

**UNITARY TAX AND RIGHTS-OF-WAY ORDINANCE CHANGES
June 11 City Commission Meeting**



CITY OF GAINESVILLE

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SUBJECT: Update on Unitary Tax on Telecommunications and Changes
Required to the City Rights-of-Way Rules

The City has three sources of revenue derived from communications services offered inside the City of Gainesville:

- ⊕ Approximately \$3.8 MM from the 7% telecommunications tax
- ⊕ Approximately \$.25 MM from the (limited) 1% franchise fee on local exchange telephone service
- ⊕ Approximately \$.75 MM from the 5% franchise fee on cable service

All of these revenue sources disappear on October 1, 2001. In their place, the Unitary Tax on Telecommunications enacted by the 2000 Florida Legislature and completed by the 2001 Legislature will become effective October 1 to replace these disappearing revenue sources.

NEW TAX – UNITARY TAX ON TELECOMMUNICATIONS

The Unitary Tax has two components:

- ⊕ a State component which replaces the gross receipts tax and the state 6% and 7% sales taxes on various communications services, and
- ⊕ the Local Tax component

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The Local Unitary Tax will be collected by the Department of Revenue rather than by local governments, but it will be distributed to local governments along with information regarding which entities are remitting to the jurisdiction and how much each entity is remitting. It is envisioned that no information presently available to local governments will be lost. Because of this information sharing, particularly during the implementation and transition years, local governments can continue to monitor their receipts to ensure that no revenue has been lost in the transition.

Local jurisdictions in the State of Florida levy the above taxes and franchise fees variously. Gainesville imposes the maximum allowable rates for all three. Some jurisdictions impose none of the above; some impose franchise fees but not the telecommunications taxes, and vice versa; and some jurisdictions impose any or all of the above at less than the maximum allowable rates.

The Department of Revenue calculated the eplacement" rates that each jurisdiction would need in order to generate the same revenue (with an allowable growth measurement) in future fiscal years as it has generated in the 2001 fiscal year. An additional 8.33% was built into the first-year rate calculation to make up for the cash receipts delay inherent in the new scheme: Providers will remit to the Department of Revenue which will then remit to local jurisdictions, causing a one-month time lag in cash collections.

The Department of Revenue calculations were based on information provided to it by local governments and by communications services providers. Because of difficulties in obtaining careful and accurate information from the providers in order to calculate all the local governmental rates, the Legislature provided an emergency rate-setting mechanism by which a local government can raise its rate if revenue projects to be less for the 2002 fiscal year than it was for the 2001 fiscal year; under the emergency provisions, the local government can reset its rate in order to recover any loss endured prior to the emergency rate-setting and to ensure that future rates will provide the revenue that was intended in the law, that is, that it will replace revenue we currently receive. Thus, the City has downside protection against any and all errors that the communications industry may have made in estimating the new taxable base.

City staff will be reviewing the cash receipts under the unitary tax and will test them against the hold-harmless base at the end of each quarter to ensure that revenues are within the projected parameters. We hope that there will be no revenue shortfalls, but if there are, staff will return with an emergency rate request. Please bear in mind that any emergency rate would not be an increase to rates currently in effect today, because the Unitary Tax revenue is intended to replace current revenues. Rather, the emergency rate would make up for the fact that the rates were accidentally set too low at the inception of the Unitary Tax in October, 2001.

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Gainesville rates are particularly complicated until January of 2003 because of the Alachua County optional sales tax which will be in effect for calendar 2002. All optional sales taxes are to be rolled into the local government rates and are not charged separately as part of the State Unitary Tax. The Department of Revenue will, however, segregate the local option sales tax portion of the taxes remitted and place it into the sales tax trust fund for distribution in the normal course of events.

The rates we are including in our ordinance are the rates calculated by the Department of Revenue plus the .12% attributable to the waiving of permit fees for communications services providers. Rates will be as follows:

- ⊕ For bills printed on or after October 1, 2001 - 5.42%
- ⊕ For bills printed on or after January 1, 2002 - 6.02%
- ⊕ For bills printed on or after October 1, 2002 - 5.62%
- ⊕ For bills printed on or after January 1, 2003 - 5.02%

The calendar 2002 rates include the optional sales tax rate in the 2001 Statute, and the 5.02% taking effect in 2003 is intended to be the City permanent effective rate, unless the revenue projections are significantly in error and an emergency ordinance is enacted, or unless the City raises its rates to the newly allowable maximum rate.

The .12% rate add-on permitted for the waiving of permit fees will be used by the Public Works Department to hire an additional inspector. With all the construction taking place inside the City limits, and given the influx of communications services providers that we anticipate in the fall of this year, another inspector is required to effect the quality of infrastructure inside the City limits.

EFFECTS OF TAX CHANGES ON INDIVIDUAL RESIDENTS

Because of the rather significant changes in the definition of services taxable under the new law compared to services taxable under the old laws, it is very difficult to predict what the effect will be on any particular consumer. Although it appears that the local tax on cable will be higher than the current franchise fee on cable, the actual tax paid by a cable customer is likely to be approximately the same. This is a result in the difference in the franchise fee base compared to the taxable services base under the Unitary Tax law -- many kinds of revenue subject to the franchise fees will not be taxable revenues under

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the terms of the new law. The Department of Revenue estimate is that the difference is approximately 16%, and that would mean customers would be paying approximately the same local tax as they previously paid in local franchise fees.

With respect to telephone services, residential telephone lines continue to remain exempt from the state sales tax and will now also be exempt from the State gross receipts tax, a tax savings of 2.5%. On the other hand, a much broader base of services will be taxable under the new law, so the actual tax to be paid by any individual consumer may be higher or lower than the tax that person is currently paying. In general, consumers with a large proportion of interstate calls will likely pay more tax that they are at the present time. On the other hand, consumers with a small proportion of interstate calls are likely to pay less tax than they do at the present time. For cellular service, customers with roaming fees are likely to pay more under the new law; customers with flat rates are likely to pay less.

Overall, the Unitary Tax is designed to be revenue neutral, so that total tax collections are expected to be approximately the same under the new law as under the old. Individuals may pay more or less than they presently do depending upon the mix of services that they obtain and use from their communications services providers.

CHANGES NECESSARY TO RIGHTS-OF-WAY LAWS

Certain sections of both the 2000 and 2001 legislation require that we make some change to our rights-of-way fee structure. Primarily, for communications services providers, the franchise fees and the linear mileage fees disappear effective October 1, 2001, because those revenues have been rolled into the Unitary Tax rates. There are certain other tweaking sections that are intended to clarify and tighten the permitting rules.

For wireline occupants of the rights-of-way that are not communications services providers, the \$500 linear mileage fees that have been part of City ordinances since 1996 will remain in place.

The second significant change to the rights-of-way ordinance is that the exemption for governmentally owned wirelines and facilities is being removed, retroactive to January 1, 2001. The reason this is necessary is that to permit a governmentally owned competitive communications services provider to occupy rights-of-way without paying a fee erects a barrier to entry and fails to establish a level playing field. The (federal) Telecommunications Act of 1996 prohibits barriers to entry and requires a level playing field. Failure to remove the governmental exemption that was inadvertently retained in

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the ordinance revision from this past December flies in the face of those federal requirements. Accordingly, governmentally owned facilities including GRUCom will be required to register, pay the fees, and pull permits just as any other communications services provider will be required to do.

Amounts received by general government in fees from GRUCom will be credited against the GRUCom transfer. It is thus expected that the imposition of these requirements on GRUCom will not alter its financial position or obligations vis a vis general government.

The permitting elements of our ordinance are the City only real means of maintaining control over our rights-of-way. Accordingly, these registration and permitting sections will be strictly enforced upon enactment of the ordinance whose first reading you will hear on June 11.