to respond to inquiries from the city concerning the seller's administration of
15 the tax.~~ The city manager or designee is hereby further authorized to prescribe and
16 promulgate necessary rules and regulations pertaining to the administration of the
17 provisions of this article.

18

19 **Sec. 25-22.** [No change to this section.]

20

21 **Sec. 25-23.** [No change to this section.]

22

ATTACHMENT C

ARTICLE V. LOCAL COMMUNICATIONS SALES TAX

Sec. 25-81. Local communications services tax.

Effective with respect to communications services reflected on bills dated on or after October 1, 2001, there is imposed and levied by the city a local communications services tax, administered in accordance with Chapter 202 Florida Statutes. The city hereby imposes the following rate structure in accordance with Chapter 202 and Alachua County's local option sales tax:

(a) For taxable sales of communications services on bills dated October 1, 2001 through December 31, 2001, the local communications services tax rate shall be 5.42%.

(b) For taxable sales of communications services on bills dated January 1, 2002 through September 30, 2002, the local communications services tax rate shall be 6.02%, which percentage includes .6% allocated to Alachua County's local option sales tax in accordance with 202.201(3), F.S.

(c) For taxable sales of communications services on bills dated from October 1, 2002 through December 31, 2002, the local communications services tax rate shall be 5.62%, which percentage includes .6% allocated to Alachua County's local option sales tax in accordance with sec. 202.20(3), F.S.

(d) Effective for taxable sales of communications services on bills dated on or after January 1, 2003, the local communications services tax rate shall be 5.02%.

