



MEMORANDUM

Office of the City Attorney

Legistar No. 001261

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

TO: Mayor and City Commission

DATE: March 15, 2004
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-04-26

An ordinance of the City of Gainesville, Florida, creating Article X of Chapter 2 of the Code of Ordinances of the City of Gainesville relating to local preference in purchasing, making findings, providing for definitions, preference and exceptions, providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing a prospective effective date and sunset provisions.

Recommendation: The City Commission adopt the proposed ordinance.

On February 9, 2004, the City Commission adopted the Personnel and Organizational Committee's recommendation that the City Attorney prepare and the Clerk of the Commission advertise an Ordinance providing for a preference to local businesses when the City purchases certain supplies, materials, equipment and services. A section-by-section discussion of the proposed ordinance follows.

Section 1 contains the requisite findings describing the basis for the limited preference.

Section 2 describes the amount and operation of preference, in both invitation to bid and request for proposal situations. Management's presentation will provide examples.

Section 3 describes the purchases to which the preference will not apply. Section 3 provides for a case-by-case waiver (non-application) of the preference on purchases to which it would otherwise be applied, when such is justified by the purchasing authority (Charter Officer). Finally, Section 3 acknowledges that factors other than the local preference can ultimately control the purchase.

Section 4 limits the preference to a business with a pre-existing occupational license with, and physical location within, the City.

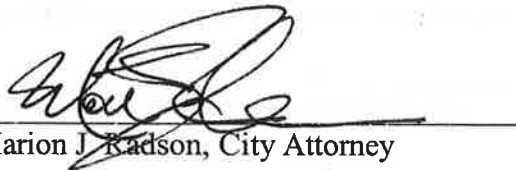
Sections 5 and 9 provide that the preference will begin to apply six months after the ordinance is adopted and expire 18 months later, absent further action by the City Commission.

Prepared by:



Charles L. Hauck, Sr. Assistant City Attorney

Approved and
Submitted by:



Marion J. Radson, City Attorney

MJR:CLH:sw

ORDINANCE NO. _____
0-04-26

An ordinance of the City of Gainesville, Florida, creating Article X of Chapter 2 of the Code of Ordinances of the City of Gainesville relating to local preference in purchasing, making findings, providing for definitions, preference and exceptions, providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing a prospective effective date and sunset provisions.

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. Section 2-620 of Article X, entitled "Local Preference Policy" of Chapter 2 of the Code of Ordinances of the City of Gainesville is hereby created to read as follows:

ARTICLE X. LOCAL PREFERENCE POLICY

Sec. 2-620. Findings of Fact.

The City annually spends significant amounts on purchasing personal property, materials, and contractual services and in constructing improvements to real property or to existing structures. The dollars used in making those purchases are derived, in large part, from

1 taxes, fees, and utility revenues derived from Local Businesses in the corporate city limits of
2 Gainesville, and the City Commission has determined that funds generated in the community
3 should, to the extent possible, be placed back into the local economy. Therefore, the City
4 Commission has determined that it is in the best interest of the city to give a preference to Local
5 Businesses in the corporate city limits of Gainesville in making such purchases whenever the
6 application of such a preference is reasonable in light of the dollar-value of proposals received in
7 relation to such expenditures.

8 **Section 2.** Section 2-621 of the Code of Ordinances of the City of Gainesville is hereby
9 created to read as follows:

10 Sec. 2-621. Definition.

11 Local Business means the vendor has a valid occupational license, issued by the City of
12 Gainesville at least six months prior to bid or proposal opening date, to do business in said
13 locality that authorizes the business to provide the goods, services, or construction to be
14 purchased, and a physical business address located within the limits of said locality, in an area
15 zoned for the conduct of such business, from which the vendor operates or performs business on
16 a day-to-day basis. Post office boxes are not verifiable and shall not be used for the purpose of
17 establishing said physical address. In order to be eligible for local preference, the vendor must
18 provide a copy of the occupational license.

19 **Section 3.** Section 2-622 of the Code of Ordinances of the City of Gainesville is hereby
20 created to read as follows:

21 Sec. 2-622. Local preference in purchasing and contracting

22 In bidding of, or letting contracts for procurement of, supplies, materials, equipment

1 and services, as described in the Purchasing Policies, the City Commission, or other purchasing
 2 authority, may give a preference to Local Businesses in making such purchase or awarding such
 3 contract in an amount not to exceed five (5) percent of the Local Business' total bid price, as
 4 described below, and in any event the cost differential should not exceed twenty-five thousand
 5 dollars (\$25,000.00). Total bid price shall include not only the base bid price but also all
 6 alterations to that base bid price resulting from alternates which were both part of the bid and
 7 actually purchased or awarded by the City Commission or other authority. In the case of requests
 8 for proposals, letters of interest, best evaluated bids, qualifications or other solicitations and
 9 competitive negotiation and selection in which objective factors are used to evaluate the
 10 responses, Local Businesses are assigned five (5) percent of the total points of the total
 11 evaluation points.

12 **Section 4.** Section 2-623 of the Code of Ordinances of the City of Gainesville is hereby
 13 created to read as follows:

14 Sec. 2-623. Exceptions to local preference policy.

15 The preference set forth in this article X shall not apply to any of the following
 16 purchases or contracts:

- 17 1. Good or services provided under a cooperative purchasing agreement;
- 18 2. Contracts for professional services procurement of which is subject to the
 19 Consultants' Competitive Negotiation Act (F.S. § 287.055) or subject to any competitive
 20 consultant selection Policy or Procedure adopted or utilized by the City Commission or Charter
 21 Officer.
- 22 3. Purchases or contracts which are funded, in whole or in part, by a governmental

1 entity and the laws, regulations, or policies governing such funding prohibit application of that
2 preference; or

3 4. Purchases made or contracts let under emergency or noncompetitive situations, or
4 for litigation related legal services, etc., as such are described in the city's Purchasing Policies.

5 5. Purchases with an estimated cost of \$50,000 or less.

6 6. Application of local preference to a particular purchase, contract, or category of
7 contracts for which the City Commission is the awarding authority may be waived upon written
8 justification and recommendation of the Charter Officer and approval of the City Commission.

9 The preferences established herein in no way prohibit the right of the City Commission or other
10 purchasing authority to compare quality or fitness for use of supplies, materials, equipment and
11 services proposed for purchase and compare qualifications, character, responsibility and fitness
12 of all persons, firms, or corporations submitting bids or proposals. Further, the preferences
13 established herein in no way prohibit the right of the City Commission or other purchasing
14 authority from giving any other preference permitted by law in addition to the preference
15 authorized herein.

16 **Section 5.** Section 2-624 of the Code of Ordinances of the City of Gainesville is hereby
17 created to read as follows:

18 Sec. 2-624. Application, enforcement.

19 The local preference shall apply to new contracts for supplies, materials, equipment and
20 services first solicited after October 1, 2004. This Article shall be implemented in a fashion
21 consistent with otherwise applicable City Purchasing Policies and Procedures.

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

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

8 **Section 8.** All ordinances or parts of ordinances in conflict herewith are to the extent of such
9 conflict hereby repealed.

10 **Section 9.** This ordinance shall become effective October 1, 2004, and shall be reviewed by
11 the City Commission October 1, 2005, and unless extended by action of the City Commission,
12 shall be deemed repealed effective March 31, 2006, provided that it shall remain applicable to
13 new contracts solicited prior to repeal.

14 **PASSED AND ADOPTED** this ____ day of _____, 2004.

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16
17
18 _____
THOMAS D. BUSSING, MAYOR

19 ATTEST:

20
21 Approved as to form and legality

22 _____
23 KURT M. LANNON
24 CLERK OF THE COMMISSION

25 _____
MARION J. RADSON, CITY ATTORNEY

26 This Ordinance passed on first reading this ____ day of _____, 2004.

27 This Ordinance passed on second reading this ____ day of _____, 2004.

