

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum
Box No. 46; 334-5011

TO: Mayor and Members of the City Commission DATE: November 23, 1998

FROM: Marion J. Radson
City Attorney

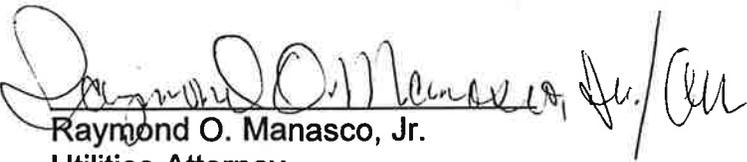
SUBJECT: Ordinance No. O-99-16 Proposed Lease In Lease Out Transaction
City Commission #980766.

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA, AUTHORIZING THE INVESTMENT BY THE CITY IN "PAYMENT AGREEMENTS" IN CONNECTION WITH THE CLOSING OF A LEASE IN-LEASE OUT TRANSACTION INVOLVING PORTIONS OF DEERHAVEN UNITS 1 AND 2 AND CERTAIN COMMON FACILITIES; ESTABLISHING CERTAIN REQUIREMENTS FOR SUCH PAYMENT AGREEMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Recommendation: The City Commission adopt the proposed ordinance as revised.

The revised language of Section 2 was requested by the Bank of New York and its lender, an affiliate of AMBAC Assurance Corporation, parties to the Lease In Lease Out for clarity of terms and does not change the substance of the proposed ordinance.

Prepared by:


Raymond O. Manasco, Jr.
Utilities Attorney

Submitted by:


Marion J. Radson
City Attorney

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA, AUTHORIZING THE INVESTMENT BY THE CITY IN “PAYMENT AGREEMENTS” IN CONNECTION WITH THE CLOSING OF A LEASE IN-LEASE OUT TRANSACTION INVOLVING PORTIONS OF DEERHAVEN UNITS 1 AND 2 AND CERTAIN COMMON FACILITIES; ESTABLISHING CERTAIN REQUIREMENTS FOR SUCH PAYMENT AGREEMENTS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in connection with the consummation of the lease in-lease out (“LILO”) transaction previously authorized by the City Commission on September 14, 1998 in agenda item number 980502; it will be necessary for the City to enter into certain “payment agreements” to provide for the investment of a portion of the up-front payments to the City to be derived from the LILO transaction, pursuant to which agreements a third party will agree to make, on behalf of the City, (a) the rent payments owed by the City pursuant to the LILO transaction and (b) to the extent that the City elects to exercise its purchase option pursuant to the LILO transaction, the purchase option payment owed by the City with respect thereto; and

WHEREAS, Fla. Stat. § 166.261 provides that, unless otherwise authorized by law or by ordinance, municipalities shall invest their surplus public funds in the investments enumerated in said section; and

WHEREAS, the “payment agreements” do not fit within the list of investments enumerated in Fla. Stat. § 166.261; and

WHEREAS, the City Commission finds that authorizing investments in “payment agreements” in connection with the LILO transaction is in the best interests of the City; and

WHEREAS, pursuant to law, this ordinance has been read on two separate days; and

WHEREAS, pursuant to law, an advertisement was placed in a newspaper of general circulation at least ten days prior to adoption notifying the public of this proposed ordinance and of the Public Hearing to be held in the City Hall Auditorium, First Floor, City Hall, in the City of Gainesville.

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

Section 1. The City is hereby authorized in connection with the LILO transaction involving portions of Deerhaven Units 1 & 2 and certain common facilities to make investments of certain surplus public funds in “payment agreements” between the City and one or more insurance companies, banks or other financial institutions, or affiliates or subsidiaries thereof (each, an “agreement provider”), pursuant to which the agreement provider will agree to repay to (or at the direction of) the City, at times and in amounts to be agreed upon by the City and the agreement provider, the amount invested by the City pursuant thereto, together with interest thereon at a rate or rates to be agreed upon by the City and such agreement provider, and without any right of set off.

CODE: Words ~~stricken~~ are deletions; words underlined are additions.

Section 2. The City shall not invest those certain surplus public funds in any particular payment agreement unless the senior unsecured debt, ~~or~~ claims-paying ability or financial strength rating of the agreement provider party thereto shall, at the time of the initial investment, be rated by at least one nationally recognized statistical rating organization in at least the "single-A" category, or the obligations of such agreement provider shall be unconditionally guaranteed or insured by an entity that is so rated.

Section 3. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 4. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 5. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this _____ day of _____, 1998.

MAYOR

ATTEST:

Approved as to form and legality:

Clerk of the Commission

By: _____
Marion J. Radson, City Attorney

This ordinance passed on first reading this _____ day of _____, 1998.

This ordinance passed on second reading this _____ day of _____, 1998.

CODE: Words ~~stricken~~ are deletions; words underlined are additions.

