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IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CITY OF GAINESVILLE, FLORIDA, a body corporate and politic and a municipality of the State of Florida,

Plaintiff,

v. Case No.

THE STATE OF FLORIDA, by and through its Attorney General, ASHLEY MOODY, Governor RON DESANTIS, and the Secretary Of State, CORD BYRD, in their official capacities,

Defendants.
_____/

PLAINTIFF CITY OF GAINESVILLE, FLORIDA'S MOTION FOR TEMPORARY INJUNCTION AND SUPPORTING MEMORANDUM OF LAW

Pursuant to Rule 1.610, *Florida Rules of Civil Procedure*, Plaintiff, City of Gainesville, Florida ("Gainesville" or "City") moves for a temporary injunction against the State of Florida ("Florida" or "the State"), enjoining the State from implementing and enforcing the terms of HB 1645, and in support states:

INTRODUCTION

The City has filed a Complaint concomitant with this Motion. In that Verified Complaint, the City compares the special law, HB 1645 with the Florida Constitution, and certain Florida Statutes. The majority of the counts in the Verified

Complaint require no facts – simply a comparison of the Special Law, with the binding constitutions and statutes cited. The impairment counts alone require the application of facts, but even those cannot actually be disputed – merely the application of these facts to the provisions of the special law is required.

In short, HB 1645 ignores existing constitutional and statutory constraints, and directs that a municipal department be managed and controlled, not by the elected legislative body, but by 5 individuals appointed by the Executive Branch of the State of Florida. In that, HB 1645 stands alone – there is no other statute in Florida, which reaches inside a municipality, removes what are indisputably municipal functions, and assigns them to State to operate and manage. In addition, this appointed Board is imbued with the constitutional and statutory powers of the municipality, despite the clear illegality of such an assignment. Finally, despite inserting 5 gubernatorial appointees to run a City utilities department, the Special Law, HB 1645 coins a new phrase: "municipal unit" and decrees that this City department, seized by the State, is still a "municipal unit." There is no known legal definition of "municipal unit" and therefore no clear understanding of what the legislation is to accomplish.

Accordingly, Court should enter a temporary injunction enjoining the State from implementing and enforcing the terms of HB 1645 in accordance with the

Verified Complaint and the law cited therein, and in this Motion for Temporary Injunction and Memorandum of Law.

BACKGROUND

As pleaded in the Verified Complaint, the City of Gainesville operates a utility system providing electric, water, wastewater, natural gas, and telecommunications for residents of Gainesville and certain areas of unincorporated Alachua County, and does so under a fictitious name, registered with Sunbiz as GRU – Gainesville Regional Utility. It is not, however, a separate body and politic – it is merely a department of the City (hereinafter the "Utility System"). In the waning hours of the last legislative session, without significant committee oversight or vetting, HB 1645 was passed removing the operation and control over Gainesville's Utility System and placing all control into a yet-to-be appointed 5 member authority, appointed solely by the Governor. Despite this whole-sale transfer of authority, the legislation decrees that the City's Utility System is a "municipal unit." That term is not defined.

There are numerous immediate violations of binding law with this bill, including that the Special Law violates several articles of the Florida Constitution. For example, while the Governor is assigned the role of appointing the Board, the Governor has no authority to run a municipal department or appoint a municipal board; the Florida Constitution requires that an elected legislative body run a City;

the gubernatorial appointees are given powers prohibited by the Constitution, such as borrowing money on behalf of the City and eminent domain; HB 1645 abolishes the position of the Charter Officer managing the Gainesville utility system, but demands that the manager keep work, and be paid despite there no longer being a valid municipal position in the budget under which to pay him; the legislature has no power to hire and fire municipal employees; the Special Law uses vague terms and internally conflicting terms to define what actions could and could not be taken by the City Commissioners. The Special Law removes the revenues from the City, and attributes them to the newly appointed Board members. This creates an impairment of the City's borrowing contracts, as Gainesville has pledged to over $1 billion in bond and debt instruments, some of which need to be refinanced and all of which require the revenues that apparently are not under their control. Moreover, the City now lacks any authority to issue new debt, despite the need to refinance existing debt before it balloons, or to adjust utility income and expenses as they may be required under debt instruments.

In short, the City could not follow its terms even if it were to try. And the Special Law does not comply with the Notice and Hearing requirements under the Florida Constitution and implementing acts, which makes it void *ab initio*. The Legislature simply must go back to the beginning, obtain input and counsel, properly publish, and draft an entirely different bill.

Indeed, even if this Court were able to find that one or more of the Counts does not provide relief, a review of the Verified Complaint, and HB 1645, demonstrates that the Special law is so convoluted and internally contradictory, that the City is unable to discern what the City may or should do. One of many examples is as follows: the Special Law deleted a budgeted position, and then decreed that the person in that position continue as if the position were not deleted. This simply cannot be accomplished without the City convening a meeting, amending the City's budget as required by Florida Statutes to create a position, and negotiate the terms of that position. This of course, is assuming the individual will continue working.

The City therefore seeks a Temporary Injunction, in order that the Utility System, which provides critical needs, may continue operating without fear of violating an existing state law, employees will know for whom they are working and who sets the terms and rules governing employment, and violations of financial documents such as outstanding bonds can be rectified, while new debt or refinanced debt may go forward to the public's benefit. This also provides the Court and the State with the opportunity to review HB 1645, and the Verified Complaint herein, and enter a permanent injunction to prevent the violations of the Florida Constitution, and Florida statutory law. As is set forth below, and in the Verified Complaint, the damage is immediate, and continuing, and the requirements of a Temporary Injunction have been well met.

ARGUMENT AND MEMORANDUM OF LAW

I. GAINESVILLE HAS MET ITS BURDEN AND THE COURT SHOULD ISSUE THE INJUNCTION.

Gainesville is entitled to a temporary injunction while this action is pending in order to prevent irreparable injury from the numerous violations of the Florida Constitution, and the U.S. Constitution, and Florida statutory law. In so enjoining the implementation of this Special Law, HB 1645, the Court is fulfilling the intent of temporary injunctions: to preserve the procedural status quo while final substantive relief is sought. *Byrd v. Black Voters Matter Capacity Building Inst., Inc*., 339 So. 3d 1070, 1078 (Fla. 1st DCA 2022).

Under Florida law, a party seeking a temporary injunction must demonstrate four well-known elements: (1) a substantial likelihood of success on the merits; (2) lack of an adequate remedy at law; (3) irreparable harm absent the entry of an injunction; and (4) the granting of a temporary injunction will not disserve the public interest. *See Reform Party of Fla. v. Black*, 885 So.2d 303, 305 (Fla. 2004); *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017).

In considering this application the Court has "broad discretion." *Sacred Family Invests., Inc. v. Doral Supermarket, Inc.*, 20 So. 3d 412, 415 (Fla. 3d DCA 2009). Further, this Court should be "guided by established rules of the principles of equity jurisprudence, in view of the particular facts presented in each case." *Muss*

v. City of Miami Beach, 312 So. 2d 553, 554 (Fla. 3d DCA 1975). Among those principles, is of course, the need to prevent future harm that may well be irreparable.

As set forth below, Gainesville satisfies all of the requirements for a temporary injunction.

Gainesville is entitled to a temporary injunction while this action is pending to prevent irreparable injury from the numerous violations of the U.S. Constitution, the Florida Constitution, and Florida statutory law resulting from enactment of HB 1645. In so enjoining the implementation of this Special Law, HB 1645, the Court is fulfilling the intent of temporary injunctions: to preserve the procedural status quo while final substantive relief is sought. *Byrd*, 339 So. 3d at 1078.

This Court has broad discretion in entering an injunction, although legal conclusions are considered de novo. *Bd. of Cnty. Comm'rs, Santa Rosa Cnty. v. Home Builders Ass'n of W. Fla., Inc*., 325 So. 3d 981, 984 (Fla. 1st DCA 2021); *see also, Alachua County v. Lewis Oil Co*., 516 So. 2d 1033, 1035 (Fla. 1st DCA 1987) ("Wide judicial discretion rests in the circuit court in granting or dissolving temporary injunctions, and an appellate court will not interfere where no abuse of discretion appears."). "The trial court's factual determinations must be supported by competent, substantial evidence." *Home Builders Ass'n of W. Florida, Inc*., 325 So. 3d at 984. In this present instance, there are few facts, and counsel cannot anticipate that those few facts would be disputed, for they apply to existing contracts

and state only the existence of those contracts and terms that have been published in some cases, to the national and international market, and in others, through the Alachua County elected officials as well as those of Gainesville.

To obtain a temporary injunction under Florida law, a petition must show a prima facie right to the relief requested pursuant to a four-part test: "a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest." *Gainesville Woman Care, LLC*, 210 So. 3d at 1258. As set forth below, Gainesville satisfies all four of the requirements for a temporary injunction.

First, Gainesville is likely to succeed on the merits of the claims asserted in its Verified Complaint. Under Florida law, a movant establishes a substantial likelihood of success on the merits "if good reasons for anticipating the result are demonstrated." *Home Builders Ass'n of W. Fla., Inc*., 325 So. 3d at 984. As pleaded and exposited upon in detail in the Verified Complaint, the State has made a number of missteps in its enactment of HB 1645, resulting in a statutory enactment with numerous violations of law, the impact of which is immediately felt. The temporary injunction is presently needed as the Special Law that is HB 1645 became effective July 1, 2023. Further, the implementation of HB 1645 violates the Florida Constitution and U.S. Constitution and, as such, warrants injunctive relief. Those violations are set forth in the Verified Complaint and exposited upon below.

Second, Gainesville lacks an adequate remedy at law. Gainesville's financial reputation and the costs of borrowing are affected by HB 1645. The Special Law, HB 1645 grants the 5 gubernatorial-appointed individuals unchecked power to borrow unlimited money and pledge City revenues in the name of the City of Gainesville. Because it is impossible to characterize or estimate the effect on the market or Gainesville's credit rating of this transfer of power from an elected municipal body to 5 individuals, Gainesville lacks an adequate remedy at law. *Thompson v. Planning Comm'n of Jacksonville*, 464 So. 2d 1231, 1237 (Fla. 1st DCA 1985) (where calculation of damages is speculative, legal remedy is inadequate).

In addition, HB 1645 terminates an employee but directs the employee to keep working and transfers the hiring authority solely to an individual hired by the as-yet-appointed-Board but decrees that these employees are City employees. In short, the Special Law HB 1645 converts the elected City officials into a blank check, with no power to reject the Board's expenditures or decisions. Thus, the injunction is needed to prevent this irreparable harm to employees while the Court considers the legality of the Special Law itself.

Next, irreparable harm is "a material injury that continues for the remainder of the case and cannot be corrected on appeal." *Home Builders Assoc. of W. Fla., Inc*., 325 So. 3d at 985 (holding county ordinance imposing invalid tax constitutes

continuing constitutional violation and, thus, irreparable harm). "[T]he law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm." *Fla. Dep't of Health v. Florigrown, LLC*, 320 So. 3d 195, 200 (Fla. 1st DCA July 9, 2019), quashed on other grounds by 317 So. 3d 1101 (Fla. 2021). As such, both the federal courts and Florida District Courts of Appeal have presumed irreparable harm where fundamental rights are violated. *See Gainesville Woman Care, LLC*, 210 So. 3d at 1264. Moreover, because all of the defendants are either state governmental entities or state governmental actors, absent a waiver of sovereign immunity in HB 1645—which is conspicuously not present—no monetary damages could be recovered at law for the constitutional violations. *See*, *e.g., Tucker v. Resha*, 634 So. 2d 756, 759 (Fla. 1st DCA 1994) (where no legislative waiver of sovereign immunity as to the privacy provisions of the Florida Constitution exist, money damages are not available for violations of that right, leading to irreparable harm).

The irreparable injuries set forth above and in the Verified Complaint demonstrate that the harm cannot be corrected on appeal: outstanding loans will have triggers to increase rates, breaches of covenants have immediate consequences in the market, employees lives cannot be set in to reverse to recapture the uncertainty, firing, or hiring that has been done without any valid legal authority.

Each of these issues independently qualifies as an irreparable injury that cannot be rectified by an appellate decision in the City's favor.

Finally, a temporary injunction would serve the public interest by upholding the Florida Constitution and statutory laws and resolve the confusion caused by HB 1645 within the City of Gainesville and its employees. *Florigrown, LLC*, 320 So. 3d at 201 (where constitutional violation likely, public interest is served by temporary injunction precluding application of allegedly-unconstitutional statutory provisions). There is presently no clear management of a multi-billion dollar Utility System that provides critical services to the City and to residents and businesses in Alachua County, and there is a potential gap in time when no one is running the Utility Services that are presently being provided by Gainesville. It is clearly in the public interest to remove the void caused by the timeline in this legislation and its void decrees. Not to mention, it is within the public interest to preserve the municipal commissioners democratically elected by the public electorate in Alachua County and the City of Gainesville. *See, e.g., Playpen South, Inc. v. City of Oakland Park*, 396 So. 2d 830, 831 (Fla. 4th DCA 1981) (where enjoining implementation of city ordinance would be in derogation of expressed public will and interest of electorate, injunction held to be against public interest). Additionally, "the public has a cognizable interest in the protection and enforcement of contractual rights," including Gainesville's contractual obligations to transfer the Trunked Radio System

and not to violate outstanding bond issues. *See Hilb Rogal & Hobbs of Fla., Inc. v. Grimmel*, 48 So.3d 957 (Fla. 4th DCA 2010).

II. THE COURT SHOULD ENTER AN INJUNCTION TO PREVENT THE CONTINUED VIOLATION OF ART. 1, S. 9 OF FLA. CONSTITUTION – DUE PROCESS– (COUNT I).

Article I, Section 9 of the Florida Constitution establishes that "[n]o person shall be deprived of life, liberty, or property without due process of law, or be twice put in jeopardy for the same offense or be compelled in any criminal matter to be a witness against oneself." Art. I, s. 9, Fla. Const. "The law is well established that a statute which forbids an act in terms so vague that anyone of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law." *State v. Cohen*, 545 So. 2d 894, 895 (Fla. 4th DCA 1989), *aff'd*, 568 So. 2d 49 (Fla. 1990). "Language of a statute must provide a definite warning of what conduct is required or prohibited, measured by common understanding and practice, to survive vagueness challenge under due process clause." *State v. Crumbley*, 247 So.3d 666 (Fla. 2nd DCA 2018).

This standard equally applies to any review of civil statutes for vagueness in civil proceedings. *See Fraternal Ord. of Police, Miami Lodge 20 v. City of Miami, 243 So. 3d 894, 897* (Fla. 2018) (in civil proceeding, using standard that "[a] statute is void for vagueness when persons of common intelligence must guess as to its meaning and differ as to its application" to analyze vagueness constitutional

challenge to civil statute setting forth the process for modification of an agreement between a public employer and a bargaining agent in the event of a financial urgency); *Newman v. Carson*, 280 So. 2d 426, 430 (Fla. 1973) (when analyzing civil statute for vagueness in violation of due process in civil proceeding, applying standard that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law"); *D'Alemberte v. Anderson*, 349 So. 2d 164, 168 (Fla. 1977) (applying same standard to analyze civil statute for vagueness in civil proceeding).

HB 1645 is vague on its face and anyone of common intelligence must guess at its meaning and differ as to its application. For example, HB 1645 appoints five (5) members of a board by the Governor, but states it is a "municipal unit." The term "municipal unit" has no definition in law. The term is both vague and ambiguous because, to the extent that the legislation intended to create an agency, a municipal agency must be governed by the municipal elected officials. This is not the case here. HB further provides:

> The Authority [the 5-member, governor-appointed board] shall operate as a unit of city government, and, except as otherwise provided in this article, shall be free from direction and control of the City Commission.

HB 1645 §7.01.

Fla. Stat. §189.012, Definitions, defines Local governing authority as the governing body as a local governing authority if it is a municipal body. Further, Special districts (not a name claimed by this legislation) cannot be created from a municipality's utility system if it includes electrical service. *Id.* This language is particularly confusing as Florida Statute §189.012 does not recognize any unit of local government that is not a part of a municipality. The legislation does not, and cannot explain, how a unit of municipal government can be excluded from the control of the municipal government.

HB 1645 is so unconstitutionally vague as to place the City and its officials at risk for violating the statute and other areas of Florida law, that are contradictory to this special law, without an intent to do so. To the extent that the direction of HB 1645 to the City can be understood, that direction violates state and federal constitutional law and several general laws. The City has numerous employees operating and managing the Utility Services. Under the City Charter, the City Manager is the administrative head of the City of Gainesville general government, responsible for the management of all departments except those under the direction of other charter officers.

The Utility Services is run by a Charter Officer, pursuant to Section 3.06 of the City of Gainesville's Charter. The legislature abolished 3.06 in the Special Act, HB 1645, effective July 1, 2023. Under the Special Act, the State's "Authority" ,

once established as of October 1, 2023, hires its own Utilities System manager, who then hires and fires the remaining employees in the Utilities System. To state this is to identify the chaos created by abolishing the manager's position, decreeing that he stay in place (rather than seek another position with a future) until they hire a new Manager of that utilities System, and that new Manager can fire everyone and hire everyone he or she chooses – but send the bill to the City. The legislation, moreover, designates this Charter Officer as a city employee, but the City Commission no longer controls the employee's salary or terms of employment, and having abolished his position, there is no budgetary position for the Manager to fulfill as directed either in this limbo-land between July 1 and October 1, or even thereafter.

The position of Utilities System thus is vacant as of July 1, 2023, with no legal method of filling it as there is no budgeted position or anyone capable of making a commitment to this employee as to the terms of employment (or whether the position lasts at all even if there were miraculously, a budgeted position). Gainesville is genuinely unable to discern how to manage its Utilities System, and its employees, if at all, since the passage of HB 1645. Certainly, the not-yet-appointed members cannot direct the City to hire and pay employees, nor can the not-yet-appointed members direct City employees themselves. Nor do they have a right to direct City employees, once appointed, under the Florida Constitution and applicable statutes. Indeed, the entity paying the salaries of any employees, and the invoices of

contractors and consultants, cannot even be determined. For example, the removal of the City Utilities System Manager, via the deletion of Charter 3.06, is effective July 1, 2023. However, the current City Utilities manager is supposed to continue working until the Authority's tenure begins. Although the date is set for October 1, 2024, if the Governor takes the full time allocated to him, the Board would not be staffed.

III. COUNT II – ART. 1 S 10 OF THE FLORIDA CONSTITUTION – PROHIBITION AGAINST IMPAIRING CONTRACTS CLAUSE

The Court should enter an injunction because HB 1645 violations art. I, s. 10 of the Florida Constitution. Article 1 s, 10 of the Florida Constitution provides that no bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed. Art. I, § 10, Fla. Const. HB 1645 violates the terms of outstanding bond issues and the existing sale of the Gainesville Trunked Radio System (i.e., contracts), causing significant and immediate damage to Gainesville. A copy of the intended Trunked Radio System Contract with Alachua County is attached to the Verified Complaint filed herein.

"When a county, municipality or other governmental entity issues its bonds under a statute providing for payment of such bonds, including the levy of an annual tax to service them, Legislature is without power to repeal statute or otherwise impair the contract." *State v. City of Coral Gables*, 72 So.2d 48 (1954). Gainesville has

issued Revenue Bonds, where the revenues from the Utility System are pledged to the repayment of those bonds. A true and correct copy of the 2021 Series A Bonds Official Statement is attached and incorporated into the Verified Complaint. The terms of the Bond Offering constitute a contract between the City and the bond holders who have purchased the bonds. Specifically, Section 103 of Appendix C states the City's Bond Resolution provides that the Resolution constitutes a contract with the bondholders (and credit enhancers and hedge providers). *See* Exh. 3 to Verified Complaint, City Bond Resolution Section 103.

The bonds and other debt instruments issued by Gainesville total approximately $1.8 billion dollars. Several of these include short-term variable debt coming due in the near future, and during this time of uncertainty. Pursuant to the 2021 Series A Bonds Official Statement, the City of Gainesville has pledged the revenues of its combined utility system to the payment of these bonds. As a municipality, such pledge is imposed on the elected commissioners, to allocate within the state of Florida required budget, sufficient revenues to comply with the bond obligations. As held by the Florida Supreme Court:

> . . . . payment of contractual obligations, such as bonds, valid and enforceable in particular way and from specified resources, against public corporations when they were incurred, cannot be hampered, delayed, or avoided by either constitutional or statutory enactments, subsequently adopted.

Humphreys v. State, 108 Fla. 92, 145 So. 858, 860 (1933).

HB 1645 removes the authority from the City of Gainesville to control and allocate the revenues received from its combined utilities, instead prohibiting the City from "interfering" with the running of the utilities and providing sole control to 5 individuals appointed by the Governor. In doing so, HB 1645 removes the revenues from the revenue bonds, and leaves the bondholders with no revenues for the payment of the City's obligations. It also separates the revenues of the Utility System from the liabilities of the City, and attempts, to allocate them without any knowledge of the underlying contractual obligations. See *Jinkins v. Entzminger*, 102 Fla. 167, 182 135 So. 785 (1931) (holding authorization of levy cannot be withdrawn as such would impair rights of creditors, and thus was prohibited under the constitutional prohibition against impairment.)

Further, HB 1645 Section 7.10(2) states that there is no change in ownership, but is contrary to the decrees contained within 7.10 which change control over and asserts dominance over all aspects of the capital infrastructure now owned by the City of Gainesville, and allows the system to be expanded or sold in whole or in part. In addition, to comply with the Bond Resolution, ownership and operation of the Utilities System must be in the same entity, which is not the case here if the titular use of ownership prevails over the indicia of ownership. Section 705 of the Bond Resolution also requires that the City set rates sufficient to realize 1.25 times the annual debt service. HB 1645 does not place any constraint or obligation on the

gubernatorially appointed 5 members, who can set rates and borrow money with almost no restraints. *See* Exh. 3 to the Verified Complaint, City Bond Resolution, at Section 705.

The 5 appointees cannot comply with the Bond Resolution, or the Bond documents, as they are not an elected legislative body, and cannot take the actions necessary and to which the City is obligated. HB 1645 does not contain any requirement that the 5 gubernatorially appointed members comply with the contractual obligations of the City relating to its Utilities System, including the outstanding debt instruments. Indeed, Section 7.10(2) contains a HB 1645 preemption clause, noting that in the event of conflict, HB 1645 prevails. It is clear from the express language of HB 1645 that the elected officials, otherwise constitutionally charged with running the City, are barred and prohibited by this State law from exerting any control over the electric system. Such does not comport with ownership and violates the bond covenants.

Additionally, based on significant input from the professionals in emergency management, and the elected officials in Alachua County (the "County") and the City of Gainesville, agreed to transfer the trunk system to the County. HB 1645, however, prohibits the City from honoring its agreement with the County, as there is a prohibition of transferring any asset "held in the possession by GRU" as of January 1, 2023 to the authority and obligates the City to create whatever

"instruments" are necessary. HB 1645 §7.10(1). For this additional reason, because the City is prohibited from transferring the Trunked Radio System that the City had agreed to transfer to the County, HB 1645 breaches the State constitutional prohibition against the impairment of contracts found in Art. I s. 10 of the Florida Constitution.

IV. COUNT III – VIOLATION OF THE REFERENDUM REQUIREMENT REQUIRED BY §166.021(4), FLA. STAT.

In addition, the implementation of HB 1645 should be enjoined because it does not comply with the referendum requirement for certain amendments to the City's charter, as required by Fla. Stat. §166.021(4). To illustrate, §166.021(4) provides the following:

> The provisions of this section shall be *so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution*. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited. *However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect the exercise of extraterritorial powers or which affect an area which includes lands within and without a municipality* . . . . or any changes in a special law or municipal charter which affect the creation or existence of a municipality, . . . matters prescribed by the charter relating to appointive boards, any change in the form of government, or any rights of municipal employees, **without approval by referendum of the electors as provided in s. 166.031**. Any other limitation of power upon any municipality contained in any municipal charter enacted or adopted prior to July 1, 1973, is hereby nullified and repealed.

(Emphasis added).

Gainesville provides utilities beyond its municipal border, and thus HB 1645 affects "the exercise of extraterritorial powers those powers are invalid without a referendum. *Id*. When a charter speaks to the issues raised in Fla. Stat. §166.021, any attempt to change municipal operations related to these issues requires a referendum under the statute. *See* 1981 Fla. Op. Att'y Gen. 206 (1981). *See also Smith v. City of Pinellas Park*, 336 So. 2d 1255, 1256 (Fla. Dist. Ct. App. 1976).

Here, the City of Gainesville provides municipal utilities services beyond its borders to Alachua County, and thus exercises extraterritorial powers. Also, the City's charter contains provisions relating to appointive boards and the rights of its municipal employees. *E.g*., City of Gainesville's Charter. (Copy attached as **Exh. 1**) These issues are specifically raised in Fla. Stat. §166.021(4), and thus, any changes to these powers and rights require charter amendments that must pass via referendum. *See* Fla. Att'y Gen. Op. 98-56 (1998); 1983 Fla. Op. Att'y Gen. 97 (1983).

HB 1645 purports to alter these powers and rights unilaterally and without referendum. For example, Section 7.09 of HB 1645 purportedly grants the chief executive officer/general manager of GRU "***the exclusive authority to hire, transfer, promote, discipline, or terminate employees under his or her supervision and direction***." Obviously, this provision affects the rights of municipal employees

because it transfers the terms of employment for hundreds of City employees – while still requiring that they be City employees – from the legislative body to the Authority. And because the City's charter speaks to the rights of its municipal employees, such a change requires a charter amendment that must pass by referendum. HB 1645, however, does not allow for any referendums. Therefore, HB 1645 violates the referendum requirement of Fla. Stat. Ch. 166.021(4).

Similarly, HB 1645 affects the extraterritorial powers of the City by removing power over extraterritorial exercises. And because the City is supplying the unincorporated areas of Alachua County with various utilities, which by definition lie outside of the City's municipal borders, such a change requires a charter amendment that must pass by referendum. *See* 1981 Fla. Op. Att'y Gen. 206. In addition, HB 1645 affects matters prescribed by the charter relating to appointive boards as well as changes in the form of government via the removal and transfer of its utilities department. These changes require a charter amendment that must pass via referendum. *See* 1983 Fla. Op. Att'y Gen. 97 (finding that a proposed change to an appointive board "would require referendum approval"); 1981 Fla. Op. Att'y Gen. 206 (finding no "change in the form of government," and thus, no referendum required, only where proposed change to municipal operations results in "no alteration of *the basic distribution of policymaking and administrative functions*") (no emphasis added). Again though, HB 1645 does not allow for referendums, and

therefore, its unilateral grant of powers contravenes the referendum requirement of Fla. Stat. Ch. 166.021(4).

Moreover, the fact that HB 1645 does not allow for referendums to amend the charter necessarily means that it does not comply with the mandatory process for amending a charter, as laid out in Fla. Stat. Ch. 166.031.

In short, the powers granted under HB 1645 require charter amendments that also require referendums, but HB 1645 grants these powers unilaterally without referendum. Thus, HB 1645 violates Fla. Stat. Ch. 166.021(4) and Fla. Stat. Ann. Ch. 166.031, and as a result, the Court should enjoin its implementation.

V. COUNT IV – ART. III, S. 10 OF FLA. CONSTITUTION AND FLA. STAT. Ch. 11.01, ET SEQ.

Article III, Section 10 of the Florida Constitution provides that "[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected." art. III, s. 10, Fla. Const. Fla. Stat. Ch. 11.01, et seq. is the general law implementing this constitutional provision. Chapter 11.065 of that law requires that the notice of the special or local legislation shall state the substance of the contemplated law, as required by article III, s. 10 of the Florida Constitution, and incorporates very specific publishing requirements in Ch. 11.02 that have not been met. Chapter 11.02.

Notice of special or local legislation or certain relief acts, as amended January, 2023, requires the following:

> The notice required to obtain special or local legislation or any relief act specified in 11.065 shall be by publishing the identical notice as provided in chapter 50 or circulated throughout the county or counties where the matter or thing to be affected by such legislation shall be situated one time at least 30 days before introduction of the proposed law into the Legislature or, if the notice is not published on a publicly accessible website as provided in s. 50.0311 and there is no newspaper circulated throughout or published in the county, by posting for at least 30 days at not fewer than three public places in the county or each of the counties, one of which places shall be at the courthouse in the county or counties where the matter or thing to be affected by such legislation shall be situated. Notice of special or local legislation shall state the substance of the contemplated law, as required by s. 10, Art. III of the State Constitution.

Fla. Stat. Ch. 11.02.

The notice was published in March, before subsequent amendment to HB 1645. The notice published provided that the bill "concerns the Gainesville City Commissioner's Governance of the Gainesville Regional Utilities." A true and correct copy of the March 2023 Gainesville Sun Publication, attached to the Verified Complaint as Exh. 6 and authenticated by that verification. This notice is effectively defective as it does not provide any details or information as to the true nature of the bill. The legislature failed to publish a notice describing the complete transfer of control of the City's utility system from the City Council to the Governor's appointments. HB 1645 does not "concern the governance" it removes the elected municipal body's control over one of its own departments – its Utility System. It

removes the City Commission of its oversight role and inserts 5 gubernatorial appointees into this City department to run a Utilities System, while attempting to imbue them with all the power of the elected officials and declaring them a "municipal unit." The special or local law is invalid, if notice is misleading or clearly inadequate to give fair notice of substance of law. *Douglas v. Webber*, 99 Fla. 755, 128 So. 613, 615, 617 (1930) (reviewing the publication and affidavit in detail to ensure that it was meticulously followed, and finding it to fail in that regard, held the law invalid).

The affidavit submitted by the House Representative attests (albeit before a Wisconsin notary, with an illegible signature), that the publication earlier filed, before the HB 1645 was amended to remove control by the City, and before the Governor appointed the 5 individuals, that there was no need to republish. In this determination, he was wrong, and it is for this Court to compare the publication with the Special Law, HB 1645, to assess whether the Notice complied. As set forth above, and in detail in the verified Complaint, the Notice fails. In so doing, he attests – with no basis – that Special Law HB 1645 determining that removing a City Department from the control of the elected officials, and making it subject to 5 gubernatorial appointments was "consistent with the published notice of intent" that stated the bill "concerned the governance" of the utilities.

A true and correct copy of the Local Bill Amendment Form is attached to the Verified Complaint as Exh. 7. Note the publication date of the aforesaid general notice – March 9, 2023. Note that the Original HB 1645 – filed on April 10 – provided that the Gainesville City Commissioners appointed the 5-person board. A true and correct copy of the April 10 Original HB 1645 is attached to the Verified Complaint. On May 5, 2023, the present and enrolled version, substituting the Governor's appointments for the City Commissioners, and thus removing a City department from City control (by the bill's express terms) was passed by the legislature. No published notice of this unique action was ever made. *State ex rel. Landis v. Reardon*, 114 Fla. 755, 154 So. 868 (1934) (holding that the purpose of notice of intention to apply for local or special bill is to secure to those directly interested therein due notice of substance of proposed law.) See also *Freeman v. Simmons*, 107 Fla. 438, 145 So. 187, 188 (1932) (holding the validity of a special law depends on the notice stating the substance of the contemplated law, among other things, including the title relating back accurately.)

The notice provided in this case is inadequate, failing to identify any of the key issues that are in HB 1645 and failing to identify any details whatsoever. The notice was vague and did not inform the readers that the powers and duties of the City would be transferred to a board appointed by the Governor. Courts have held such notices to be inadequate and as a result the law enacted invalid. *See Barndollar*

v. Sunset Realty Corp., 379 So.2d 1278, 1279-80 (1979) (holding that the published notice of intention to seek enactment of special legislation creating district for purposes of historic preservation and conservation, which made no mention of powers and duties of proposed special district, was inadequate to apprise interested persons of scope and purpose of proposed regulatory scheme.") *See also Harrison v. Wilson,* 120 Fla. 771, 163 So. 233 (1935) (holding local or special law which is enacted without compliance with constitutional requirements relating to publishing intention to enact law in locality affected thereby, and to manner of establishing legislative evidence of such publication, is invalid).

VI. COUNT V – VIOLATION OF ART. IV, S. 1 OF THE FLORIDA CONSTITUTION.

With regard to municipalities, art. IV, s. 1, Fla. Const. grants the Governor only two limited powers:

1) The power to "require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices," and

2) the power to initiate judicial proceedings against municipal officers. More particularly, Art. IV, § 1, Fla. Const. states:

> (a) The supreme executive power shall be vested in a governor, who shall be commander-in-chief of all military forces of the state not in active service of the United States. The governor shall take care that the laws be faithfully executed, commission all

> officers of the state and counties, and transact all necessary business with the officers of government. The *governor may require information in writing from all executive or administrative state, county or municipal officers upon any subject relating to the duties of their respective offices*. The governor shall be the chief administrative officer of the state responsible for the planning and budgeting for the state.
>
> (b) The governor *may initiate judicial proceedings* in the name of the state against any executive or administrative state, county or municipal officer to enforce compliance with any duty or restrain any unauthorized act.

(emphasis supplied).

While art. IV, s. 1(f) grants the Governor the right to fill any vacancy in a state or county office, again, it does not grant this right with regard to municipalities:

> (f) *When not otherwise provided for in this constitution, the governor shall fill by appointment any vacancy in state or county office* for the remainder of the term of an appointive office, and for the remainder of the term of an elective office if less than twenty-eight months, otherwise until the first Tuesday after the first Monday following the next general election.

Under the long-established legal principle, of *espressio unius et exclusio alterius,* the stating of one excludes the others – applies here. *S & J Transportation, Inc. v. Gordon*, 176 So.2d 69, 71-2 (Fla. 1965) (noting that this maxim is a "well-recognized rule of construction." *Id*. at 71. Listing of two specific instances in which the governor may appoint individuals within the State and County makes clear that the Constitution did not authorize the Governor to install a board, selected

by him, never mind one that is not subject to any elected legislative body. The governor simply does not have such power, and as was held more than 60 years ago, and is still the law today. *See* 1961 Florida Op. Atty. Gen., 061-185, Nov. 15, 1961 art. IV, ss. 6, 7:

> [I]t seems clear from the language used in §§6 and 7, art. XVIII, State Constit., relative to the filling of vacancies in office, that it relates only to state and county officers, and not to municipal officers. We doubt that said § 7, art. IV, would authorize the filling of the [municipal] vacancies in office by the Governor.

The office of the Governor, similarly has no authority to create municipal offices and then fill them regardless of the direction of the legislature to do so.

In granting the Governor the power to instill a "municipal unit" that is not subject to the control of the municipality, HB 1645 therefore subverts the Constitution and allows the Governor to (i) fire the current municipal officers, and (ii) appoint five (5) "municipal unit" members of his choosing. This he simply cannot do, directly or indirectly through the legislature's Special Act.

The Constitution clearly provides that, save as otherwise expressly stated, state functions shall be performed by state officers and county functions of exclusively local concern by county officers. As held by the Florida Supreme Court in 1930:

> It is fundamentally true that all local powers must have their origin in a grant by the state, which is the fountain and source of authority. Nevertheless, our State Constitution clearly implies, and it is therefore the spirit of our Constitution, that, save as is otherwise clearly

> contemplated thereby, the performance of state functions shall be confided to state officers, and that the performance of county functions of exclusively local concern shall be confided to county officers.

Amos v. Mathews, 126 So. 308, 320 (Fla. 1930).

VII. COUNT VI – VIOLATION OF ART. VIII, S. 2, 4 OF THE FLORIDA CONSTITUTION

Pursuant to art. VIII, municipal powers must be ultimately controlled by an elected municipal legislative body. The powers of Municipalities are set for in art. VIII, s. 2:

> **Municipalities**, (b) POWERS. Municipalities shall have governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. **Each municipal legislative body shall be elective.**

While Section 2 provides that that municipalities can render municipal services, and exercise every power for such purposes <u>other than as provided by law,</u> the requirement that every municipal legislative body be elective is not subject to that provision under standard statutory construction, as the requirement follows the limiting language. HB 1645, however, expressly grants the gubernatorially elected Authority to run a major City department – the Utilities System – independently: setting rates; hiring employees; setting the workplace terms of City employees, borrowing money in the City's name, incurring expenses, and all without the municipal elective body's control. As such, this unique legislation fails for being completely at odds with the Florida Constitution.

Moreover, Section 4 of art. VIII limits the nature of any transfers of municipal powers to another "county, municipality or special district" after a referendum or "as otherwise provided by law." These transfers do not fall into any of the foregoing categories. In order to approve of HB 1645, the Court would be required to ignore the plain language of Section 4, and grant the transfer of all power to the gubernatorially appointed board, *over a city department,* and then, having transferred these powers in contravention of art. VIII, s. 4, would then have to contravene art. VIII s. 2 by ignoring the requirement that the municipality must, in its operations, be ultimately managed by an elected legislative body. Not surprisingly, there is no precedent for this transfer of power. Thus, either by referendum or legislation, municipal powers – as defined in section 2, and requiring that legislative bodies are elected – cannot be transferred other than to a county, municipality, or special district. *See* Florida Op. Atty. Gen., 061-185, Nov. 15, 1961. §189.012(6) (in defining special district, the term does not include "a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.")

Accordingly, the transfer of powers contained in HB 1645 is invalid as violating the Florida Constitution, art. VIII, s. 2 and s. 4.

VIII. VIOLATION OF CHAPTER 180 OF THE FLORIDA STATUTES – (COUNT VII).

Special Law HB 1645 violates provisions of Chapter 180 of the Florida Statutes. Pursuant to art. VIII, s. 2 of the Florida Constitution, municipal legislative bodies must be elected:

> (a) Establishment. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.
>
> (b) Powers. Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. ***Each municipal legislative body shall be elective***.

Fla. Const. art. VIII, s. 2(a)-(b). Under this provision, the legislature's retained power with respect to municipalities is merely one of limitation; municipalities retain all other governmental and proprietary powers. *Fla. Dep't of Revenue v. City of Gainesville*, 918 So. 2d 250, 262 (Fla. 2005). Thus, while the state may establish or abolish municipalities as per art. VIII, the Florida Constitution expressly does not permit it to take all authority and transfer it to unelected boards or individuals.

Florida Stat. Ch. 180.01 provides *municipalities* with the power to set rates, and operate utilities and defines municipalities as cities, towns, and villages – not as appointees. Thereafter, Ch. 180 provides municipalities with certain powers to set

utility rates, and issued debt. By definition, none of those powers under Chapter 180 may be exercised unilaterally by appointed entities, who dictate to the municipality the rates and debt that the municipality will incur. None.

Pursuant to the authority of art. VIII of the Florida Constitution, which requires municipalities to be run by legislative, elected, bodies, and not by appointees from another branch of government, Chapter 180 of the Florida Statutes empowers only the "city council, or other legislative body of the municipality" to manage municipal public utilities:

> When it is proposed to exercise the powers granted by this chapter [authorizing, inter alia, the provision of utilities], a resolution or ordinance shall be passed by the city council, ***or the legislative body of the municipality***, by whatever name known, reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, what mortgage revenue certificates or debentures if any are to be issued to finance the project, the cost thereof, and such other provisions as may be deemed necessary. ***

Fla. Stat. §180.03(1) (emphasis added). Of course, an appointed Board cannot pass an ordinance or resolution to approve construction of new capital for utilities, or the sale of debentures, but HB 1645 nonetheless grants them that power. Likewise, Chapter 180 grants only the "city council, or other legislative body of the municipality" to establish rates charged by the municipality:

> The city council, ***or other legislative body of the municipality***, . . . may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; * * *

Fla. Stat. Ch. 180.13(2) (emphasis added); *see also Mohme v. City of Cocoa*, 328 So.2d 422, 424 (Fla. 1976) ("In Florida, it is a well-recognized principle of law that rate-setting for municipal utilities is a legislative function to be performed by legislative bodies like municipal governments and the commissions to which these bodies delegate such authority.").

Because of the clear language in Fla. Stat. Ch. 180.03, and in art. VIII, there is a dearth of case law on this point. Moreover, despite the clear language of Article VIII and Chapter 180, Section 7.03 of HB 1645 replaces the elected municipal officials and gives an appointed gubernatorial body, the "Authority," broad powers over the GRU Utility Services:

> (1) The Authority shall have the following powers and duties, in addition to the powers and duties otherwise conferred by this article:
>
> (a) ***To manage, operate, and control the utilities***, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article.
>
> (b) ***To establish and amend the rates, fees, assessments***, charges, rules, regulations, and policies governing the sale and use of services provided through the utilities.
>
> (c) ***To acquire real or personal property and to construct such projects as necessary to operate, maintain, enlarge, extend, preserve, and promote the utility systems*** in a manner that will ensure the economic, responsible, safe, and efficient provision of utility services, provided that title to all such property is vested in the City.
>
> (d) ***To exercise the power of eminent domain pursuant to chapter 166, Florida Statutes, and to use utility funds to appropriate***

or acquire property, excluding federal or state property, for the purpose of obtaining, constructing, and maintaining utility facilities, provided that title to all such property is vested in the City.

(e) ***To authorize the issuance of revenue bonds and other evidences of indebtedness of the City, secured by the revenues and other pledged funds and accounts of the utility system***, pursuant to Florida law. Upon resolution of the Authority establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166, Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general obligation bonds. Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM) or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

(f) ***To dispose of utility system assets*** only to the extent and under the conditions that the City Commission may dispose of such assets pursuant to section 5.04 of Article V. control establish rates and charges for utility services within the territory of the Gainesville Regional Utilities.

H.B. 1645 §7.03 (emphasis added). In short, Special Law HB 1645 transfers all the powers and authority to make policies, govern, and operate the GRU Utility Services—a municipal utility system owned by the people of the City of Gainesville through the elected City Commission—to an unelected 5 individuals, appointed by

the Governor, who is not an elected municipal official. This is inconsistent with and violative of the plain language of Chapter 180.

"The principle of local self-government is predicated on the theory that the citizens of each municipality or governmental subdivision of a state should determine their own local public regulations and select their own local officials" pursuant to Article I of the Florida Constitution. *State ex rel. Johnson v. Johns*, 92 Fla. 187, 197, 109 So. 228 (1926). With this principle and the express language of Article VIII and Chapter 180 in mind, the 5 appointed members in HB 1645 cannot be "the legislative body of the municipality," as required by Chapter 180. Rather, the 5 gubernatorial appointments comprising the "Authority" in HB 1645 are not an "other legislative body of the municipality" under Chapter 180. Instead, the 5 appointees would be an independent, unelected board, appointed and removed at the whim of the Governor and exercising complete executive-branch dominion over city funds and employees. *See Burklin v. Willis*, 97 So. 2d 129 (Fla. 1st DCA 1957) ("the power of removal is incident to the power of appointment, and that removal may be effected at the discretion of the appointing authority.").

Thus HB 1645 moves rate-making, and all related determinations to an Authority that does not fall under the umbrella of an elected legislative body within the City. As such, the transfer of these power to the Authority is prohibited by the Florida Constitution, and the Act should be voided.

IX. COUNT VIII – ART. VII S. 18 OF THE FLORIDA CONSTITUTION

Indeed, art. VII, s. 18 of the Florida Constitution states:

> (a) No county or municipality shall be bound by any general law *requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest* **and** *unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure*; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

Fla. Const. art. VII, s. 18 (emphasis added). HB 1645 requires the City to spend money in the form of salary, and expenses, and to pay debt obligations issued in the City's name by the gubernatorial appointees. HB 1645 thus enables the Authority (i.e. the five gubernatorial appointees) to issue revenue bonds and "other evidences of indebtedness of the City in dereliction of Section 18." In effect, HB 1645 authorizes five appointees to issue bonds and debt that the City would have to pay. As such, it constitutes a law "requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds." *See* Fla. Const. art. VII, § 18. Therefore, HB 1645 falls within the purview of Section 18 of art. VII. *Id*.

And yet, HB 1645 does not articulate how it fulfills an important state interest, which is an express requirement of any law subject to Section 18. In order to satisfy this requirement and "comply with the purposeful restraint imposed under the Constitution," Florida appellate courts look for "a separate provision in the bill stating unequivocally: 'The Legislature determines and declares that this act fulfills an important state interest.'" *Lewis v. Leon Cnty.*, 15 So. 3d 777, 781 (Fla. Dist. Ct. App. 2009), *aff'd,* 73 So. 3d 151 (Fla. 2011). Here, HB 1645 makes no such proclamation. Rather, HB 1645 only addresses the creation of the Authority and how it will operate the City's utilities, but this does not suffice under Florida law. *Id*. ("Although [the bill] contains general statements of intent as to the creation of Regional Conflict Counsel, it provides no indication that the Legislature ever determined that creation of the Office fulfills an important state interest"). So when viewed altogether, it become clear that "the Legislature simply did not consider the unfunded mandate issues" under Section 18 and its state interest requirement. *Id*. This alone is grounds to find that "the Legislature violated art. VII, section 18(a), of the Florida Constitution." *Id*.

In short, the provisions authorizing five gubernatorial appointees to take on debt at the City's expense violate the Florida Constitution. Thus, based on the express language of the Florida Constitution and case law interpreting the same, the City of Gainesville is not bound by this law. And since HB 1645 violates Section 18

of the Florida Constitution, the Court should issue an injunction staying the implementation of HB 1645. *See Gainesville Woman Care*, 210 So. 3d at 1258.

X. COUNT IX – VIOLATION OF FLA. STAT. CH. 166 ET. SEQ.

Lastly, HB 1645 conflicts with numerous provisions of Fla. Stat. Ch. 166 et seq, and thus, it is an invalid bill whose implementation should be enjoined. To start, Fla. Stat. Ann. Ch. 166.121 states that, "Bonds issued under this part shall be authorized by resolution or ordinance of ***the governing body***." It further states that "***the governing body of a municipality*** shall determine the terms and manner of sale and distribution or other disposition of any and all bonds it may issue . . . and shall have any and all powers necessary or convenient to such disposition."

The governing Board of the City of Gainesville, is, of course, its elected City Commission. Accordingly,, only the City, as the governing body of the municipality, can issue bonds and determine the terms, sale, and disposition of their bonds. Crucially, "[e]ssential requirements of a statute authorizing the issue of bonds must be complied with, or the bonds will be invalid." *State ex rel. Davis v. Ryan*, 118 Fla. 42, 67, 158 So. 62, 68 (1934). And yet, HB 1645 authorizes the gubernatorial appointees to issue bonds and pass resolutions "establishing the authorized form, terms, and purpose of such bonds." And further requires that the bonds and debt instruments be in the name of the City – thereby obligating the City while bypassing the legislative body. As a legislative body, the City Commission of

course is subject to statutes governing the passing of ordinances and resolutions, and the acceptance of public input during public hearings. Where the five gubernatorial appointees are not "the governing body of the municipality but are nonetheless granted the power to borrow on behalf of the City, there is a violation of Chapter 166.121. Therefore, any bond issued by the Authority under HB 1645 cannot comply with an essential requirement of Fla. Stat. Ann. § 166.121. *See Ryan*, 118 Fla. at 67, 158 So. at 68. As a result, any bond issued under HB 1645 will be invalid under Fla. Stat. Ann. Ch. 166.121. *Id*. HB 1645 should be enjoined from implementation. *See Gainesville Woman Care*, 210 So. 3d at 1258.

Notably, this same exact issue presents when the grant of authority to issue bonds under HB 1645 is compared to Fla. Stat. §166.111, which provides:

> ***The governing body of every municipality*** may borrow money, contract loans, and issue bonds as defined in s. 166.100 to finance the undertaking of a capital or other project for the purposes permitted by the state constitution and may pledge the funds, credit, property, and taxing power of the municipality for the payment of such debts and bonds.

(Emphasis added). As for HB 1645, it purportedly grants the Authority the right to issue bonds and "exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166." But Fla. Stat. Ch. 166.111 clearly limits any grant of authority to borrow money and to issue bonds to the elected municipal commission. This statutory language, again, should act as a reminder of the boundaries that the state

legislature set for itself. More specifically, this language reflects how they chose to make it so that a municipality has the right to issue bonds it will ultimately be responsible for. *See Roper v. City of Clearwater*, 796 So. 2d 1159, 1162 (Fla. 2001) ("the [state] Legislature enacted the Municipal Home Rule Powers Act (codified in chapter 166, Florida Statutes), which provides that municipalities have full authority to issue bonds"). Again, the Authority of gubernatorial appointees are not "the governing body of the municipality." So like with Fla. Stat. Ann. Ch. 166.121, any bond issued by the Authority under HB 1645 cannot comply with an essential requirement of Fla. Stat. Ch. 166.111. *See Ryan*, 118 Fla. at 67, 158 So. at 68. Thus, any bond issued under HB 1645 is invalid under Fla. Stat. Ch.166.111. *Id*. Thus, Fla. Stat. Ch.166.111 provides even more reason to grant an injunction and stay the application of HB 1645. *See Gainesville Woman Care*, 210 So. 3d at 1258. Ironically, the failure of HB 1645 to comply with these limitations concerning bonds simply reflects how HB 1645 disregards procedural safeguards that were put in place by the state legislature for the best governance of municipalities, like the City.

In addition, HB 1645 does not comply with Fla. Stat. §166.401, which states that

> ***The local governing body of a municipality*** may not exercise its power of eminent domain unless the governing body adopts a resolution authorizing the acquisition of a property, real or personal, by eminent domain for any municipal use or purpose designated in such resolution.

(Emphasis added). This statute also states that "***Each municipality*** shall strictly comply with the limitations set forth in ss. 73.013 and 73.014," which are the statutes that allow municipalities to acquire property via petition in eminent domain. *See* Fla. Stat. Ann. Ch. 166.401 (emphasis added). Importantly, "the power of eminent domain is one of the most harsh proceedings known to the law. Consequently, when the sovereign delegates this power to a political unity or agency, ***a strict construction*** must be given against the agency asserting the power." *Baycol, Inc. v. Downtown Dev. Auth. of City of Fort Lauderdale*, 315 So. 2d 451, 455 (Fla. 1975) (emphasis added).

Here, HB 1645 purports to establish eminent domain powers for the gubernatorial appointees "pursuant to Chapter 166, Florida Statutes." But as above, Fla. Stat. Ch. 166.401 limits the powers of eminent domain to the "[t]he local governing body of a municipality" and the "municipality." The gubernatorial appointees, however, are not "[t]he local governing body of a municipality" or the "municipality." Thus, any attempt by the Governor's Authority to exercise eminent domain would not comply with a "strict construction" of Fla. Stat. Ch. 166.401, which is required for any review of eminent domain powers. As such, HB 1645 creates a legally invalid basis for eminent domain. Not to mention that, HB 1645 conflicts with yet another procedural safeguard designed for the protection and best governance of the City and its citizens. So because HB 1645 would allow the

Authority to wield illegitimate eminent domain powers on the citizens of the City, the Court should grant an injunction to stay the application of HB 1645.

As another example, Fla. Stat. §166.045 provides for precise elements that must be accomplished to purchase real property. HB 1645, however, provides that the five gubernatorial appointees have these same powers, even though they are incapable of following the provisions of Fla. Stat. §166.045, which require submission and approval to the City Commissioners, not an appointed board. Again, HB 1645 turns a blind eye to even more procedural safeguards.

In addition, Fla. Stat. Ch. 166.048 states that, "the governing body of each municipality shall consider enacting ordinances . . . requiring the use of Florida-friendly landscaping as a water conservation or water quality protection or restoration measure." (emphasis added). But HB 1645, Section 7.12 states that the gubernatorial appointees "shall consider only pecuniary factors . . ., which do not include consideration of the furtherance of social, political, or ideological interests." But Fla. Stat. Ch. 166.048 requires the consideration of goals that fall directly within those categories.[1] Thus, HB 1645 interferes with the state legislature's directive to the City under Fla. Stat. Ch. 166.048 to enact ordinances "requiring the use of

[1] *See* Fla. Stat. Ch. 166.048 ("the governing body shall consider promoting Florida-friendly landscaping as a water conservation or water quality protection or restoration measure by: using such landscaping in any areas under its jurisdiction which are landscaped after the effective date of this act; providing public education on Florida-friendly landscaping, its uses in increasing water conservation and water quality protection or restoration, and its long-term cost-effectiveness; and offering incentives to local residents and businesses to implement Florida-friendly landscaping").

Florida-friendly landscaping as a water conservation or water quality protection or restoration measure."

In light of the numerous ways in which HB 1645 violates Fla. Stat. Ch. 166 et seq., the City respectfully requests that this Court grant an injunction and stay the implementation of HB 1645.

CONCLUSION

For each of the reasons above the temporary injunction is necessary.

WHEREFORE, Gainesville moves for entry of an order:

i. temporarily enjoining the State from implementing and enforcing the terms of HB 1645; and

ii. granting such further and additional relief as is just and equitable.

Dated: July 21, 2023 AKERMAN LLP

By: */s/ Cindy A. Laquidara*

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Exhibit 1

PART I
CHARTER LAWS[1]

Preamble.

We, the people of the City of Gainesville, under the constitution and laws of the State of Florida, value the benefits of local self-government and an honest and accountable commission-management government, and hereby affirm this charter. By this action, we increase citizen participation and promote equal opportunity of broad cultural diversity of the city and inclusiveness that focuses on justice and equality. Further, we affirm the values of representative democracy, professional management, and environmental stewardship.

(Ord. No. 191121 , § 1, 6-18-20/Ref. 11-3-20)

ARTICLE I. ESTABLISHMENT, CORPORATE LIMITS, AND POWERS

1.01. Establishment and general powers.

The City of Gainesville, created by chapter 12760, Laws of Florida, 1927, as amended, shall continue and is vested with all governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions, render municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.

1.02. Territorial limits.

The territorial limits and boundaries of the municipality existing in Alachua County under the name of the City of Gainesville shall embrace all of the territory described as follows:

Editor's note(s)—At the discretion of the city, the legal description of the municipal corporate limits of the city, formerly set out in § 1.02, has been placed in Appendix I to the Charter.

1.03. Construction.

(1) The powers of the city shall be construed liberally in favor of the city, limited only by the State Constitution, general law, and specific limitations contained in this act.

(2) If any provision of this act or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

[1]Editor's note(s)—The Charter of the City of Gainesville, as created by Chapter 12760, Laws of Florida, 1927, and as amended by Chapter 90-394, Laws of Florida, 1990, is set out herein as enacted. Amendatory legislation will be identified by history notation following a particular amended section.

(3) All powers and authority granted by this act are supplemental and additional to all other statutory and constitutional authority.

(4) For purposes of this act, the term:

(a) "City" means the City of Gainesville.

(b) "Commission" means the city commission as established in Article II.

(c) "State" means the State of Florida.

1.04. Special powers.

In addition to its general powers, the city may:

(1) Acquire by purchase, gift, devise, lease, lease-purchase, condemnation, or otherwise, real or personal property, or any estate or interest in property, within or without the city limits, and for any of the purposes of the city, and to improve, sell, lease, mortgage, pledge, or otherwise dispose of its property or any part of its property.

(2) Acquire, purchase, hire, construct, extend, maintain, own, operate, or lease local public utilities, including: cable television, transportation, electric, telephone, and telegraph systems; wastewater and stormwater facilities; works for supplying the city and its inhabitants with water, gas, and electric energy for illuminating, heating, or power purposes; water, electric, and gas production, transmission, and distribution systems; sanitary sewage facilities; wastewater transmission and disposal facilities; and any and all other utilities as the welfare of its residents reasonably demands.

(3) Finance local public utilities through the sale of bonds, pledging revenue, general taxation, or otherwise; sell water, electricity, gas, wastewater, or any other service, product, or commodity gathered, provided, produced, or manufactured by the city from the public utilities systems and facilities owned or operated by the city to any consumer within or without the limits of the city; and locate utility plants, distribution facilities, or any appurtenances either within or without Alachua County.

(4) Enter into agreements with other municipalities either within or without Alachua County, or with governmental units or private utility companies, for selling or buying utility services or other municipal services of any kind, wherever located; sell any surplus of water or electric energy it may have over and above the amount required to supply its own inhabitants and any other services to persons, firms, and corporations, public or private, on such terms and conditions as the commission considers appropriate; exercise all powers and authority of the city to acquire by purchase, gift, lease, lease-purchase, or otherwise, real or personal property; and exercise the power of eminent domain within Alachua County, and exercise the power of eminent domain anywhere outside the county where permitted by general law.

(5) Make reasonable rules and regulations for promoting the purity of its water supply and for protecting it from pollution, and for this purpose may exercise full police powers and sanitary control over all lands comprised within the limits of the watershed tributary to any such supply wherever such lands may be located in this state; impose and enforce any such rules and regulations; and prevent, by injunction, any pollution or threatened pollution of such water supply and any act likely to impair the purity of the water.

(6) Acquire, build, construct, erect, extend, enlarge, improve, furnish, equip, and operate as a separate bulk power supply utility or system, electric generating plants, transmission lines, interconnections, and substations for generating, transmitting, distributing, and exchanging electric power and energy

both within and without the limits of the city, including specifically all powers and immunities granted by chapter 75-375, Laws of Florida.

(7) Fix the maximum rate and establish, impose, and enforce, by ordinance, the rates to be charged for gas, electric, wastewater, and all other public utilities or other services or conveniences whether operated, rendered, furnished, or owned by the city or by any person, firm, or corporation.

(8) Require that all electric wires and all telephone and telegraph wires be placed in underground conduits; prescribe rules and regulations for constructing and using the conduits; enforce compliance with such rules and regulations; and, if the public utilities company fails or refuses to comply with such rules and regulations, construct such conduits and place the wires underground and maintain a lien against the franchises and property of such company.

(9) Compel the abatement and removal of all nuisances within the city limits, or upon property owned by the city beyond its limits, at the expense of the person causing the nuisance or of the owner or occupant of the ground or premises where the nuisance is found; require all lands, lots, and other premises to be kept clean, sanitary, and free from weeds or make them so at the expense of the owner or occupant; regulate or prevent noisome or offensive businesses; regulate or prohibit the keeping of animals, poultry, or other fowl, or the exercise of any dangerous or unwholesome business, trade, or employment within the city limits; and regulate the transportation of all articles through the streets of the city.

(10) Provide and maintain, either within or without the city limits, charitable, recreative, curative, corrective, detention, or penal institutions.

(11) Provide and regulate hospitals within and without the city limits; enforce the removal of persons afflicted with contagious or infectious diseases to hospitals provided for them; establish and maintain a quarantine ground within or without the city limits and such quarantine regulations against infectious and contagious diseases as the city sees fit to impose; and protect the health of the public.

(12) Acquire by purchase, gift, devise, condemnation, or otherwise, lands, either within or without the city limits, to be used, kept, and improved as a place of interment of the dead; make and enforce all necessary rules and regulations for the protection and use of all cemeteries within the city limits; and generally regulate the burial of the dead.

(13) Provide fire protection and other governmental services within and without the city limits and enter into contracts for such purposes.

(14) License, tax, cause to be registered, control the drivers of, and fix the rate to be charged for the transportation of persons and property within the city limits and to the public works beyond the city limits; provide for parking spaces on the streets and regulate, vacate, or discontinue the right to use the parking spaces; and require bonds and sureties to be furnished for all vehicles operated for hire upon the streets of the city whether such operation is wholly within the city limits or between the city and places outside the city.

(15) Exercise full police powers over the entire width of right-of-ways of all streets and public ways which lie within, adjacent to, or partially within the city limits.

(16) Issue any bonds which municipalities are authorized to issue under the State Constitution or laws of the state, subject to the provisions of this act. For purposes of this subsection, the term "bonds" means ad valorem bonds, revenue bonds and certificates, certificates of indebtedness, special assessment bonds and certificates, tax anticipation notes, bond anticipation notes, revenue anticipation notes, and other evidences of indebtedness. The term "revenue bonds" means bonds payable solely from the revenues derived from sources of revenue other than ad valorem taxes. The term "ad valorem bonds" means bonds and the interest thereon which are payable from the proceeds of ad valorem taxes levied

on real and personal property situated within the city limits. Ad valorem bonds may be used in combination with other revenue sources.

(17) Exercise the power of eminent domain to acquire property located within Alachua County, and exercise the power of eminent domain outside the county where permitted by general law, for the purpose of locating electrical generating, transmission, or distribution facilities; sanitary sewerage or other waste collection, treatment, or disposal facilities; water production, treatment, transmission, and distribution facilities; and for use by the city in the performance of any of its duties, rights, and authority.

(18) Levy ad valorem taxes in accordance with the State Constitution and laws of the state and to levy other taxes authorized by general law.

(19) Enact ordinances relating to the repair, closing, demolition and removal of dwelling unfit for human habitation, including specifically all powers and immunities granted by chapter 63-1359, Laws of Florida.

(20) Adopt urban renewal and community development ordinances.

(21) Provide, own, and operate a public transportation system within and without the city limits and on the campuses of the University of Florida and Santa Fe Community College, unless otherwise provided by those institutions, and provide for an adequate public transportation system by contract with other agencies, either public or private, on such terms and conditions as the city commission determines, and including specifically all powers and immunities granted by chapter 67-1413, Laws of Florida.

ARTICLE II. CITY COMMISSION

2.01. Composition.

(1) Population under 110,000.

(a) As long as the population of persons within the city remains under 110,000, the legislative power of the city is vested in a city commission of five members. Three members shall be elected by the qualified voters of each of three districts and two members shall be elected by the qualified voters of the city at large.

(b) For the regular election in 1998, the at large seat then available shall become and remain the mayor's seat. Candidates shall designate at time of qualifying that they are running for mayor. The mayor shall be elected by the qualified voters of the city at large, and shall be considered a member of the commission, except as expressly provided herein.

(2) Population of 110,000 and over. At any time the population within the City reaches or exceeds 110,000 persons, as ascertained as of the effective date of any annexation under either: 1) the most recent decennial census of the population produced by the U.S. Bureau of the Census, or 2) the most recent estimates of populations of municipalities produced by the State of Florida, Office of the Governor, or the designated agency thereof, whichever number is greater, then the commission shall adopt a resolution which ratifies the number of persons in the City and authorizing the increase in the number of commissioners as provided in subsection (3). Until such time as the additional commissioners are elected and placed in office, however, the legislative power of the city shall remain vested in a commission of five members.

(3) The legislative power of the city shall be vested in a city commission of seven members including the mayor (when the population within the City reaches or exceeds 110,000 persons as provided in Subsection (2) above) elected in accordance with Sec. 2.04 of this Charter. Four members shall be elected by the qualified voters of each of four districts and two members and the mayor shall be elected by the qualified voters of the city at large as provided in Sec. 2.04.

(Ord. No. 3752, § 1, 12-16-91, referendum of 3-10-92; Ord. No. 4053, § 1, 1-23-95)

2.02. Districts.

(1) For the purpose of electing three members of the commission (as long as the population within the City remains under 110,000 as provided in Sec. 2.01(1)), the commission shall, by ordinance, apportion the city into three consecutively numbered districts and shall adjust the boundary lines of the districts by subsequently enacted ordinances whenever, in its judgment, the districts are not ratably or equally proportioned in accordance with the State Constitution and the Constitution of the United States, but not less frequently than within the second year following each decennial census.

(2) For the purpose of electing four members of the commission (when the population within the City reaches or exceeds 110,000 as provided in Sec. 2.01(2)), the commission shall, by ordinance, apportion the city into four consecutively numbered districts and shall adjust the boundary lines of the districts by subsequently enacted ordinances whenever, in its judgment, the districts are not ratably or equally proportioned in accordance with the State Constitution and the Constitution of the United States, but not less frequently than within the second year following each decennial census.

(Ord. No. 3752, § 1, 12-16-91; referendum of 3-10-92; Ord. No. 4053, § 1, 1-23-95)

2.03. Eligibility.

Each candidate for a district seat must be a qualified voter who is a resident of the district from which the person seeks to be elected for a period of not less than 6 months prior to the date the person qualifies to run for office. Each commissioner elected from a district shall continuously reside in the district during the commissioner's term of office, except that any commissioner who is removed from a district by redistricting may continue to serve during the remainder of the commissioner's term of office. Each candidate for an at-large seat, including the mayor's seat, must be a qualified voter of the city for at least six (6) months prior to the date the person qualifies to run for office. Each at-large commissioner and the mayor shall continuously reside within the city during their terms of office. Candidates for the commission shall, at the time of qualifying, designate the district seats, the mayor's seat, or at-large seats for which they intend to run. A commissioner may not serve on the commission for more than two (2) consecutive terms, excluding filling a term created by vacancy. The mayor may not serve as mayor for more than two (2) consecutive terms, excluding filling a term created by vacancy. For purposes of this section, service as the elected mayor shall not be considered to be service as a commissioner.

(Ord. No. 4053, § 1, 1-23-95; Ord. No. 160876 , § 1, 1-4-18/Ref. 11-6-18)

2.04. Election and terms.

(1) (a) Candidates for election to the commission shall qualify in the manner prescribed by ordinance.

(b) Except as provided in Subsection (1)(c) herein, each commissioner shall be elected for a term of four (4) years.

(c) For the purposes of establishing municipal elections every other year in even-numbered years, and changing regular terms of office from three (3) years to four (4) years, the transitional terms of office filled by elections in the years following this change shall be as provided in this subsection. The election held in 2019 for the mayor and district 4 commission seats shall be for terms of office ending when successors in office are elected and qualified after the election held in 2022. The election held in 2020 for the district 2 and district 3 commission seats shall be for terms of office ending when successors in office are elected and qualified after the election held

in 2022. The election held in 2020 for the at-large, designated "at-large A", commission seat shall be for a term of office ending when the successor in office is elected and qualified after the election held in 2024. The election held in 2021 for the district 1 and at-large, designated "at-large B", commission seats shall be for terms of office ending when successors in office are elected and qualified after the election held in 2024. Commencing with the regular election held in 2022, the terms of office for the newly-elected seats shall be four (4) years.

(d) The regular municipal election shall be held on the date as prescribed by ordinance. Commencing with the regular election held in 2022, the regular municipal election shall be held on the date to coincide with the statewide primary election.

(e) A vacancy in office may occur due to death or permanent disability, forfeiture of office as provided in this charter, suspension by the Governor as provided by law, voluntary resignation upon delivery of written notice stating an effective date to the City Clerk, or as otherwise provided by law. Upon the occurrence of a vacancy on the commission, a special election may be held to fill the vacancy for the remainder of the unexpired term as may be prescribed by ordinance.

(2) The district candidate receiving a majority of the votes cast in a particular district shall be elected. The at-large candidate and the candidate for mayor receiving a majority of the votes cast within the city at-large for such seat shall be elected. If a candidate does not receive a majority of the votes cast for a particular seat, as applicable, a runoff election shall be held between the two (2) candidates for that seat receiving the highest number of votes cast. In the case of a tie, the candidates shall be selected for the runoff election in the same manner as provided for other offices by general law. The runoff election shall be held on the date to coincide with the statewide general election. The candidate receiving more votes in the runoff election shall be elected.

(3) The terms of office of commissioners shall be staggered so that the terms of office of all commissioners do not expire the same year. For the regular elections held in 2019, 2020, and 2021, commissioners hold office from 12 o'clock noon of the Thursday following the first Tuesday in May of the year in which they are elected until their successors in office are elected and qualified or until recalled as provided by law. If a runoff election is necessary in 2019, 2020, or 2021, commissioners hold office from 12 o'clock noon of the Thursday following the third Tuesday in May of the year in which they are elected. For the regular elections held in 2022 and thereafter, commissioners hold office from 12 o'clock noon of the day of the first city commission meeting in January immediately following the year in which they are elected until their successors in office are elected and qualified or until recalled as provided by law. The city commission shall hold a meeting no later than January 31st of each calendar year following an election for the purpose of swearing-in the elected mayor and commissioners.

(4) Vacancies in office shall be filled in one of the following ways:

(a) If less than 6 months remain in the unexpired term or until the next regular election, the commission by a majority vote of the remaining members shall choose and appoint a successor, who is otherwise eligible under section 2.03 of this act, to serve until a newly elected commissioner is qualified.

(b) If more than 6 months remain in the unexpired term and a general election is not scheduled within 6 months, the commission shall fill the vacancy by a special election to be called not more than 60 days after the occurrence of the vacancy. A special election called to fill a vacancy shall be held as expeditiously as practicable, considering the existing demands upon elections equipment and personnel.

(Ord. No. 4053, § 1, 1-23-95; Ord. No. 020289, § 1, 8-27-02; Ord. No. 160876 , § 1, 1-4-18/Ref. 11-6-18; Ord. No. 210851 , § 1, 7-21-22/Ref. 11-8-22)

2.05. Recall of commissioners.

Commissioners including the mayor are subject to recall as provided by law.

2.06. Commission as judge of qualifications of members; election of mayor-commissioner pro tempore; rules of procedure; punishment of members for misconduct; and quorum.

The commission shall be the judge of the qualifications of its own members, subject to review by the courts, and shall elect one member as the mayor-commissioner pro tempore. The commission may determine its own rules of procedure and may punish its own members for misconduct. A majority of all the members of the commission constitutes a quorum to do business but a smaller number may adjourn.

(Ord. No. 4053, § 1, 1-23-95)

2.07. Commission actions; majority vote necessary for adoption of ordinances and resolutions.

The commission shall act by motion, proclamation, resolution, or ordinance. Unless otherwise provided in this act or by law, a motion or a proclamation is adopted when approved by the votes of a majority of the members present, and an ordinance or resolution is adopted when approved by the votes of four or more members of the commission.

(Ord. No. 4053, § 1, 1-23-95; Ord. No. 020749, § 1, 2-10-03)

2.08. Mayor.

The mayor shall be the presiding officer of the commission and shall exercise such powers conferred and implied by, and perform all duties imposed by, this act, the ordinances of the city, and the laws of the state. The mayor shall have a voice and a vote in the proceedings of the commission, but no veto power. The mayor shall be the official head of the city for receipt of service of legal processes, the purposes of military law, and all ceremonial purposes, but shall have no administrative duties. The mayor-commissioner pro tempore shall perform the functions and duties of the office of mayor in the absence of the mayor.

(Ord. No. 4053, § 1, 1-23-95)

2.09. Commissioner forfeiture of office and interest in contracts.

Any commissioner including the mayor who ceases to possess any of the qualifications required by this act shall forfeit the office of commissioner. Any contract of the city in which any commissioner has or may have a conflict of interest is voidable by the commission.

(Ord. No. 4053, § 1, 1-23-95)

2.10. Interference with charter officers.

Neither the commission nor any commissioner, including the mayor, may dictate the appointment of any person to office or employment by the charter officers nor in any manner interfere with the independence of charter officers in the performance of their duties. Except for the purpose of an inquiry, the commission and its members, including the mayor, must deal with employees of the city solely through their respective charter

officers, and neither the commission nor any commissioner, including the mayor, may give orders to any subordinates of the charter officers either publicly or privately. Any commissioner, including the mayor, who violates this section is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083, Florida Statutes.

(Ord. No. 4053, § 1, 1-23-95)

2.11. Oaths of office.

Before taking office for any term each commissioner shall swear or affirm:

"I do solemnly swear (or affirm) that I will support, honor, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State and under the charter of the City of Gainesville; and that I will well and faithfully perform the duties of (title of office) on which I am now about to enter."

(Ord. No. 4053, § 1, 1-23-95)

ARTICLE III. ADMINISTRATION

3.01. Charter officers.

The charter officers provided for in this article are vested with authority to administer the assigned duties of their offices including the employment and removal of all subordinate employees of their offices. They must make all appointments based on merit and fitness alone and, except as otherwise provided in this act, may remove nonprobationary personnel only for cause, obsolescence of position, budgetary restriction, or for other legitimate reasons. The charter officers may purchase and contract for supplies, materials, equipment, and services required to perform their assigned duties under procedures and limitations prescribed by the commission.

3.02. City manager.

(1) *Appointment; administrative head of municipal government; qualifications; terms; bond.* The commission shall appoint a city manager who shall be the administrative head of the municipal government. The city manager is responsible for the efficient administration of all the departments except for those under the control of other charter officers. The city manager shall be appointed without regard to political beliefs, hold office at the will of the commission, and receive no salary for any portion of a salary period extending beyond termination of office. The city manager shall give bond for the faithful performances of this duty in such sum as the commission requires to protect the finances of the city.

(2) *Powers and duties generally.* The city manager:

(a) Shall see that the laws and ordinances are enforced.

(b) Shall propose ordinances to designate the job title of subordinates who are directors of departments.

(c) Shall appoint and, except as otherwise provided in this act, may remove any director of a department at will.

(d) May remove any nonprobationary subordinate officer or employee in a department for cause, obsolescence of position, or to satisfy budgetary restrictions.

(e) Shall administer all departments and divisions created by the commission, except as otherwise provided in this act.

(f) Shall attend all meetings of the commission, except as excused, with the right to take part in the discussion, but having no vote.

(g) Shall recommend to the commission all measures necessary and expedient for the proper governance and management of the city.

(h) Shall keep the commission fully advised as to the management, governance, and needs of the city.

(i) Is the purchasing agent for the city subject to rules adopted by the commission. However, the power of purchase and sale granted to the city manager does not include the power to dispose of any public utility owned by the city.

(j) Shall recommend an annual budget to the commission.

(k) Shall perform all other duties prescribed by law, this act, ordinance, or direction of the commission.

3.03. City attorney.

The city attorney must be admitted to the practice of law in the state, and shall be the legal advisor to and attorney for the city. The city attorney shall serve at the will of the commission. The city attorney shall prosecute and defend all suits, complaints, and controversies for and on behalf of the city, unless otherwise directed by the commission, and shall review all contracts, bonds and other instruments in writing in which the city is to be a party, and shall endorse on each approval as to form and legality.

3.04. City clerk.

The commission may employ a city clerk who shall keep records and perform such other duties as are prescribed by this act or the commission. The city clerk shall serve at the will of the commission.

(Ord. No. 191051 , § 1, 6-18-20/Ref. 11-3-20)

3.05. City internal auditor.

(1) The commission may appoint a city internal auditor who shall serve at the will of the commission. The city internal auditor:

(a) Shall perform financial and compliance audits.

(b) Shall assist the commission in all its accountability functions.

(c) Shall perform compliance audits on the implementation of the city's human relations and equal opportunity ordinances, policies, and programs pertaining to the activities of the city within all departments of the city in accordance with schedules prescribed by the commission.

(d) Shall perform all other duties assigned by the commission.

(2) All financial and compliance audits and other reports of the city internal auditor shall be filed in the office of the city clerk.

(Ord. No. 020024, § 1, 7-8-02; Ord. No. 210562 , § 1, 6-16-22)

3.06. General manager for utilities.

(1) *Appointment; administrative head of municipal utilities; qualifications; terms.* The commission shall appoint a general manager for utilities ("general manager") who shall be responsible to the commission. The general

manager shall be responsible for the efficient administration of the Utility System. The general manager for utilities shall serve at the will of the commission.

(2) *Powers and duties generally.* The general manager:

(a) Shall be responsible for and have exclusive management jurisdiction and control over operating and financial affairs of the Utility System including, but not limited to, the planning, development, production, purchase, sale, exchange, interchange, transmission and distribution of all electricity; the planning, development, purchase, sale, exchange, interchange, transmission and distribution of all natural gas; the planning, development, supply, treatment, transmission, distribution and sale of all potable water; and the planning, development, collection, treatment, disposal and billing of all wastewater now or hereafter provided by the city;

(b) Shall submit to the commission for its consideration a yearly budget for the operation of the Utility System;

(c) Shall be the purchasing agent for all equipment, materials, supplies and services necessary for operating and maintaining the Utility System subject to policies promulgated by the commission;

(d) Shall propose ordinances to designate the job titles of subordinates that are to be considered directors of department;

(e) Shall appoint and, except as otherwise provided in this charter, remove all directors of departments at will;

(f) Shall recommend to the commission all measures necessary and expedient for the proper governance and management of the Utility System;

(g) Shall keep the commission fully advised as to the management, governance and needs of the Utility System;

(h) Shall perform all other duties prescribed by law, this charter, ordinance, or direction of the commission.

3.07. Audits and examinations of administrative departments.

In the absence of state law requiring the city to conduct an annual financial audit, the commission shall adopt an ordinance requiring an annual financial audit of the accounts and records of the city to be completed by an independent certified public accountant within 12 months after the end of each fiscal year.

3.08. Equal opportunity director.

The commission shall appoint an equal opportunity director who shall serve at the will of the city commission. The equal opportunity director:

(1) Shall investigate complaints of discrimination, harassment, retaliation, and other related matters, and propose remedial action, as prescribed by the city's human relations and equal opportunity ordinances. No city employee shall suffer retaliation for filing a complaint or testifying, assisting, or participating in any investigation under these ordinances, and such complaints shall be held confidential to the extent allowed by federal and state law.

(2) Shall make reports, including an annual report, to the charter officers and the commission, as appropriate, as to the activities of the year and the need, if any, to revise the city's human relations and equal opportunity ordinances, policies, and programs pertaining to, but not limited to, equal opportunity, affirmative action, local minority business and local small business enterprise

procurement program, fair housing, unlawful harassment, and accessibility to the city's programs, services, and activities.

(3) Shall propose policies for the implementation of comprehensive equal opportunity and diversity programs and adherence to equal opportunity laws, policies, procedures, and related matters.

(4) Shall develop, prepare, and monitor the city's affirmative action plan.

(5) Shall develop training, conduct workshops, and propose strategies and initiatives related to diversity and equal opportunity and related matters in employment, purchasing, services, programs, and activities.

(6) Shall review all proposed changes to current or proposed new city employment policies, procedures, and guidelines, job descriptions, and purchasing policies, procedures, and guidelines for compliance with equal opportunity laws, policies, procedures, and guidelines, and related matters.

(7) Shall monitor all hires, transfers, demotions, promotions, and terminations for compliance with equal opportunity laws, policies, procedures, guidelines, and related matters.

(8) Shall develop instruments to monitor adherence to diversity and equal opportunity laws, policies, procedures, guidelines, and related matters for city services, programs, activities, employment, and purchasing.

(9) Shall participate in the assessment and review of the city's employment practices, including recruitment, appointment, and promotion, as they pertain to all employees and applicants at all levels of city employment.

(10) Shall compile various equal opportunity reports and related reports required of the city by state and federal agencies or that are necessary for compliance purposes.

(11) Shall perform all other functions as prescribed by ordinances or as otherwise directed by the commission.

(Ord. No. 020024, § 2, 7-8-02)

ARTICLE IV. BOARDS AND COMMITTEES

4.01. Boards and committees.

The commission may create advisory boards and committees as it deems necessary. The members of all boards and committees shall serve without compensation, shall consult with and advise the commission and the various departments, and shall perform all duties and powers prescribed by ordinance or resolution.

4.02. City plan board.

(1) The commission shall create one or more city plan boards which shall:

(a) Plan for the proper development and growth of the city.

(b) Prepare comprehensive plans or elements or portions of plans to guide future development and growth.

(c) Make recommendations pertaining to comprehensive plans or elements or portions of plans.

(d) Monitor and oversee the effectiveness and status of the comprehensive plan, and recommend changes in the comprehensive plan as are from time to time required.

(e) Review proposed land development regulations and land development codes, or amendments thereto, and make recommendations as to the consistency of each proposal with the adopted comprehensive plan or element or portion of the plan.

(f) Perform all other functions, duties, and responsibilities assigned to it by the commission.

(2) Each board shall issue reports and hold public hearings as required by law. The commission may not take final action on any matter pending before a board until the board has completed its report in accordance with law.

(3) The commission may not declare itself as the city plan board with responsibility under this section.

4.03. Building and land development regulatory boards.

(1) *Creation and composition.* The commission may, by ordinance, create one or more building and land development regulatory boards. Each member of a building and land development regulatory board shall be appointed by the commission and may not be an official or an employee of the city. The commission may designate a city plan board to serve as a building and land development regulatory board.

(2) *Powers and duties.* A building and land development regulatory board may:

(a) Hear and decide appeals alleging an error in any order, requirement, decision, or determination made by an administrative official of a department in the enforcement of any building or land development regulation.

(b) Hear and decide any special exception under the jurisdiction of the board as prescribed by a building or land development regulation.

1. The board may not grant a special exception unless it finds that the grant is in harmony with the purpose and intent of any building or land development regulation and will not adversely affect the public interest.

2. The board may qualify any special exception with appropriate conditions and safeguards.

3. The board may prescribe a reasonable time limit within which the action for which the special exception is required must be begun or completed, or both, after which the special exception automatically expires if the time limit has not been strictly satisfied.

(c) Grant variances to a regulation that are not contrary to the public interest when, owing to special conditions, a literal enforcement of the regulation would result in unnecessary and undue hardship. The board may prescribe appropriate conditions and safeguards in conformity with any building or land development regulation. The board may prescribe a reasonable time limit within which the action for which the variance is required must be begun or completed, or both, after which the variance automatically expires if the time limit has not been strictly satisfied. A variance to a building or land development regulation may not be granted unless the board first finds:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings similarly situated;

2. That the special conditions and circumstances do not result from the actions of the applicant;

3. That the requested variance will not confer on the applicant any special privilege that is denied by the regulation to other lands, buildings, or structures in the same land use category;

4. That literal interpretation of the regulation would deprive the applicant of rights commonly enjoyed by other properties in the same land use or zoning category under the terms of the regulation and would work unnecessary and undue hardship on the applicant;

5. That the variance granted is the minimum variance required to make possible the reasonable use of the land, building, or structure; and

6. That the variance is in harmony with the general intent and purpose of the regulation and that such variance will not be injurious to the abutting lands or to the area involved or otherwise detrimental to the public welfare.

(3) The commission may grant, by ordinance, any additional powers and duties to a building and land development regulatory board in accordance with applicable law.

(4) The board may not grant any variance, special exception, or appeal which is not consistent with either the comprehensive plan or element or portion of the plan, or with the building or land development regulations, except as permitted under paragraph (2)(c).

(5) A violation of conditions and safeguards prescribed under the terms of a granted variance or special exception constitutes a violation of the building or land development regulations.

ARTICLE V. SPECIAL PROVISIONS

5.01. Charter amendments.

This act may be amended pursuant to this section or as otherwise provided by general law.

(1) *Petition.* An amendment may be proposed by a petition signed by 10 percent of the registered voters of the city, or by an ordinance adopted by a four-fifths vote of the membership of the commission. The commission shall place the proposed amendment to a vote of the electors at the next general election or at a special election called for that purpose.

(2) *City charter review commission.*

(a) A city charter review commission (CCRC) consisting of eleven (11) registered voters of the city shall be appointed by the city commission at least twelve (12) months but not more than eighteen (18) months before the general election occurring in November 2020 and at least twelve (12) months but not more than eighteen (18) months before the November general election occurring every ten (10) years thereafter, to review the city charter and propose any amendments which may be advisable for placement on the November general election ballot. Members of the CCRC shall receive no compensation. Vacancies shall be filled within thirty (30) days in the same manner as the original appointments.

(b) The CCRC shall meet for the purpose of organization within thirty (30) days after the appointments have been made. The CCRC shall elect a chairman and vice chairman from among its membership. Further meetings shall be held upon the call of the chairman or a majority of the members of the CCRC. All meetings shall be held in accordance with Florida's Government-in-the-Sunshine Law. A majority of the members of the CCRC shall constitute a quorum. The CCRC may adopt rules of procedure as it deems necessary, subject to approval by the city attorney as to form and legality.

(c) The city commission shall budget funds for the operation of the CCRC. Expenditures of the CCRC shall be approved in advance by a majority vote of the membership of the CCRC and shall be made in accordance with city ordinances, policies and procedures and within the budgeted funds approved by the city commission.

(d) The city clerk, or designee, shall serve as the clerk and administrator of the CCRC. The city attorney, or designee, shall serve as legal counsel to the CCRC. The city manager, general

manager for utilities, city auditor and equal opportunity director shall provide staff to assist the CCRC in its work, as necessary.

(e) The CCRC shall hold at least three (3) public hearings, that are a minimum of seven (7) calendar days apart, on any proposed charter amendment(s). No charter amendment shall be submitted to the city electorate for adoption unless favorably voted upon by a majority of the entire membership of the CCRC. The city charter officers shall review and prepare a written analysis for each charter amendment that the CCRC proposes to the city commission.

(f) No later than six (6) months prior to the November general election, the CCRC shall deliver its proposed charter amendments to the city commission. The city commission may veto a proposed charter amendment by a two-thirds vote of the membership of the city commission. For all proposed amendments that are not vetoed, the city commission shall adopt an ordinance requesting the county supervisor of elections place those proposed amendments on the next November general election ballot. The city clerk shall deliver the ordinance to the county supervisor of elections no later than four (4) months prior to the November general election.

(g) If it does not submit any proposed charter amendments or revisions to the city commission at least six (6) months prior to the November general election, the CCRC shall be automatically dissolved. Otherwise, the CCRC shall be automatically dissolved on the date of the November general election. Upon dissolution of the CCRC, all city property used by the CCRC shall be turned over to the city clerk.

(3) *Notice.* The full proposed amendment must be published once each week for 4 consecutive weeks prior to the election in a newspaper of general circulation published in the city.

(4) *Effect of election.* A proposed amendment receiving an affirmative vote of a majority of the votes cast shall be effective as an amendment to this act not later than the 90th calendar day after the day on which the vote was taken unless otherwise provided in the proposed amendment.

(Ord. No. 170717 , § 1, 8-2-18/Ref. 3-19-19; Ord. No. 210562 , § 2, 6-16-22)

5.02. Issuance of ad valorem bonds generally.

The city, in its corporate capacity, may issue ad valorem bonds of the city becoming due at such times and upon such conditions as are prescribed by ordinance. The proceeds from the sales of ad valorem bonds shall be used for such municipal purposes as may be provided by ordinance, and for the payment of ad valorem bonds and the interest thereon. The full faith and credit of the city, the ad valorem taxing power of the city, and the revenues obtained from the public utilities owned by the city may be pledged by ordinance, if, before the ad valorem bonds are issued, the amount and purposes of the proposed issue has been approved by a majority vote of the electors of the city voting on the question. The rate of interest shall be determined at the time of sale of the bonds. The commission may, by ordinance, prescribe provisions not inconsistent with this act for the control and direction of the expenditures of ad valorem bond moneys, and for the control and management of public utilities acquired by the city. The commission may levy ad valorem taxes upon real and tangible personal property within the city limits to raise funds to pay the principal and interest of the general obligation and ad valorem bonded indebtedness of the city and to provide a sinking fund for the payment of these ad valorem bonds.

5.03. Retirement and pension plan for city employees.

The commission shall, by ordinance approved by at least four-fifths of the members of the commission, adopt and implement a retirement and pension plan for the benefits of the employees of the city and shall make appropriations necessary for the plan.

5.04. Disposal of utilities.

The commission may not, in any manner, dispose of or agree to dispose of the following city utility systems, or any part thereof, so as to materially reduce the capacity of that system to produce, distribute or treat:

(1) Electric system;

(2) Water system;

(3) Natural gas system;

(4) Wastewater system; or

(5) Telecommunications system.

Unless the commission first adopts an ordinance approving of the disposition and submits that ordinance to referendum vote and such referendum is approved by a majority vote of the qualified electors of the city voting at the election for the purpose of approving the ordinance.

(Ord. No. 191120 , § 1, 6-18-20/Ref. 11-3-20)

5.05. Fresh pursuit and arrest by municipal officers.

Any police officer of the city may make fresh pursuit of any person from within the city to any point in Alachua County and there arrest the person, if the pursued person has violated a municipal ordinance of the city or committed a misdemeanor within the city in the presence of a police officer, or if the police officer has reasonable grounds to believe that the pursued person has committed or is committing a felony.

5.06 Reserved.

Editor's note(s)—Ord. No. 191115 , § 1, adopted June 18, 2020/Ref. 11-3-20, repealed § 5.06, which pertained to funds for construction of paved surfaces in designated areas and derived from Ord. No. 041138, § 1, 1-9-06.

5.07. Equal opportunity; duties of charter officers.

The charter officers shall apply the city's human relations and equal opportunity ordinances and implement its human relations and equal opportunity programs within their respective departments and shall coordinate the efforts of the various departments to optimize the effectiveness of their efforts. The charter officers shall, from time to time, make individual and collective recommendations to the commission pertaining to the effectiveness of the city's human relations and equal opportunity ordinances and programs pertaining to the activities of the city.

(Ord. No. 020024, § 3, 7-8-02)

5.08. Reserved.

5.09. Sale or conversion of City-owned lands used or acquired for conservation, recreation, or cultural purposes.

(1) A registry is hereby created, for the purpose of identifying real properties owned in fee simple by the City of Gainesville that are acquired or used for conservation, recreation, or cultural purposes, and that are deemed by the City Commission of the City of Gainesville to be worthy of the highest level of protection. The registry

shall be known as the "City of Gainesville Registry of Protected Public Places." At a public hearing the City Commission may add properties to the Registry by adopting an ordinance by a five-sevenths vote of the membership of the City Commission. The ordinance shall contain the legal description(s) of the site(s) and a description of the value(s) that support their inclusion on the Registry, and shall be recorded in the official public records.

(2) Real properties, or portions of real properties, on the City of Gainesville Registry of Protected Public Places may not be sold, or converted to a use that will result in a loss of a value or values, as determined by the City Commission, for which a property was placed on the Registry, except by a majority vote of the electors voting in a city-wide referendum election.

(3) The above restrictions on divestiture or change of use of property shall not apply where the property is being taken for a public purpose by the state or federal government by way of eminent domain.

(Ord. No. 080576, § 1, 12-18-08)

ARTICLE VI. TRANSITION SCHEDULE

6.01. Former charter provisions.

All provisions of the charter of the City of Gainesville in effect immediately prior to the effective date of this act which are not contained in and are not inconsistent with this act are ordinances of the city subject to modification or repeal in the same manner as other ordinances of the city.

6.02. Ordinances and resolutions preserved.

All ordinances and resolutions in effect immediately prior to the effective date of this act shall remain in full force and effect to the extent not inconsistent or in conflict with this act until repealed or changed in the manner provided by law.

6.03. Rights of officers and employees.

Nothing in this act except as otherwise specifically provided in this act shall affect or impair the rights or privileges of persons who were city officers or employees immediately prior to the effective date of this act.

6.04. Pending matters.

All rights, claims, actions, orders, and legal or administrative proceedings involving the city immediately prior to the effective date of this act shall continue, except as modified pursuant to the provisions of this act.

APPENDIX I. LEGAL DESCRIPTION OF MUNICIPAL CORPORATE LIMITS*

*__Editor's Note—__At the direction of the city, the legal description of the municipal corporate limits, formerly set out under Charter § 102, has been included herein as Charter Appendix I. These corporate limits were replaced in their entirety by Ord. No. 080085, § 1(Exh. A), adopted Oct. 2, 2008.

The corporate boundaries have been revised by the following ordinances annexing additional areas:

Ord. No.	Date
3744	10-21-91

3745	11- 4-91
3768	4-24-92
3769	4-24-92
3864	6- 7-93
3865	6- 7-93
3920	12-20-93
3959	2-28-94
3979	6-27-94
3980	6-27-94
4035	10-10-94
4047	12-12-94
4048	12-12-94
4060	1-30-95
4061	1-30-95
4062	1-30-95
960938	10-13-97
960939	10-13-97
960940	10-13-97
960941	10-13-97
970051	10-13-97
970136	10-27-97
980987	6-14-99
990947	1-10-00
990866	1-24-00
990898	1-24-00
990898	1-24-00
991230	4-10-00
991231	4-10-00
000130	7-24-00
000738	12-18-00
000665	1-22-01
000666	1-22-01
000797	1-22-01
000798	1-22-01
001162	4-23-01
001160	5-14-01
001161	5-14-01
001163	5-14-01
001912	11-26-01
002124	12-10-01
002393	3-11-02

002394	3-11-02
0202104	9- 9-02
020654	12- 9-02
020815	2-10-03
030250	8-25-03
030457	12- 8-03
030458	12- 8-03
040280b	12-13-04
040290	9-13-04
040705	12-13-04
040706	12-13-04
041230	5- 9-05
050547	11-14-05
050662	12-12-05
050699	12-12-05
050716	12-19-05
050881	2-27-06
051124	5- 8-06
060097	7-24-06
060148	8-14-06
060730	2-12-07
060731	2-12-07
060972	5-14-07
061079	6-11-07
061147	5-14-07
070075	8-13-07
070083	8-13-07
070215	11-26-07
070457	11-26-07
070458	11-26-07
070514	1-14-08
070722	4-28-08
070721	2-11-08
080137	7-28-08
080193	9- 4-08
080605	2- 5-09
090809	4-15-10
110505	1-19-12
110680	3- 1-12
130243	11- 4-13
130339	12-19-13

130340	12-19-13
130341	12-19-13
130342	12-19-13
140124	10- 2-14
140618	4-16-15
150818	5- 5-16
150912	6-16-16
160156	9-15-16
160216	2-16-17
160744	6- 1-17
170256	11- 2-17
170520	4-19-18
170762	4-19-18
170953	9- 6-18
171006	10- 4-18
171037	10- 4-18
180311	1- 3-19
180416	2-21-19
180538	2-21-19
180614	4- 4-19
181064	8-15-19
181065	9- 5-19
190419	2- 6-20
190420	2-20-20
210734	9-15-22
210956	9-15-22

[The territorial limits and boundaries of the municipality existing in Alachua County under the name of the City of Gainesville shall embrace all of the territory described as follows:]

Commence at the approximate Northwest corner of the City of Gainesville Deerhaven Power Generating Station and being the Northeast corner of the lands as described in Official Records Book 883, Page 502 of the Public Records of Alachua County, Florida (hereafter abbreviated as ORB, __ Page __ ACR), lying in Section 27, Township 8 South, Range 19 East and the existing City of Gainesville city limit line as per Ordinance #060731, said point being the point of beginning; thence West along the North line of said parcel to the East line of the lands as described in ORB 3283, Page 0470 ACR; thence North along said East line to the South right-of-way line of Alachua County Road N.W. 26 (Northwest 128th lane); thence West along said right-of-way line to the southerly extension of the East line of the lands as described in ORB 807, Page 403 ACR; thence North along said southerly extension and the East line thereof to the Northeast corner of said parcel; thence West along the North line of said parcel to the East right-of-way line of Alachua County Road N.W. 31 (Northwest 59th Drive); thence North along said right-of-way line to the North line of the lands as described in ORB 2579, Page 0005 ACR; thence East along said North line to the Northeast corner thereof; thence South along the East line of said parcel to the North right-of-way line of

Alachua County Road N.W. 26 (Northwest 128th Lane); thence South along the southerly extension of said East line to the South right-of-way line of said county road, said point also being the Northeast corner of the lands as described in ORB 2400, Page 1034 ACR; thence South along the East line of said parcel to the North line of the lands as described in 2599, Page 0585 ACR; thence East along said North line to the Northeast corner of said parcel and the Northwest corner of the lands as described in ORB 2400, Page 1034 ACR; thence continue East to the West right-of-way line of State Road 121; thence East along the easterly extension of said North line to the East right-of-way line of said state road; thence southeasterly along said right-of-way line and the southwesterly lines of Seminole Woods Units Number One and Two, subdivisions as recorded in Plat Book "L", Page 7 and Plat Book "L" Page 46, respectively, ACR to the North line of the lands as described in ORB 2916, Page 1126 ACR; thence West along said North line to the Northwest corner of said parcel, said point also being on the East right-of-way line of said state road; thence Southeasterly along said right-of-way line and the West line of said parcel to the South line of said parcel; thence East along said South line to the West right-of-way line of Alachua County Road N.W. 231; thence northeasterly along said right-of-way line and the East line of said parcel to the Northeast corner of said parcel; thence West along the North line of said parcel to the West right-of-way line of said county road, said point also being the Southeast corner of said Seminole Woods Unit Number Two; thence northeasterly along said right-of-way line and the East line of said subdivision to the Northeast corner of said subdivision; thence East along the easterly extension of the North line of said subdivision to the East right-of-way line of said county road; thence along said right-of-way line to the North line of the South ½ of Government Lot 6 Section 30, Township 8 South, Range 20 East; thence East along said North line and the North line of the South ½ of Government Lot 5 Section 30, Township 8 South, Range 20 East to the East line of said Government Lot 5; thence South along said East line and the East line of Government Lot 8 Section 30, Township 8 South, Range 20 East and the East line of Government Lot 5 Section 31, Township 8 South, Range 20 East to the North line of the lands as described in ORB 2356, Page 0156 ACR; thence West along said North line to the East right-of-way line of State Road Number 121; thence North along said right-of-way line to the easterly extension of the North line of the lands as described in ORB 1938, Page 2821 ACR; thence West along said easterly extension and the North line thereof to the Northwest corner of said parcel; thence westerly to the Northeast corner of the lands as described in ORB 2131, Page 0189 ACR; thence westerly, southerly, and easterly along the northerly, westerly, and southerly boundaries of said parcel to its Southeast corner; thence southerly to the Northwest corner of the lands as described in ORB 3578, Page 1012 ACR; thence southerly and easterly along the westerly and southerly boundaries of said parcel to its Southeast corner, said point also being on the West right-of-way line of said state road; thence South along said right-of-way line to the westerly extension of the North line of the South ½ of Government Lot 7 Section 31, Township 8 South, Range 20 East; thence East along said westerly extension and the North line thereof and the North line of the South ½ of Government Lot 8 Section 31, Township 8 South, Range 20 East to the Northeast corner of said South ½ of Government Lot 8, said point also being on the West line of a conservation easement as described in Book 2267, Page 2479 and amended in Book 2388, Page 2379 ACR; thence South along said West line to the South line of the lands as described in ORB 2393, Page 1657 ACR and the North line of Section 7, Township 9 South, Range 20 East and being the existing city limits line as per Ordinance #3768; thence East along said North line of Section 7 to the East line of Section 7; thence South along said East line of Section 7 to the North line of Section 17, Township 9 South, Range 20 East; thence East along said North line of said Section 17 to the East line of said Section 17; thence South along said East line of Section 17 to the North line of Section 21, Township 9 South, Range 20 East; thence East along said North line of Section 21 to a point 670 feet West of the Northeast corner of said Section 21, said point also being the Northwest corner of a City of Gainesville transmission station and being a point on the existing city limits line as per Ordinance #2773; thence North along the northerly extension of the West line of said transmission station to the North right-of-way line of Northeast 53rd Avenue; thence East along said North right-of-way line to the West right-of-way line of NE 15th Street; thence North along said West right-of-way line (being a line 50 feet West of and parallel to the East line of the Southeast one-quarter of Section 16, Township 9 South, Range 20 East) to the North line of the South one-half (S ½) of said one-quarter Section; thence East along said North line and along the North line of the South one-half (S ½) of the Southwest one-quarter (SW ¼) Section 15, Township 9 South, Range 20 East to a point on the East line of said one-quarter Section; thence South along said

East line to the North right-of-way line of NE 53rd Avenue and the existing city limits line as per Ordinance #000738, said point also being the Southeast corner of said Murphy Water Plant; thence East along the North right-of-way line of North East 53rd Avenue to a point on the northerly projection of the East line of the West half of the Northwest quarter of Section 23, Township 9 South, Range 20 East; thence South leaving said North right-of-way line of Northeast 53rd Avenue and along said East line to the Southeast corner of the West half of said Northwest quarter; thence continue South along the East line of the Southwest quarter of said Section 23 a distance of approximately 450 feet to the Southeast corner of the lands as described in ORB 3532, Page 1158 ACR and being the existing city limits line as per Ordinance #3102; thence South 60° East a distance of 431.41 feet to the West right-of-way line of State Highway 24 (NE Waldo Road); thence northeasterly along said West right-of-way line to the westerly extension of the North line of the lands as described in ORB 2446, Page 0565 ACR and being a point on the existing city limits line as per Ordinance #070458; thence leaving said westerly right-of-way line East along said westerly extension and the North line thereof to the Northeast corner of said parcel; thence South along the East line of said parcel to the Southeast corner of said parcel; thence West along the South line of said parcel to the intersection with the West line of Section 13, Township 9 South, Range 20 East; thence South along the West line of said Section to the Northwest corner of the lands as described in ORB 1158, Page 824 ACR; thence North 89°19'15" East to the East line of said Section 13; thence South along said East line to the Southeast corner of Section 24, Township 9 South, Range 20 East and being a point on the existing city limits line as per Ordinance #3102; thence East to the Northeast corner of the Northwest one-quarter (NW ¼) of Section 30, Township 9 South, Range 21 East and being a point on the existing city limits line as per Ordinance #3959; thence continue East along the North line of parcels as described in said Ordinance #3959 to the Northeast corner of Section 29, Township 9 South, Range 21 East; thence South along the East line of said Section 29 to the Southeast corner of said Section; thence West along the South line of said Section 29 to the Southwest corner of the lands as described in ORB 1906, Page 0596 ACR; thence Northwest along the Southwesterly line of said parcel to the southerly right-of-way line of State Road 26 (NE 55th Blvd.); thence northeasterly along said southerly right-of-way line to a point on the southerly extension of the North right-of-way line of County Road NE 38C (NE 27th Avenue); thence northwesterly along said southerly extension and the North right-of-way line of said County Road NE 38C to the Southwest corner of the lands as described in ORB 1906, Page 0592 ACR and being the existing city limits line as per Ordinance #3980; thence North along the West line of said parcel to the intersection with the South line of the Northeast one-quarter of Section 30, Township 9 South, Range 21 East; thence West along said South line of the Northeast one-quarter of Section 30 to the Southwest corner of the lands as described in ORB 2046, Page 2419 ACR, said point also being the Southwest corner of the Northeast one-quarter of said Section 30 and being the existing city limits line as per Ordinance #070075; thence North along the West line of said parcel and the West line of the Northeast one-quarter to the intersection with the southerly right-of-way line of State Road S-232 (NE 39th Blvd.); thence continue North along the West line of the Northeast one-quarter to the intersection with the northerly right-of-way line of State Road S-232 and being a point on the existing city limits line as per Ordinance #3102; thence South 42°23'34" West along said northerly right-of-way line a distance of 360 feet to the Northeast corner of the lands as described in ORB 2319, Page 1544 ACR; thence, leaving said northerly right-of-way line, North 78°18'55" West, a distance of 1094.69 feet to the intersection with the East line of the lands as described in ORB 3376, Page 0904 ACR; thence North 00°20'36" East, along the East line of said parcel, a distance of 177.28 feet to the Northeast corner of said parcel; thence North 89°48'40" West, along the North line of said parcel, a distance 840 feet to the Southeast corner of the lands as described in ORB 1142, Page 214 ACR and being the existing city limits line as per Ordinance #070083; thence continue West along the South line of said parcel to the Southwest corner of said parcel and the intersection with the East line of Section 25, Township 9 South, Range 20 East; thence North along the East line of said Section 25 to the Southeast corner of the lands as described in ORB 1088, Page 957 ACR; thence South 89°32'20" West along the South line of said parcel a distance of 500 feet to the intersection of the East line of the lands as described in ORB 1448, Page 0581 ACR; thence North 00°17'40" West along the said East line a distance of 240 feet to the Northeast corner of said parcel; thence North 80°03'58" West a distance of 945.98 feet to the Southwest corner of the lands as described in ORB 1088, Page 957 ACR and the intersection of the East line of the lands as described in ORB 607, Page 347 ACR; thence in a South, Southeast, and Southwest

direction along the East line of said parcel to the intersection with the East line of the lands as described in ORB 1331, Page 885; ACR thence South 12°32'44" West along the East line of said parcel a distance of 942.41 feet to the intersection with the North line of the lands as described in ORB 2220, Page 1560 ACR; thence South 82°45'04" East along the North line of said parcel a distance of 1006.60 feet to the Northeast corner of said parcel; thence South 00°12'17" East along the East line of said parcel to the intersection with the South right-of-way line of NE 39th Avenue (SR 222); thence westerly along said South right-of-way line of NE 39th Avenue to the intersection with the South line of Section 25, Township 9 South, Range 20 East; thence South 89°47'43" West along the South line of said Section 25 a distance of 1840.65 feet to the Southwest corner of said Section 25 and the Southeast corner of Section 26, Township 9 South, Range 20 East; thence continue West along the South line of said Section 26 to the Southwest corner of Section 26 and the Northwest corner of Section 35, Township 9 South, Range 20 East; thence South along the West line of said Section 35 to a point lying 1323.40 feet North of the South line of said Section and being the North line of the South one-half of the South one-half; thence North 89°05'15" East along said North line a distance of 5295.49 feet to the intersection with the East line of Section 35, Township 9 South, Range 20 East; thence South 00°59'06" East along said East line of Section 35 a distance of 1324.04 feet to the Southeast corner of said Section 35 and the Northeast corner of Section 2, Township 10 South, Range 20 East; thence South 01°22'14" East along the East line of said Section 2 a distance of 2591.57 feet to the North right-of-way line of State Road 26 (East University Avenue); thence South 89°00'15" West along said North right-of-way line of State Road 26 to a point lying 1481.74 East from the West line of Section 2 and being the existing city limits line as per Ordinance #3865; thence southerly along the centerline of a drainage easement according to said Ordinance to the South line of said Section 2; thence westerly along said South line of Section 2 to the Southwest corner of Section 2; thence southerly to the North right-of-way line of State Road 20 (Hawthorne Road); thence southerly along the East line of Section 10 and the East line of Section 11, Township 10 South, Range 20 East to a point on the northwesterly extension of the South right-of-way line of State Road 20 and being the existing city limits line as per Ordinance #951158; thence Southeasterly along said right-of-way line to the Northeast corner of the lands as described in ORB 2187, Page 603 ACR; thence South along the East line of said parcel to the Southeast corner of said parcel; thence West along the South line of said parcel to the East right-of-way line of State Road 329-A (SE 27th Street); thence South along the East right-of-way line of SE 27th Street to the Southeast corner of the Northeast one-quarter (NE ¼) of Section 10, Township 10 South, Range 20 East; thence West along the South line of said Northeast one-quarter to the Southwest corner of said Northeast one-quarter (being also the Northeast corner of the Southwest one-quarter (SW ¼) of Section 10, Township 10 South, Range 20 East) and being the Northeast corner of the lands as described in ORB 1994, Page 0279 ACR; thence South 00°25'51" West along the East line of the Southwest one-quarter (SW ¼) and the East line of said parcel a distance of 1360.85 feet; thence continue along said parcel boundary North 87°54'20" West a distance of 636.24 feet; thence South 01°29'09" West a distance of 1305.48 feet to the Southeast corner of said parcel and the intersection with the South line of Section 10, Township 10 South, Range 20 East; thence North 89°33'05" West along said South line of Section 10 a distance of 1755.04; thence leaving said South line of Section 10, North 00°00'40" East a distance of 420.00 feet; thence North 89°33'05" West a distance of 160 feet, more or less, to the East right-of-way line of SE 15th Street (Kincaid Road); thence South along said East right-of-way line to the intersection with the easterly extension of the South line of the lands as described in ORB 2198, Page 562 ACR; thence West along said easterly extension and South line to the Southwest corner of said parcel; thence South 00°13' East along the West line of said parcel to the Northeast corner of the lands as described in ORB 1701, Page 916 ACR and being the existing city limits line as per Ordinance #3692; thence South 00°13' West a distance of 355.00 feet; thence East a distance of 168.18 feet to the West right-of-way line of County Road 2043 (SE 15th Street); thence South 00°13' West along said West right-of-way line of County Road 2043 to the Northeast corner of Robinson Heights Unit 2 as recorded in ORB "98", Page 684 ACR; thence West along the North line of said Robinson Heights Unit 2 to the Northeast corner of Robinson Heights Unit 3 as recorded in ORB "98", Page 685 ACR; thence continue West along the North line of said Robinson Heights Unit 3 to the Northwest corner of Unit 3 and the intersection with the East right-of-way line of Atlantic Coastline Railroad; thence northwesterly along said East right-of-way line to the intersection with the easterly extension of the South line of Pine Grove Cemetery as recorded in ORB 80, Page 663 ACR; thence North 89°37'30"

West along said easterly extension of Pine Grove Cemetery to the Southeast corner of pine grove cemetery as per ORB 80, Page 663 ACR; thence North 89°37'30" West along the South line of said Pine Grove Cemetery a distance of 1106 feet to the intersection with the East line of Evergreen Cemetery; thence South 04°06'15" West along the East line of said Evergreen Cemetery a distance of 44.85 feet to the Southeast corner of said cemetery; thence North 89°56'00" West along the South line of said Evergreen Cemetery a distance of 722.50 feet; thence North 01°12'22" West a distance of 57.05 feet; thence North 88°43'07" West a distance of 304.50 feet to the Southwest corner of Evergreen Cemetery; thence North 00°17'14" West along the West line of said cemetery a distance of 767.05 feet to the South line of Section 9, Township 10 South, Range 20 East; thence West along said South line of Section 9 a distance of 1252.11 feet to the easterly right-of-way line of State Road 331 (Williston Road); thence Southwesterly along the easterly right-of-way line of State Road 331 to a point lying approximately 60 feet northeasterly of the South line of the D.L. Clinch Grant; thence North 06°31'55" East to the northwesterly right-of-way line of State Road 331; thence South 45°10'07" West along the curve of said northwesterly right-of-way line a distance of 190.00 feet, more or less, to the Northeast corner of the lands as described in ORB 815, Page 910 ACR; thence North 82°24'25" West along the North line of said parcel a distance of 97.05 feet to the Northwest corner of said parcel; thence South 30°35'15" West a distance of 100.00 feet to the intersection with the South line of the D.L. Clinch Grant; thence North 82°24'45" West along said South line of the D.L. Clinch Grant to a point lying 572 feet more or less from the Southwest corner of the D.L. Clinch Grant; thence South a distance of 538 feet to the North right-of-way line of State Road 329; thence South 65°17'00" West along said North right-of-way line of State Road 329 (Williston Road) a distance of 185 feet to the Southwest corner of the lands as described in ORB 2040, Page 2981 ACR; thence North 09°10'00" West along the West line of said parcel a distance of 637 feet to the intersection with the South line of the D.L. Clinch Grant; thence North 85°15'00" West along said South line of the D.L. Clinch Grant to the Southwest corner of the D.L. Clinch Grant and being the intersection with the East line of the Thomas Napier Grant; thence South 04°16'11" East along said East line of the Thomas Napier Grant to a point lying 750 North of the Southeast corner of the Thomas Napier Grant in Township 10 South, Range 20 East and being the intersection with the South line of the lands as described in ORB 2040, Page 2981 ACR; thence South 84°54'45" West a distance of 362.24 feet; thence North 08°02'15" East a distance of 144.33 feet; thence North 81°57'45" West a distance of 150 feet to the East right-of-way line of State Road 25 (SW 13th Street and US 441); thence North 07°44'15" East along said East right-of-way line of State Road 25 a distance of 649.20 feet to the Northwest corner of the lands as described in ORB 2933, Page 0386 ACR; thence North 84°48'15" East along the North line of said parcel a distance of 334.06 feet to the intersection with the East line of the Thomas Napier Grant; thence northwesterly along said East line to a point approximately 173 feet South of the Southwest corner of Lot 3 of Millers Survey as per Deed Book "I", Page 591; thence northwesterly to a point lying 141.46 feet South of a westerly extension of the South line of said Lot 3 of Millers Survey, also lying on the East right-of-way line of State Road 25; thence South 07°56'32" West along said easterly right-of-way line a distance of 550.13 feet more or less; thence North 82°03'28" West a distance of 136.00 feet to the westerly right-of-way line of said State Road 25; thence North 82°03'28" West a distance of 229.97 feet; thence North 08°50'42" East a distance of 278.91 feet; thence North 85°29'42" East a distance of 231.29 feet to the westerly right-of-way line of said State Road 25; thence North 07°56'32" East along said right-of-way line of State Road 25 a distance of 221.05 feet; thence North 82°04'13" West a distance of 36 feet more or less to the waters edge of Bivens Arm; thence northerly along the waters edge of Bivens Arm to the intersection of the North line of the Thomas Napier Grant and the existing city limits line as per Ordinance #4048; thence South 83°55'05" West along said North line of the Thomas Napier Grant a distance of 2478.96 feet to the Southeast corner of the lands as described in ORB 1647, Page 139 ACR; thence South 84°40'25" West a distance of 796.84 feet to the Southwest corner of said parcel; thence South 83°55'05" West along said North line of Napier Grant a distance of 453.37 feet; thence South 27°54'03" East a distance of 213.05 feet to a point on the line between lots 18 and 19 of a subdivision of the Thomas Napier Grant as per said deed Book "I", Page 591; thence South 50°26'03" East a distance of 1070.70 feet to a point on the line between lots 19 and 20 of said subdivision of the Thomas Napier Grant; thence South 61°55'04" East a distance of 893.12 feet to a point on the East line of Lot 20 of said subdivision; thence South 05°47'32" East a distance of 825.00 feet to the Southeast corner of said Lot 20 and the intersection with the North line of Dales Court as recorded in Plat

Book "E", Page 55; thence West along the North line of said Dales Court to the West right-of-way line of SW 20th Street; thence South along said West right-of-way line to the Northeast corner of the lands as described in ORB 1279, Page 977 ACR; thence West along the North line of said parcel to the Northeast corner of Madera Cluster Development Phase 2 as recorded in plat Book "26", Page 20 also being Northwest corner of the lands described in ORB 1279, Page 977 ACR and being the existing city limits line as per Ordinance #991231; thence South 04°35'42" East a distance of 206.91 feet to the Southwest corner of the lands as described in ORB 1279, Page 977 ACR; thence North 86°18'33" East a distance of 140.07 feet to intersection of the West right-of-way line of SW 20th street; thence South 04°25'59" East along said West right-of-way line and along the East line of said Madera Cluster Development Phase 2 a distance of 689.05 feet to the Northeast corner of the lift station parcel as described in ORB 2428, Page 240 ACR; thence continue South 04°25'59" East to the Southeast corner of said lift station parcel; thence continue South 04°25'59" East a distance of 405.35 feet to the Northeast corner of the lands described in ORB 2014, Page 1438 ACR; thence South 84°50'03" West along the North line of said parcel a distance of 200.02 feet to the Northwest corner of said parcel; thence South 04°25'59" East along the West line of said parcel a distance of 95.46 feet to the Southeast corner of said Madera Cluster Development Phase 2; thence South 86°08'10" West along the South line of said Madera Cluster Development Phase 2 a distance of 208.80 feet; thence South 04°33'17" East a distance of 9.40 feet to the Northeast corner of Napier Estates as recorded in Plat Book "E", Page 16; thence South 86°51'26" West along the North line of said Napier Estates a distance of 123.86 feet to the East line of Madera Cluster Development Phase 1 as recorded in Plat Book "23", Page 72; thence South 86°51'26" West a distance of 176.32 feet to Northwest corner of said Napier Estates; thence South 04°53'02" East along the West line of said Napier Estates and the East line of said Madera Cluster Development Phase 1 a distance of 834.90 feet to the intersection with the North right-of-way line of State Road 331 (Williston Road) and the Southeast corner of said Madera Cluster Development Phase 1; thence westerly along said North right-of-way line and said South line of Madera Cluster Development Phase 1 to the Southwest corner of said Madera Cluster Development Phase 1 and being the existing city limits line as per Ordinance #4048 said point being the point of curvature of a curve concave to the Southeast, having a radius of 5741.63 feet, a delta of 06°24'53" and a chord bearing and distance of South 77°17'42" West, 642.49 feet; thence continue along the North right-of-way line of State Road 331 and the arc of said curve a distance of 642.82 feet to the existing city limits line as per Ordinance #001912; thence along the existing city limits line crossing S.W. Williston Road along a radial line of South 15°52'56" East a distance of 100.00 feet to a point on the South right-of-way line of S.W. Williston Road as shown on Florida Department of Transportation Right-of-Way Highway Plans, Section 26220-2501, said point also being a point on a curve concave to the Southwest having a radius of 5,641.63 feet; thence Southwesterly along the arc of said South right-of-way line a distance of 587.76 feet, more or less, marking the Northeast corner of the lands as described in ORB 2541, Page 38 ACR and being the existing city limits line as per Ordinance #030250; thence South 00°03'11" West a distance of 2217.56 feet; thence South 04°53'13" East a distance of 1088.53 feet to a point lying South 83°46'31" West 374.15 feet from a concrete monument found at the Northeast corner of the lands described in ORB 1908, Page 1714 ACR; thence South 83°46'31" West a distance of 2045.42 feet to a ½" iron pipe found at the Northwest corner of the lands as described in ORB 1086, Page 395 ACR; thence South 05°12'23" East a distance of 508.90 feet to a ¾" iron pipe found at the Northwest corner of the lands as described in ORB 1926, Page 2992 ACR also being the Southwest corner of the lands as described in ORB 1086, Page 395 ACR; thence South 84°06'56" West parallel with the South line of Serenola Plantation, as recorded in Deed Book "L", Pages 480 and 481, a distance of 1023.15; thence North 05°56'18" West parallel with the West line of said Serenola Plantation, a distance of 879.95 feet to a point lying 300 feet perpendicular to a point on the West line of said Serenola Plantation, which lies North 05°56'18" West 1543.40 feet from the concrete monument found at the Southwest corner of said Serenola Plantation, and South 05°56'18" East, 3059.13 feet from a rebar & cap (JW Myers, PLS 3447) found at the Northwest corner of said Serenola Plantation; thence North 49°05'14" East parallel with and 80 feet Southeasterly of the Southeast boundary of the parcel of lands as described in ORB 1997, Page 232 ACR, a distance of 330.77 feet to the beginning of a curve concave northwesterly and having a radius of 540.00 feet; thence northeasterly, along the arc of said curve, said arc being subtended by a chord having a bearing and distance of North 39°57'45" East, 171.27 feet; thence North 30°50'15" East, a distance of 94.84 feet to the

beginning of a curve concave Southeasterly and having a radius of 460.00 feet; thence northeasterly along the arc of said curve, through a central angle of 18°14'59", an arc distance of 146.52 feet to the end of said curve, being subtended by a chord having a bearing and distance of North 39°57'45" East, 145.90 feet; thence North 49°05'14" East, parallel with the southerly right-of-way line of State Road No. 331 (Williston Road, 100' r/w), a distance of 751.08 feet to a point lying South 40°54'00" East, 725.14 feet from a rebar and cap (LS 4948) found at the Northwest corner of the parcel of lands as described in ORB 2028, Page 254 ACR; thence South 40°54'00" East along the West boundary of said parcel a distance of 144.98 feet to a concrete monument found at the Southwest corner of said parcel; thence North 49°05'43" East a distance of 250.26 feet to a concrete monument at the Southeasterly corner of said parcel, also known as the Southwest corner of Parcel "I", described in ORB 803, Page 289 ACR; thence North 40°54'00" West a distance of 871.06 feet to the Northeast corner of the parcel of lands as described in ORB 2028, Page 254 ACR and being the intersection with the southerly right-of-way line of State Road No. 331 and being the existing city limits line as per Ordinance #001912; thence South 49°03'23" West along said right-of-way line of State Road No. 331 a distance of 2359.05 feet; thence South 40°56'37" East a distance of 20.00 feet; thence South 49°03'23" West a distance of 649.34 feet; thence South 21°39'26" West a distance of 65.19 feet to the East line of Rocky Point Road; thence crossing Rocky Point Road South 49°03'23" West a distance of 100.00 feet to the West line of Rocky Point Road; thence South 49°03'23" West a distance of 996.28 feet to the intersection of the westerly projection of said South right-of-way with the West limited access right-of-way line for Interstate 75 as shown on Florida Department of Transportation Right-of-Way Highway Plans, Section 26260-2420 being the existing city limits line as per Ordinance No. 070721; thence continue Southwesterly along said southerly right-of-way line of State Road No. 331 (Williston Road) to a point opposite from the point marking the intersection of the East line of that certain tract of land as described in ORB 3367 Page 145 ACR and the North right-of-way line of said S.W. Williston Road, said point also being on a line perpendicular to said North right-of-way line; thence run northwesterly along said perpendicular line to said intersection of the South line of said tract and the North right-of-way line of said S.W. Williston Road; thence run North and northwesterly along the East line of said tract to the northmost corner of said tract; thence run Southwesterly along the northerly line of said tract to the West corner of said tract; thence run Southeasterly along the westerly line of said tract to the South corner of said tract, said corner being on the North right-of-way line of State Road 331 (Williston Road); thence run Southwesterly along said North right-of-way line to the eastmost corner of that certain tract of land as described in ORB 2821 Page 70 ACR; thence leaving said North right-of-way line run northwesterly along the easterly line of said tract to the southmost corner of certain tract of land as described in ORB 1736 Page 2672 ACR; thence run northeasterly along the southerly line of said tract to the Southeast corner of said tract; thence run to the Southwest corner of lands as described in ORB 2208 Page 2895 ACR; thence run northeasterly along the southerly line of said tract and the southerly line of that certain tract of land as described in ORB 2827 Page 1388 ACR to the westerly right-of-way line of Southwest 41st Boulevard; thence run northwesterly along said westerly right-of-way line to the Southwesterly projection of the southerly line of that certain tract of land as described in ORB 2264 Page 43 ACR; thence run northeasterly along said projection and the southerly line thereof to the Southeast corner of said tract; thence run northwesterly along the northeasterly line of said tract to a point at the intersection of the easterly line of said tract and the West limited access right-of-way line of Interstate 75 (US 93) as shown on Florida Department of Transportation Right-of-Way Highway Plans, Section 26260-2420, said point being the existing City of Gainesville limit line as per Ordinance No. 001912; thence along said West right-of-way line, northwesterly to the Northeast corner of that certain tract of land as described in ORB 3242 Page 404 ACR; thence leaving said city limit line run Southwesterly and northwesterly along the northerly line of said tract to the North corner of said tract, said corner being on the northeasterly right-of-way line of Southwest 41st Boulevard; thence run westerly, perpendicular to said right-of-way line, to a point on the Southwesterly right-of-way line of said Southwest 41st Boulevard; thence run Southeasterly along said right-of-way line to the Northeast corner of that certain tract of land as described in ORB 2267 Page 1441 ACR; thence run Southwesterly along the North line of said tract and the North lines of that certain tract of land as described in ORB 2246 Page 1343 ACR and that certain tract of land as described in ORB 1736 Page 2672 ACR to a point on the East line of that certain tract of land as described in ORB 3051 Page 1418 ACR; thence run North along the East line of said tract to the Northeast corner of said tract;

thence run Southwesterly along the North lines of the 6 tracts of land as described in the following official records: 1) ORB 3051 Page 1418 ACR; 2) ORB 3051 Page 1419 ACR; 3) ORB 2537 Page 389 ACR; 4) ORB 3051 Page 1420 ACR; 5) ORB 3051 Page 1422 ACR; 6) ORB 3051 Page 1421 ACR to the Northwest corner of that certain tract of land as described in ORB 3051 Page 1421 ACR, said corner being on the West line of the Gary Grant; thence run Northwest along the West line of said Gary Grant to the Southeast corner of that certain tract of land as described in ORB 1821 Page 2875 ACR; thence run Northeast along the North line of said Gary Grant to the West corner of that certain tract of land as described in ORB 2507 Page 1285 ACR; thence leaving said North line of the Gary Grant run East along the South line of said tract to the Southeast corner of said tract; thence run North along the East line of said tract to the North corner of said tract, said corner being on the North line of the Gary Grant; thence run Northeast along said North line of the Gary Grant to a point lying on a northwesterly extension of the westerly line of that certain tract of land as described in ORB 3478 Page 798 ACR, said point also being on the North line of a 150' wide City of Gainesville power line easement; thence leaving the North line of the Gary Grant and said power line easement run Southeasterly along said extension to the West most corner of said tract described in ORB 3478 Page 798 ACR; thence run Southeasterly along the westerly line of said tract to the South corner of said tract also being the existing city limit line as per Ordinance #061079; thence along said city limit line and the Southeasterly boundary of said parcel the following 3 courses: North 51°10'52" East, a distance of approximately 641.51 feet; North 82°08'57" East, a distance of approximately 308.65 feet; North 53°14'32" East, a distance of 188.13 feet; thence leaving said southerly boundary continue North 53°14'32" East, a distance of approximately 90 feet to a point on the West right-of-way line of Interstate 75 and being the existing city limits line as per Ordinance #001912; thence northwesterly along said West right-of-way line of Interstate 75 to the point of intersection with the westerly projection of the North right-of-way line for S.W. Archer Road; thence along the North line of S.W. Archer Road, North 57°58'54" East along the northerly right-of-way line of said S.W. Archer Road to the Southwest corner of the lands known as Exhibit "A", parcel 25 as described in official records Book 3048, Page 502 ACR, said corner also being the intersection of the northerly right-of-way line of Southwest Archer Road and the easterly right-of-way line of Southwest 40th Boulevard and the existing city limit line as per Ordinance #070722; thence run northerly along said city limit line and said easterly right-of-way line to the Southwest corner of the lands as described in ORB 1805, Page 1000 ACR; thence run northeasterly along the South line of said tract to the Southeast corner of said tract; thence run in a general northwesterly direction along the easterly perimeter of said tract to the Northmost corner of said tract; thence run Southwesterly along the North line of said tract and the South line of the lands known as Exhibit "A", Parcel 4 as described in 3048, Page 502 ACR to the Southwest corner of said tract, said corner also being a point on the easterly right-of-way line of aforementioned Southwest 40th Boulevard; thence run northwesterly along the West line of said tract and said easterly right-of-way line to the Northwest corner of said tract; thence run northeasterly along the North line of said tract to the Southeasterly corner of the lands as described in ORB 3546, Page 464 ACR; thence run North along the East lines of said tract and the lands as described in ORB 3366, Page 1040 ACR to the Northeast corner of the lands as described in ORB 3366, Page 1040 ACR, said corner being on the southerly right-of-way line of Southwest 33rd Place; thence run West along said southerly right-of-way line to a point on the southerly projection of the West line of the lands known as Parcel IV as described in ORB 3601, Page 1361 ACR; thence run North along said projection and the West line thereof and the West line of the lands known as parcel i as described in ORB 3601, Page 1361 ACR to the Northeast corner of the lands as described in ORB 2437, Page 35 ACR; thence run West along the North line of said tract to the Southwest corner of the lands known as Parcel II as described in ORB 3601, Page 1361 ACR, said corner also being the Northwest corner of the lands as described in ORB 2437, Page 35 ACR; thence run North along the West line of the lands known as Parcels II and III as described in ORB 3601, Page 1361 ACR and the West line of the lands as described in ORB 3578, Page 501 ACR to the Northwest corner of the lands as described in ORB 3578, Page 501 ACR, said corner also being the Northeast corner of the lands as described in ORB 2340, Page 849 ACR; thence run West along the North line of said tract to the Northwest corner of said tract, said corner being on the East right-of-way line of Southwest 43rd Street; thence run South along said East right-of-way line to the easterly projection of the South line of the lands as described in ORB 2051, Page 1590 ACR; thence run West along said easterly projection to the West right-of-way line of Southwest 43rd Street; thence run West along the South line of said

tract to the Southwest corner of said tract, said corner being on the East right-of-way line of Southwest 42nd Way; thence run West along the westerly projection of said South line to the West right-of-way line of said Southwest 42nd Way; thence run North along said West right-of-way line to the Southeast corner of the lands as described in ORB 3072, Page 1443 ACR; thence run West along the South line of said tract to the Southwest corner of said tract; thence run North along the West line of said tract to the Northwest corner of said tract; thence run East along the North line of said tract to the Northeast corner of said tract, said corner being on the West right-of-way line of Southwest 42nd Way; thence run North along said West right-of-way line to the beginning of a curve concave Southwest; thence run northwesterly along the arc of said curve to the point of reverse curvature of a curve concave Southeast; thence run along the arc of said curve and said West right-of-way line of Southwest 42nd Way to the Northeast corner of the lands as described in ORB 2987, Page 1245 ACR, said corner being on the South line of the lands as described in ORB 2195, Page 1994 and ORB 2181, Page 1006 ACR; thence run West along the South line of said tract to the Southwest corner of said tract; thence run North along the West line of said tract to the Northeast corner of the lands as described in ORB 1123, Page 352 ACR; thence run West along the North line of said tract to the Northwest corner of said tract, said corner also being on the northeasterly right-of-way line of Southwest 40th Boulevard; thence run northwesterly along said northeasterly right-of-way line to the Northwest corner of the lands as described in ORB 2685, Page 1319 ACR also known as Exhibit "A", Parcel 8 of the lands as described in ORB 3048, Page 502 ACR, said corner also being the Southwest corner of Lot 11 of I-75 service park, a subdivision as recorded in plat Book "L", Page 53 of the official records of Alachua County, Florida; thence run East along the South line of said I-75 service park to the Southeast corner of Lot 16 of said I-75 service park, said corner being on the East line of Section 15, Township 10 South, Range 19 East; thence run North along the East line of said I-75 service park and said Section to the Northeast corner of said Section, also being the Southwest corner of Section 11, Township 10 South, Range 19 East and being on the westerly right-of-way line of Southwest 43rd Street; thence run East along the South line of said Section 11 and the westerly projection of the North right-of-way line of Southwest 24th Ave and the North right-of-way line thereof to the Southwest corner of the lands as described in ORB 1814, Page 1200 ACR, said corner also being the Southeast corner of Hailey Gardens Condominium, a condominium as described in ORB 3026, Page 652 ACR; thence run North along the West line of said tract to the Northwest corner of said tract; thence run East along the North line of said tract and the North line of the lands as described in ORB 818, Page 15 and ORB 1814, Page 1211 ACR to the Northeast corner of said tract; thence run South along the East line of said tract and the East line of the lands as described in ORB 1814, Page 1200 ACR to the Southeast corner of said tract also being on the North right-of-way line of Southwest 24th Avenue; thence run East along said North right-of-way line to the Southeast corner of Mill Run, a planned unit development as recorded in plat Book "L", Page 3 of the official records of Alachua County, Florida; thence run North along the East line of Mill Run to the Southwest corner of Old Mill Condos, a condominium as described in ORB 1423, Page 261 ACR; thence run East along the South line of said Old Mill Condos to the Southeast corner of said condominium, said corner being on the West line of the lands as described in deed Book 33, Page 328 ACR; thence run South along said West line to the Southwest corner of said tract, said corner being on the North right-of-way line of Southwest 24th Avenue; thence run East along said North right-of-way line to the Southwest corner of the lands as described in ORB 3331, Page 503 ACR; thence run North along the West line of said tract to the Northwest corner of said tract; thence run East along the North line of said tract to the Northeast corner of said tract; thence run South along the East line of said tract to the Southwest corner of the lands as described in ORB 3321, Page 812 ACR; thence run East, North, East, South and Southwesterly along the southerly boundary of said tract to a point on the North right-of-way line of Southwest 24th Avenue; thence run East along said North right-of-way line to the northerly projection of the West line of the lands as described in ORB 1902, Page 1978 ACR; thence run South along said northerly projection and the West line thereof to the Southwest corner of said tract, said corner being on the northeasterly line of that part of the lands as described in ORB 2189, Page 2457 ACR also known as Windmeadows Road and as Exhibit "A", parcel 28 as described in ORB 3048, Page 502 ACR; thence run easterly along the North line of said tract and northerly line of said Windmeadows Road to the West right-of-way line of Southwest 34th Street (State Road 121); thence run North along said West right-of-way line to its intersection with the northerly right-of-way line of Southwest 19th place also being the Southeast corner of the lands as described in

ORB 3678, Page 287 ACR; thence West along the North right-of-way line of Southwest 19th place and the South line of said parcel to the Southwest corner of said parcel; thence North along the West line of said parcel to the Southeast corner of the lands as described in ORB 299, Page 492 ACR; thence West along the South line of said parcel to the Southwest corner of said parcel and being the existing city limits line as per Ordinance #041230; thence South along the East line of said Ordinance line to the Northeast corner of the lands as described in ORB 2950, Page 0288 ACR and being the existing city limits line as per Ordinance #060148; thence South along said East line to the Southeast corner of said parcel; thence West along the South line of said parcel to the Southwest corner of said parcel; thence North along the West line of said parcel to the Northwest corner of lands described in ORB 2950, Page 288 ACR; thence run West along the centerline of Southwest 17th place to a point on the southerly extension of the East line of Lot 35 of Shady Forest A Subdivision as recorded in ORB 95, Page 255 ACR and the existing city limit line as per Ordinance #050881; thence South along said southerly extension to the South right-of-way line of Southwest 17th place; thence West along said South right-of-way line of Southwest 17th place to the Northeast corner of Lot 45 of said Shady Forest and the existing city limits line as per Ordinance #060730; thence South along the East line of said Lot 45 to the Southeast corner of said Lot 45; thence West along the South line of said Lot 45 and the South line of Lot 44 to the Southwest corner of Lot 44 of said Shady Forest; thence North along the West line of said Lot 44 to the Northwest corner of said Lot 44 and the South right-of-way line of Southwest 17th Place and the existing city limits line as per Ordinance #050881; thence West along said right-of-way line to the intersection with the East right-of-way line of Southwest 38th Terrace; thence West along the westerly projection of said South right-of-way line of Southwest 17th place to the West right-of-way line of said Southwest 38th Terrace; thence North along said West right-of-way line of Southwest 38th terrace to the intersection with the westerly projection of the North right-of-way line of Southwest 17th avenue; thence East along said westerly projection line to the East right-of-way line of Southwest 38th Terrace; thence continue East along the North right-of-way line of Southwest 17th Avenue to the Southwest corner of Lot 18 of said Shady Forest and the existing city limits line as per Ordinance #050699; thence North along the West line of said Lot 18 to the Northwest corner of said Lot 18, also being the Southeast corner of Lot 14 of said Shady Forest; thence West along the South line of said Lot 14 and its westerly extension of Lots 9 through 14 of said shady forest a distance of approximately 630 feet to a point on the West line of said shady forest and the West line of Lot 4 of Section 11, Township 10 South, Range 19 East; thence North along the West line of said Shady Forest and the West line of said Lot 4 a distance of approximately 2145 feet to the Southwest corner of the North 660 feet of the West 250 feet of said Lot 4, also being the Southwest corner of that parcel described in ORB 2363, Page 1149 ACR; thence East along the South line of said parcel a distance of approximately 250 feet to the Southeast corner of said parcel and the existing city limits line as per Ordinance #051124; thence North along the East line of said parcel to the Northeast corner of said parcel and the intersection with the North line of Section 11, Township 10 South, Range 19 East; thence West along said North line of Section 11 to the Northeast corner of the lands as described in ORB 1660, Page 782 ACR and the existing city limits line as per Ordinance #3616; thence South along the East line of said parcel to the Southeast corner of said parcel; thence West along the South line of said parcel to the Southwest corner of said parcel; thence North along the West line and the northerly projection of the West line of said parcel to the intersection with the North line of said Section 11; thence West along the North line of said Section 11 to the Northwest corner of said Section 11, Township 10 South, Range 19 East also being the Northeast corner of Section 10, Township 10 South, Range 19 East, and a point on the existing city limits line as per Ordinance #3769; thence South along the East line of said Section 10 to the centerline of Hogtown Creek, and the existing city limits line as per Ordinance #060080; thence South 00°06'12" East along said East line of Section 10 a distance of 532.03 feet to the northerly line of a power line easement; thence South 89°24'22" East, along the northerly line of said power line easement, a distance of 662.00 feet to the East line of Lot 8 of the subdivision of Section 11, Township 10 South, Range 19 East and the East right-of-way line of Southwest 42nd Street; thence South 00°05'58" East, along the East line of said Lot 8, a distance of 1636.41 feet to the northerly right-of-way line of County Road SW-30 (Southwest 20th Avenue); thence northwesterly along the northerly right-of-way line of said county road with a curve concave northeasterly to the Southeast corner of the lands as described in ORB 720, Page 167; thence North, West and South along the boundary of said parcel to the Southwest corner of said parcel being on the northerly

right-of-way line of said County Road SW-30; thence northwesterly along the northerly right-of-way line of said county road with a curve concave northeasterly to the Southeast corner of the lands as described in ORB 1743, Page 1153 ACR; thence North and northwesterly along the East and North boundary lines of said lands to the Northwest corner of said lands; thence continue northwesterly along the North boundary lines of the lands as described in ORB 1997, Page 1843 ACR and of the lands as described in ORB 2187, Page 1514 ACR to the Northwest corner of said lands; thence Southwesterly along the West boundary line of said lands to the northerly right-of-way line of said county road; thence Northwest along the northerly right-of-way line of said county road to the centerline of Hogtown Creek, and the existing city limits line as per Ordinance #3769; thence southerly along said centerline of Hogtown Creek to the North line of the lands as described in ORB 3610, Page 0219 ACR and being a point on the existing city limits line as per Ordinance #070215; thence East along the North line of said lands to the Northwest corner of Marchwood, a subdivision as recorded in Plat Book "M", Page 47 of the official records of Alachua County, Florida; thence South along the West line of said subdivision to the Southwest corner of said subdivision, said point also being the Northwest corner of Southfork Oaks Condominium Phase I, according to the declaration of condominium thereof recorded in ORB 1568, Page 1065 ACR; thence South along the West line of said condominium to the Southwest corner of said condominium, thence South along the East line of parcel 2 of the lands as described in ORB 3370, Page 1419 ACR to the Southeast corner of said parcel; thence West along the South line of said parcel 2 to the Southwest corner of said parcel; thence North to the Northwest corner of said parcel 2 and being the Southeast corner of parcel 1 of the lands as described in ORB 3370, Page 1419 ACR; thence West along the South line of said parcel 1 to the Southwest corner of said parcel; thence North along the West line of said parcel 1 also being the East line of the lands as described in ORB 1628, Page 1107 ACR to the Northeast corner of the lands as described in ORB 1628, Page 1107 ACR; thence West along the North line of said lands to the Northwest corner of said lands and a point on the East boundary line of the lands as described in ORB 2301, Page 0194 ACR; thence North along said East line to the Northeast corner of said lands, and being the South line of Lot 6 of "Map of Sections 9 and 10, Township 10 South, Range 19 East" as recorded in Plat Book A, Page 10 of the public records of Alachua County, Florida; thence westerly along the South line of said Lot 6 to the West right-of-way of Interstate 75 and a point on the existing city limits line as per Ordinance #001160; thence continue West along said South line of Lot 6 to the intersection with the West line of said Section 10; thence South to the Southwest corner of said Section 10 and the Southeast corner of Section 9; thence South 88°57’51” West along the South line of said Section 9 a distance of 2630.04 feet to an intersection with the East line of a 15 foot by 15 foot easement to J.C. Dickenson III and Sarah L. Bingham Dickenson as recorded in ORB 1093, Page 0740 ACR; thence following the boundary of said easement, North 01°04’12” West, a distance of 15 feet; thence South 88°57’51” West, a distance of 15 feet to an intersection with the East line of that property described in ORB 1589, Pages 201-202 ACR; thence departing said easement, along said East line North 01°04’12” West, a distance of 632.54 feet to the existing city limits line as per Ordinance #040280b; thence continue along the boundary of said lands North 01°04’12” West, a distance of 87.46 feet; thence continue along the boundary of said lands North 64°37’41” West, a distance of 360.69 feet to a point of intersection with the easterly right-of-way line of County Road SW 30 (a.k.a. SW 24th Avenue, right-of-way width varies), said point being on a non-tangent curve to the left, concave northwesterly, having a radius of 1959.86 feet, and being subtended by a chord bearing and distance North 27°49’20” East, 166.86 feet; thence northeasterly along the arc of said curve and along said easterly right-of-way line through a central angle of 04°52’46", an arc distance of 166.91 feet to the point of tangency; thence continue along said easterly right-of-way line North 25°23’02” East, a distance of 1465.38 feet to the point of curvature of a curve to the right, concave Southeasterly, having a radius of 1859.86 feet, and being subtended by a chord bearing and distance of North 42°26’55” East, 1091.56 feet; thence northeasterly along the arc of said curve and along said easterly right-of-way line through a central angle of 34°07’37", an arc distance of 1107.86 feet to the end of said curve; thence departing said easterly right-of-way line South 30°29’37” East, a distance of 130.00 feet to an intersection with a curve being concave to the Southeast, and having a radius of 1729.86 feet, a tangent of 311.84 feet, a central angle of 20°26’16", and a chord bearing and distance of North 69°43’36” East, 613.78 feet and the existing city limits line as per Ordinance #001160; thence along said curve an arc distance of 617.05 feet; thence leaving said curve, South 00°37’49” East, a distance of 230.00 feet; thence South 60°37’49” East, a distance of 431.27 feet; thence North

89°21'36" East, a distance of 809.87 feet; thence North 59°21'36" East, a distance of 480.00 feet; thence North 00°38'24" West, a distance of 220.00 feet; thence North 89°21'36" East, a distance of 349.69 feet to a point of intersection with the westerly right-of-way of Interstate 75 (State Road 93) and the existing city limits line as per Ordinance #3769; thence Northwest along said westerly right-of-way to the North right-of-way line of State Road 26; thence East along said North right-of-way line to the West line of the lands as described in ORB 0798, Page 0534 ACR and the existing city limits line as per Ordinance #3979; thence northerly along said West line to the North line of the lands as described in ORB 1123, Page 0353 ACR; thence westerly along said North line to the Northwest corner of said lands and the Southwest corner of the lands as described in ORB 1636, Page 0787 ACR; thence North along the West line of said lands to the Northwest corner of said lands and a point on the South line of Lot 21 of North Florida Regional Doctors Office Park, a subdivision as recorded in plat Book "H", Page 81 ACR, also identified as the point of beginning of said plat; thence westerly along the South line of said plat to the West line of Lot 20 of said plat; thence northerly along the said West line to the South right-of-way line of N.W. 9th Boulevard; thence easterly along said South right-of-way line to the East line of Lot 21 and the existing city limits line as per Ordinance #030457; thence northeasterly and southerly along said South right-of-way line of N.W. 9th Boulevard and the North and East boundaries of lots 22, 23, 24, 25 and 26 to the South line of said plat; thence crossing N.W. 64th terrace, easterly to the East right-of-way line of N.W. 64th terrace and the Southwest corner of Lot 1 of said plat; thence northerly along said East right-of-way line to the Northwest corner of said Lot 1 and the Southwest corner of Lot 2 and the existing city limits line as per Ordinance #020104; thence northwesterly along said East right-of-way line to the Northwest corner of Lot 2 and the Southern most corner of Lot 3 and the existing city limits line as per Ordinance #002124; thence northwesterly along said East right-of-way line to the Southwest corner of Lot 3 and the South East corner of Lot 4; thence northeasterly along the West line of Lot 3 to the North line of said North Florida Regional Doctors Office Park plat and the existing city limits line as per Ordinance #3979; thence westerly along said North line of plat to the Northeast corner of Lot 10 of said plat and the existing city limits line as per Ordinance #030458; thence Southwesterly along the East line of Lot 10 and a southerly extension thereof to the South right-of-way line of N.W. 11th Place; thence westerly along said South right-of-way line to the Northeast corner of Lot 16 of said plat; thence Southwesterly along the East line of Lot 16 to the Southeast corner of Lot 16; thence westerly along the South line of said Lot 16 to the Southwest corner of said lot; thence northeasterly along the West line of Lot 16 to the Northwest corner of said Lot 16 and the intersection with the South right-of-way line of NW 11th Place; thence northwesterly along said South right-of-way line to the southerly projection of the West line of Lot 11 of said plat; thence northeasterly along said projection to the Southwest corner of Lot 11; thence continue northeasterly along the West line of Lot 11 to the North line of North Florida regional doctors office park plat and the existing city limits line as per Ordinance #3979; thence westerly to the Northwest corner of said plat; thence southerly to the intersection of the West line of said plat with the East right-of-way line of N.W. 69th Terrace; thence northwesterly along said East right-of-way line to the Southwest corner of the lands as described in ORB 2434, Page 0241 ACR; thence easterly along the South line of said lands to the Southwest corner of University ACRes Unit No. 2, a subdivision as recorded in Plat Book "H", Page 10 ACR; thence easterly along the South line of said University ACRes Unit No. 2 and the South line of University ACRes Unit No. 1, a subdivision as recorded in Plat Book "F", Page 88 ACR, to the Southeast corner of said subdivision and a point on the Southwest line of the lands as described in ORB 1315, Page 0726 ACR; thence Southeasterly along the Southwest line of said lands to the Southeast corner of said lands and the Northwest corner of Lot 24 of West Hills, a subdivision as recorded in Plat Book "E", Page 11 ACR; thence southerly along the West line of said West Hills to intersection with the North right-of-way line of State Road 26 and the existing city limits line as per Ordinance #3769; thence easterly along said North right-of-way line to the West right-of-way line of N.W. 55th Street; thence northerly along said West right-of-way line through Section 34, Township 9 South, Range 19 East to its intersection with the North right-of-way line of NW 23rd Avenue; thence East along said North right-of-way line to its intersection with the West right-of-way line of N.W. 43rd Street; thence, northerly along said West right-of-way line to the Southeast corner of the lands as described in ORB 3700, Page 0529 ACR; thence North 89°55'11" West, a distance of approximately 613.12 feet to a point on the East line of Lot 63 of the "subdivision of Section 27, Township 9 South, Range 19 East, Arredondo Grant" as per the plat thereof as recorded in Plat Book "A" at Page 55

ACR; thence North, a distance of approximately 165.07 feet to the Northeast corner of said Lot 63; thence West, along the North line of said Lot 63 also being the South line of Lot 50 of said "Arredondo Grant" a distance of approximately 663 feet to the Southwest corner of said Lot 50; thence West along the South line of Lot 51 of said "Arredondo Grant" a distance of approximately 663 feet to the Southwest corner of said Lot 51; thence North along the West line of said Lot 51, a distance of approximately 663 feet to the Northwest corner of said Lot 51 said corner also being the Southwest corner of "Buck Ridge Unit-2" a subdivision as recorded in Plat Book "R", at Page 31 ACR; thence along the West line of said "Buck Ridge Unit-2", North 00°15'19" East a distance of 663.36 feet to the Northwest corner of said "Buck Ridge Unit-2"; thence along the North line of said "Buck Ridge Unit-2", South 89°42'46" East, a distance of 662.41 feet to the Northeast corner of said "Buck Ridge Unit-2", said corner also being the Northwest corner of Lot 47 of said "Arredondo Grant"; thence East along the North line of said Lot 47 and along the North line of Lot 48 of said "Arredondo Grant" a distance of approximately 1276 feet to the West right-of-way line of State Road S-329 (N.W. 43rd Street); thence northerly along said West right-of-way line to the Southeast corner of the lands as described in ORB 1453, Page 0076 ACR and the existing city limits line as per Ordinance #040706; thence westerly along the South line of said lands to the Southwest corner of said lands; thence northerly to along the West line of said lands to the Southeast corner of the lands as described in ORB 1747, Page 1636 ACR; thence South 89°04'10" West a distance of 262.01 feet to a set iron pin (#3524), marking the intersection with the East line of Chula Vista Park as recorded in Plat Book "G", Page 67, and Plat Book "G", Page 75 ACR; thence North 00°49'08" West along said East line a distance of 213.37 feet to a set iron pin (#3524), marking the intersection with the South right-of-way line of State Road No. 222 (NW 39th Avenue); thence South 87°02'50" East along said line a distance of 53.02 feet to a set iron pin (#3524); thence North 89°04'10" East along said line a distance of 208.54 feet to the Northwest corner of the lands as described in ORB 1453, Page 0076 ACR; thence easterly along the North line of said lands to the intersection with the West right-of-way line of N.W. 43rd Street; thence northerly along said West right-of-way line to the South line of Bellamy Forge Condominium, as recorded in declaration of condominium in ORB 876, Page 219 ACR, and the existing city limits line as per Ordinance #3578; thence North 89°37'37" West along the South line of said Bellamy Forge Condominium to the Northeast corner of the lands as described in ORB 2212, Page 1500 ACR, and the existing city limits line as per Ordinance #990947; thence South 00°06'22" West, parallel to the West line of the East half (E ½) of the Southeast quarter (se ¼) of Section 22, Township 9 South, Range 19 East, a distance of 645.86 feet along the East line of said lands to the North right-of-way line of N.W. 39th Avenue; thence North 89°49'38" West, along said North right-of-way line 250.00 feet to the Southwest corner of said lands and the existing city limits line as per Ordinance #3645; thence westerly along said North right-of-way line to the intersection with the East line of the West ½ of the Southwest ¼ of the Southwest ¼ of the Southeast ¼ of said Section 22, and the existing city limits line as per Ordinance #3646; thence continue westerly along said North right-of-way line to the West line of the Southeast ¼ of said Section 22; thence northerly along said West line to the North line of the Southwest ¼ of the Southwest ¼ of the Southeast ¼ of said Section 22, and the existing city limits line as per Ordinance #3645; thence continue northerly along said West line to the South line of the North 1029.87 feet of the Northwest ¼ of the Southeast ¼ of said Section 22; thence easterly along said South line to the East line of the Southeast ¼ of the Southeast ¼ of said Section 22; thence southerly along said East line to the Northwest corner of said Bellamy Forge Condominiums and the existing city limits line as per Ordinance #3578; thence North 89°59'03" East along the North line of said Bellamy Forge Condominiums a distance of 1091.89 feet to the West right-of-way line of N.W. 43rd Street; thence northerly along said West right-of-way line to the North line of a drainage right-of-way as described in ORB 1741, Page 2148 ACR, and the existing city limits line as per Ordinance #3614; thence South 89°35'40" West along the North line of said lands and parallel to the South line of the Northeast ¼ of said Section 22, 499.89 feet; thence South 00°24'20" East a distance of 103.77 feet; thence South 89°31'35" West to the Northwest corner of said drainage right-of-way; thence South 00°27'55" East a distance of 40 feet to the Southwest corner of said drainage right-of-way; thence South 89°18'14" West to an iron pipe found at the Southwest corner of the Northeast one-quarter of said Section 22; thence North 00°25'51" West along the West boundary of said Northeast ¼ to the Southeast corner of the lands as described in ORB 1658, Page 2502 ACR and the existing city limits as per Ordinance #020815; thence South 89°35'16" West and parallel with the North line of the Northwest ¼ of said Section 22, a distance of 565.00 feet to

the Southwest corner of said lands; thence North 00°24'40" West and parallel with the East line of said Northwest ¼, a distance of 590.00 feet to the Northwest corner of said lands; thence North 89°35'16" East and parallel with said North line of the Northwest ¼, a distance of 565.00 feet to the Northeast corner of said lands and the existing city limits line as per Ordinance #980467; thence North to the North right-of-way line of County Road 232 (NW 53rd Avenue and Millhopper Road); thence West along said right-of-way line to the Southeast corner of Lot 34 of Deer Run Unit I, as recorded in Plat Book "J", Page 33 ACR; thence North along the East line of said Deer Run Unit I and the East line of Deer Run Unit II as recorded in Plat Book "J", Page 86 ACR, to a point on the southerly line of Lot 14, of said Deer Run Unit II; thence East along the southerly lines of lots 14 through 17 of said Deer Run Unit II to the Southeast corner of said Lot 17; thence North along the East line of said Deer Run Unit II to the Southwest corner of Lot 129 of Deer Run Unit III as recorded in Plat Book "L", Page 34 ACR; thence East to the Southeast corner of said Lot 129; thence North along the East line of said Deer Run Unit III and a northerly projection of said East line to a point on the South line of Section 10, Township 9 South, Range 19 East, said point also being on the South line of Sterling Place Unit - 2 as recorded in Plat Book "R", Page 81 ACR; thence East along said South line of Section 10 and said Sterling Place Unit - 2 to the Southeast corner of said Sterling Place Unit - 2, said point also being the Southwest corner of the East half of the Southeast quarter of said Section 10; thence North along the East line of said Sterling Place Unit - 2 also being the West line of said East half of the Southeast quarter of said Section 10, and the East line of Sterling Place Unit - 1, a subdivision as recorded in Plat Book "R", Page 39 ACR, to the Northeast corner of said Sterling Place Unit - 1 and the existing city limits line as per Ordinance #002393; thence South 89°37'45" West along the North line of said Sterling Place Unit - 1, a distance of 1318.93 feet to the Northwest corner of said Sterling Place Unit - 1 also the Northeast corner of blues creek unit 1 as per the plat thereof recorded in plat Book "M", Page 95 ACR said point also being on the East right of way line of Northwest 52nd Terrace and the existing city limits line as per Ordinance #040290; thence along the East line of said 52nd Terrace the following 10 courses; S 00°27'43" E, a distance of 100.00 feet; thence S 89°32'17" W, a distance of 12.53 feet to a point on a curve concave to the Northwest having a radius of 405 feet; thence along the arc of said curve a distance of 300.42 feet through a central angle of 42°30'02" and being subtended by a chord bearing and distance of S 35°04'59" W, 293.58 feet; thence S 56°20'00" W, a distance of 166.60 feet to the beginning of a curve concave to the Southeast having a radius of 345 feet; thence along the arc of said curve a distance of 341.91 feet through a central angle of 56°46'54" and being subtended by a chord bearing and distance of S 27°56'33" W, 328.08 feet; thence S 00°26'54" E, a distance of 54.17 feet to the beginning of a curve concave to the East having a radius of 344.97 feet; thence along the arc of said curve a distance of 102.36 feet through a central angle of 17°00'03" and being subtended by a chord bearing and distance of S 08°56'56" E, 101.98 feet; thence S 17°26'57" E a distance of 91.83 feet to the beginning of a curve concave to the West having a radius of 405 feet; thence along the arc of said curve a distance of 282.74 feet through a central angle of 40°00'00" and being subtended by a chord bearing and distance of S 02°33'03" W, 277.04 feet to the beginning of a curve concave to the Southeast having a radius of 345 feet; thence along the arc of said curve a distance of 88.43 feet through a central angle of 14°41'09" and being subtended by a chord bearing and distance of S 15°12'28" W, 88.19 feet to a point on the South line of said Blues Creek Unit 1; thence leaving the East right of way line of Northwest 52nd Terrace, s 89°39'06" W along the South line of said Blues Creek Unit 1, a distance of 60.53 feet to the Southeast corner of Blues Creek Unit-2 as per the plat thereof recorded in Plat Book "O", Page 34 ACR also being a point on the West right of way line of said Northwest 52nd Terrace and being on a curve concave to the Southeast having a radius of 405 feet; thence along the arc of said curve also being the easterly boundary of said Blues Creek Unit-2 and the West right of way line of said NW 52nd Terrace, a distance of 61.99 feet through a central angle of 08°46'10" and being subtended by a chord bearing and distance of N 11°01'51" E, 61.93 feet to a point on a curve concave to the Northwest having a radius of 25 feet; thence leaving said West right of way line of NW 52nd Terrace, continuing along the northeasterly boundary of said Blues Creek Unit-2 and along the arc of said curve a distance of 33.88 feet through a central angle of 77°38'29" and being subtended by a chord bearing and distance of S 54°14'10" W, 31.34 feet; thence continuing along said northeasterly boundary of Blues Creek Unit-2, N 72°41'04" W, a distance of 168.00 feet; thence N 34°15'00" W, a distance of 840.00 feet to the North most corner of Lot 6 of said Blues Creek Unit-2 and the existing city limits line as per Ordinance #001162; thence along the North line of said Blues Creek Unit-2 the following

courses: South 32°25'00" West, 240.00 feet; South 70°45'00" West, 530.00 feet; South 42°10'00" West, 140.00 feet; South 61°40'00" West, 140.37 feet; South 85°37'35" West, 415.29 feet to the point of curvature of a curve concave to the Southeast having a radius of 50.00 feet; thence Southwesterly along the arc of said curve, through a central angle of 36°52'11", an arc length of 32.17 feet and a chord bearing and distance of South 67°11'29" West, 31.62 feet; thence South 85°37'35" West, a distance of 170.00 feet to the Northwest corner of said Blues Creek Unit-2 also being a point on the West line of Section 10, Township 9 South, Range 19 East, Alachua County, Florida; thence North 00°23'44" West along the West line of said Section a distance of 3550.34 feet to the Northwest corner of Blues Creek Unit 5 Phase 1 as recorded in Plat Book 24, Page 73 and the existing city limits line as per Ordinance #3864; thence North 00°23'44" West along the West line of said Section 10 a distance of 1558.81 feet to the Northwest corner of said Section 10; thence North 89°37'43" East along the North line of said Section 10, a distance of 3947.81 feet to the West line of the East ¼ (E ¼) of said Section 10; thence easterly along said North line of Section 10 to the West line of a 150-foot City of Gainesville transmission line right-of-way; thence North along said West transmission line right-of-way to the northwesterly right-of-way line of the Seaboard Coastline Railroad and being a point on the southerly line of the City of Gainesville Deerhaven Power Generating Station; thence northwesterly along said southerly line and said Seaboard Coastline Railroad right-of-way to a point lying 1800 feet more or less from the West line of Section 27, Township 8 South, Range 19 East (being also on a southerly extension of the East property line of the Alachua County Road Department And Engineering Compound); thence North to the Northeast corner of the lands as described in ORB 883, Page 502 ACR lying in Section 27, Township 8 South, Range 19 East and the existing City of Gainesville city limit line as per Ordinance #060731, said point being approximate Northwest most corner of the City of Gainesville Power Generating Station and the point of beginning.

Also: parcel 1

A tract of land situated in the Northwest ¼ of Section 4, Township 10 South, Range 19 East, Alachua County, Florida, said tract of land being more particularly described as follows:

> Commence at the Northwest corner of Section 4, Township 10 South, Range 19 East, and thence South 00°50'48" East, along the West line of said Section 4, a distance of 801.31 feet; thence North 89°26'12" East, 39.53 feet to the East right-of-way line of County Road No. S.W. 29 (N.W. 75th Street); thence South 00°50'48" East, along the East right-of-way line of said County Road No. S.W. 29 (N.W. 75th Street), 868.40 feet; thence South 89°57'23" East, 204.22 feet; thence South 00°02'37" West, 300.00 feet; thence South 89°57'23" East, a distance of 660.35 feet to the true point of beginning and the existing city limits line as per Ordinance #991230; thence continue South 89°57'23" East, a distance of 129.67 feet to the Southwest corner of the "Home Depot Parcel" as recorded in ORB 1726, Page 2386 ACR; thence along said "Home Depot Parcel" the following four courses: South 89°57'23" East, 456.00 feet; North 00°02'37" East, 809.51 feet; North 89°57'23" West, 426.00 feet; South 00°02'37" West, 103.82 feet; thence leaving said "Home Depot Parcel", thence South 89°54'28" West, a distance of 90.51 feet; thence North 83°05'52" West, a distance of 61.62 feet; thence South 00°05'46" West, a distance of 377.82 feet; thence North 89°41'31" West, a distance of 8.21 feet; thence South 00°03'18" East, a distance of 335.06 feet to the true point of beginning.

Also: parcel 2

A tract of land situated in Section 16, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

> Commence at the intersection of the East line of S.W. 63rd Boulevard and the South line of Section 16, Township 10 South, Range 19 East for a point of beginning and the existing city limits line as per Ordinance #061147; thence West along the southerly line of said Section 16 to the Northeast corner of Green Leaf Unit No. 1, a subdivision as recorded in Plat Book "K", Page 81 ACR; thence West along the North line of said

subdivision and the North line of Section 21, Township 10 South, Range 19 East to the Northwest corner of Green Leaf Unit No. 1 and the Northeast corner of Tower Village, a subdivision as recorded in Plat Book "J", Page 96 ACR; thence West along the North line of said Tower Village Subdivision to the Northwest corner of said subdivision, said point also being on the East right-of-way line of S.W. 75th Street (Tower Road), also known as Alachua County Road SW 29; thence North along said right-of-way line to the Southwest corner of the lands as described in ORB 1816, Page 2063 ACR; thence East along the South line of said lands to the Southeast corner of said lands; thence North along the East line of said lands to the Northeast corner of said lands; thence North along the northerly extension of said East line and the West line of the lands as described in ORB 0379, Page 0304 ACR to the Northwest corner of said lands, said point also being on the South line of Garison Way Phase 1, a subdivision as recorded in Plat Book 25, Page 75 ACR; thence East along the South line of said subdivision and the North line of said lands and the North line of the lands as described in ORB 0335, Page 0398 ACR and the South line of lands described in ORB 1268, Page 495 to the Southeast corner of said lands described in ORB 1268, Page 495; thence northwesterly along the East line of said lands to the Northeast corner of said lands, said corner also being on the South line of the lands as described in ORB 2330, Page 1860, parcel 5, ACR; thence East along said South line to the Northwest corner of the lands as described in ORB 935, Page 279 ACR; thence in a southerly and Southwesterly direction along the westerly line of said lands to the Northeast corner of the lands as described in ORB 1750, Page 1897 ACR; thence West and South along the northerly and westerly lines of said lands to the Southwest corner of said lands; thence southerly along the easterly right-of-way line of Old Stagecoach Road to a point on the southerly line of Section 16, Township 10 South, Range 19 East and its intersection with the East right-of-way line of S.W. 63rd Boulevard and the point of beginning.

Also: parcel 3

A portion of Section 22, Township 10 South, Range 19 East, Alachua County, Florida, being more particularly described as follows:

Commence at the Southwest corner of Section 22, Township 10 South, Range 19 East, Alachua County, Florida, and thence North 00°05'11" East along the West boundary of said Section 2951.24 feet to a ⅝" iron rod (no ID.) Found on the northerly boundary of that certain parcel of land as described in ORB 0363, Page 0309 ACR, said iron rod being a corner on the westerly line of that certain tract of land as described in ORB 1702, Page 1085 et seq. ACR; thence continue North 00°05'11" East along said West boundary and said westerly line 1113.37 feet to the point of beginning and the existing city limits line as per Ordinance #060980; thence continue North 00°05'11" East along said West boundary and said westerly line 495.53 feet to a concrete monument (stamped 'PLS 509') found at the Northwest corner of said certain tract of land; thence North 89°56'16" East, 651.35 feet to a rebar and cap (stamped 'Eng, Denman & Assoc.') set at the Northeast corner of said certain tract of land; thence South 00°05'11" West along the East line of said certain tract of land 717.50 feet to a rebar and cap (stamped 'Eng, Denman & Assoc.') set on the North boundary of 'Broken Arrow Bluff', a subdivision as per the plat thereof, recorded in Plat Book "H", Page 16 ACR; thence North 89°46'11" West along said North boundary of 'Broken Arrow Bluff', 9.19 feet to a concrete monument (not identifiable) found at the Northwest corner of Lot 1 of 'Oaks of Kanapaha Unit 1', a planned unit development, as per the plat thereof recorded in Plat Book "M", Page 34 of said public records and the existing city limits line as per Ordinance #070457; thence South and West along the easterly and southerly lines of said Lot 1 to the Southeast corner of Lot 2 of 'Oaks of Kanapaha Unit 1'; thence West and Northwest along the southerly lines of said Lot 2 and lots 3, 4, 5 and 6 of 'Oaks of Kanapaha Unit 1' to the Southwest corner of said Lot 6; thence North along the West line of said Lot 6 to the Northwest corner of said Lot 6 and the existing city limits line as per Ordinance #060980; thence North 66°54'49" West, 350.32 feet to the point of beginning.

Less and except: parcel 1

A tract of land located in fractional Section 2, Township 9 South, Range 19 East and Section 35, Township 8 South, Range 19 East, Alachua County, Florida, according to City of Alachua Ordinances 0-91-19, 0-82-1, 0-91-18, 0-91-4, 0-91-15, 0-08-20, 0-93-8, being more particularly described as follows:

Commence at the Northwest corner of Turkey Creek Forest Unit No. 3D, as recorded in Plat Book "M", Page 98 ACR for a point of beginning and the existing city limits line as per Ordinance #3768; thence East along the North line of said subdivision, along the North line of Turkey Creek Forest Unit No. 1 as recorded in Plat Book "J", Page 7, along the North line of Turkey Creek Forest Unit No. 2 as recorded in Plat Book "K", Page 11, and along the North line of Turkey Creek Forest Unit No. 4, as recorded in Plat Book "M", Page 99, to the West right-of-way line of U.S. Highway No. 441; thence Northwest along said West right-of-way line of U.S. Highway No. 441 to the South line of that parcel located in Section 2, Township 9 South, Range 19 East outside the Arredondo Grant and described in ORB 1228, Page 417 ACR; thence Southwest along said South line of parcel to the West line of said parcel; thence Northwest along said West line to the North line of said parcel; thence Northeast along said North line to the West right-of-way line of U.S. Highway No. 441; thence Northwest along said right-of-way line to the North line of fractional Section 2, Township 9 South, Range 19 East outside the Arredondo Grant; thence East along the North line of said Section 2 to the East right-of-way line of U.S. Highway No. 441 at its intersection with the South line of the City of Gainesville Deerhaven Power Generating Station; thence Northwest along said East right-of-way line of U.S. Highway No. 441 to the intersection with the East line of the 150-foot wide power transmission line right-of-way; thence South along said East line to the Northwest corner of Turkey Creek Forest Unit No. 3D and the point of beginning.

(Ord. No. 080085, § 1(Exh. A), 10-2-08)

CHARTER COMPARATIVE TABLE LAWS OF FLORIDA

Chapter	Section	Section this Charter
90-394	1	Art. I, §§ 1.01—1.04 Art. II, §§ 2.01—2.11 Art. III, §§ 3.01—3.07 Art. IV, §§ 4.01—4.03 Art. V, §§ 5.01—5.05 Art. VI, §§ 6.01—6.04

CHARTER COMPARATIVE TABLE ORDINANCES

Ordinance Number	Adoption Date	Referendum Date	Section	Section this Charter
3744	10-21-91	—	1	App. I (note)
3745	11- 4-91	—	1	App. I (note)
3752	12-16-91	3-10-92	1	2.01, 2.02
3979	6-27-94	—	1	App. I (note)
3980	6-27-94	—	1	App. I (note)
4035	10-10-94	—	1	App. I (note)
4047	12-12-94	—	2	App. I (note)
4048	12-12-94	—	2	App. I (note)

4053	1-23-95	3-14-95	1	2.01—2.11
4060	1-30-95	—	1	App. I (note)
4061	1-30-95	—	1	App. I (note)
4062	1-30-95	—	1	App. I (note)
960938	10-13-97	—	1	App. I (note)
960939	10-13-97	—	1	App. I (note)
960940	10-13-97	—	1	App. I (note)
960941	10-13-97	—	1	App. I (note)
970051	10-13-97	—	1	App. I (note)
970136	10-27-97	—	1	App. I (note)
—	—	3-17-98		5.06
980987	6-14-99	—	1	App. I (note)
990947	1-10-00	—	2	App. I (note)
990866	1-24-00	—	2	App. I (note)
990898	1-24-00	—	2	App. I (note)
991230	4-10-00	—	2	App. I (note)
991231	4-10-00	—	2	App. I (note)
000130	7-24-00	—	2	App. I (note)
000738	12-18-00	—	2	App. I (note)
000665	1-22-01	—	2	App. I (note)
000666	1-22-01	—	2	App. I (note)
000797	1-22-01	—	2	App. I (note)
000798	1-22-01	—	2	App. I (note)
001162	4-23-01	—	2	App. I (note)
001160	5-14-01	—	2	App. I (note)
001161	5-14-01	—	2	App. I (note)
001163	5-14-01	—	2	App. I (note)
001912	11-26-01	2-26-02	2	App. I (note)
002124	12-10-01	—	2	App. I (note)
002393	3-11-02	6-25-02		App. I (note)
002394	3-11-02	6-25-02		App. I (note)
0202104	9- 9-02	—	2	App. I (note)
020024	7- 8-02	11- 5-02	1	3.05
			2 Added	3.08
			3 Added	5.07
020289	8-27-02	11- 5-02	1	2.04
020654	12- 9-02	—	2	App. I (note)
020749	2-10-03	4- 8-03	1	2.07
020815	2-10-03	—	2	App. I (note)
030250	8-25-03	—	2	App. I (note)
030457	12- 8-03	—	2	App. I (note)
030458	12- 8-03	—	2	App. I (note)
040280b	12-13-04	—	2	App. I (note)
040290	9-13-04	—	2	App. I (note)
040705	12-13-04	—	2	App. I (note)

040706	12-13-04	—	2	App. I (note)
041230	5- 9-05	—	2	App. I (note)
050547	11-14-05	—	2	App. I (note)
050662	12-12-05	—	2	App. I (note)
050699	12-12-05	—	2	App. I (note)
050716	12-19-05	—	2	App. I (note)
041138	1- 9-06	3- 7-06	1	5.06
050881	2-27-06	—	1	App. I (note)
051124	5- 8-06	—	1	App. I (note)
060097	7-24-06	—	1	App. I (note)
060148	8-14-06	—	1	App. I (note)
060730	2-12-07	—	1	App. I (note)
060731	2-12-07	—	1	App. I (note)
060972	5-14-07	—	2	App. I (note)
060980	5-14-07	—	2	App. I (note)
061079	6-11-07	—	2	App. I (note)
061147	5-14-07	—	2	App. I (note)
070075	8-13-07	—	2	App. I (note)
070083	8-13-07	—	2	App. I (note)
070215	11-26-07	—	2	App. I (note)
070457	11-26-07	—	2	App. I (note)
070458	11-26-07	—	2	App. I (note)
070514	1-14-08	—	2	App. I (note)
070721	2-11-08	—	2	App. I (note)
080137	7-28-08	11- 4-08	2	App. I (note)
080193	9- 4-08	—	1	App. I (note)
080085	10- 2-08	—	1(Exh. A)	App. I
080576	12-18-08	3-24-09	1 Added	5.09
080605	2- 5-09	—		App. I (note)
090809	4-15-10	—	2	App. I (note)
110505	1-19-12	—	1	App. I (note)
110680	3- 1-12	—	1	App. I (note)
130243	11- 4-13	—	2	App. I (note)
130339	12-19-13	—	2	App. I (note)
130340	12-19-13	—	2	App. I (note)
130341	12-19-13	—	2	App. I (note)
130342	12-19-13	—	2	App. I (note)
140124	10- 2-14	—	2	App. I (note)
140618	4-16-15	—	2	App. I (note)
150818	5- 5-16	—	2	App. I (note)
150912	6-16-16	—	2	App. I (note)
160156	9-15-16	—	2	App. I (note)
160216	2-16-17	—	2	App. I (note)
160744	6- 1-17	—	2	App. I(note)
160876	1- 4-18	11- 6-19	1	2.03, 2.04

170256	11- 2-17	—	2(Exh. A)	App. I(note)
170520	4-19-18	—	2	App. I(note)
170717	8- 2-18	3-19-19	1	5.01
170762	4-19-18	—	2	App. I(note)
170953	9- 6-18	—	2(Exh. A)	App. I(note)
171006	10- 4-18	—	2(Exh. A)	App. I(note)
171037	10- 4-18	—	2(Exh. A)	App. I(note)
180311	1- 3-19	—	2(Exh. A)	App. I(note)
180416	2-21-19	—	2(Exh. A)	App. I(note)
180538	2-21-19	—	2(Exh. A)	App. I(note)
180614	4- 4-19	—	2(Exh. A)	App. I(note)
181064	8-15-19	—	2(Exh. A)	App. I(note)
181065	9- 5-19	—	2(Exh. A)	App. I(note)
190419	2- 6-20	—	2(Exh. A)	App. I(note)
190420	2-20-20	—	2(Exh. A)	App. I(note)
191051	6-18-20	11- 3-20	1	3.04
191115	6-18-20	11- 3-20	1 Rpld	5.06
191120	6-18-20	11- 3-20	1	5.04
191121	6-18-20	11- 3-20	1 Added	Preamble
210562	6-16-22	11- 3-20	1	3.05(2)
			2	5.01(2)(d)
				5.01(2)(f), (g)
210734	9-15-22	—	2	App. I(note)
210851	7-21-22	11-8-22	1	2.04
210956	9-15-22	—	2	App. I(note)

Chapter 1 GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Gainesville, Florida," and may be so cited.

(Code 1960, § 1-1)

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances the following rules shall be observed and the following definitions shall apply unless the content clearly indicates otherwise:

Charter. The word "Charter" shall mean the Charter Laws of the city as printed in Part I of this volume.

City. The words "the city" or "this city" shall be construed as if the words "of Gainesville, Florida," followed them.

Code. The words "this Code" or "the Code" shall mean "The Code of Ordinances, City of Gainesville, Florida," as cited in section 1-1.

Commission. The words "the commission" shall be construed to mean the city commission of the City of Gainesville.

Computation of time. In computing any period of time prescribed or allowed by this Code, by order of court or by any applicable ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday nor legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

County. The words "the county" or "this county" shall mean the County of Alachua.

State law reference(s)—Boundaries of Alachua County, F.S. § 7.01.

F.S., Fla. Stats. or *Florida Statutes.* The terms "F.S.", "Fla. Stats." or "Florida Statutes" shall mean the official statutes of the State of Florida as adopted and amended by the Florida Legislature.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such person or officers.

Keeper and *proprietor.* The words "keeper" and "proprietor" shall mean and include persons, firms, associations, corporations, clubs and copartnerships, whether acting by themselves or a servant, agent or employee.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one (1) person and thing.

Officer, department, board, commission or other agency. Whenever any officer, department, board, commission or other agency is referred to by title only, such reference shall be construed as if followed by the words "of the City of Gainesville, Florida." Such reference shall include any authorized subordinate or designee.

Or, and. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or of a part of the building or land.

Person. The word "person" shall extend and be applied to associations, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal property. The term "personal property" includes every species of property except real property, as herein defined.

Property. The word "property" shall include real and personal property.

Public place. The term "public place" shall mean any park, cemetery, school yard or open space adjacent thereto and any lake or stream.

Real property. The term "real property" shall include lands, tenements and hereditaments.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curb line and the adjacent property line, intended for the use of pedestrians, excluding parkways.

State. The words "the state" or "this state" shall be construed to mean the State of Florida.

State law or *general law.* The term "state law" and "general law" shall refer to the Florida Statutes and Session Laws of the State of Florida.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public highways in the city.

Street line. The words "street line" shall mean that line which delineates the right-of-way of any street and is identical to the property line of persons owning property fronting on a street.

Tenant. The word "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease of or who occupies the whole or a part of such building or land either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

(Code 1960, § 1-2)

State law reference(s)—Construction of statutes, F.S. § 1.01 et seq.

Sec. 1-3. Headings, catchlines, history notes and references.

The chapter, article and division headings, the section catchlines and history notes, and all references and notes in small type, shall not be considered as part of the text of the sections and are used in this Code only to assist in the usage of this Code.

(Code 1960, § 1-3)

Sec. 1-4. Certain provisions saved from repeal.

Nothing in this Code or the ordinance adopting this Code shall affect any of the following when not inconsistent with this Code:

(1) Any offense or act committed or done or any penalty or forfeiture incurred or any contract or right established or accruing before the effective date of this Code;

(2) Any ordinance or resolution promising or guaranteeing the payment of money by the city, or authorizing the issuance of any bonds of the city or any evidence of the city's indebtedness, or any contract or obligation assumed by the city;

(3) The administrative ordinances or resolutions of the city commission;

(4) Any right of franchise granted by any ordinance or resolution of the city commission or any preceding governing body to any person, firm or corporation;

(5) Any ordinance dedicating, naming, establishing, locating, relocating, opening, paving, widening, or vacating any street or public way in the city;

(6) The annual budget or appropriation ordinance or resolution;

(7) Any ordinance establishing and prescribing the street grades of any street in the city;

(8) Any ordinance levying taxes;

(9) Any ordinance providing for local improvements and assessing taxes therefor;

(10) Any ordinance dedicating or accepting any plat or subdivision in the city;

(11) Any ordinance designating or naming public buildings, athletic fields, airports or playgrounds;

(12) Any ordinance amending the zoning map of the city; the Charter or any special act which was converted to an ordinance by F.S. § 166.021(5), or any ordinance relating to or describing the corporate limits;

(13) Any ordinance authorizing any encroachment on any city or public property;

(14) Any ordinance or code or parts thereof adopted by reference by any section of such Code and not included herein;

(15) Nor shall such repeal be constructed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance which is repealed by this Code.

Sec. 1-5. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code of Ordinances which amend, repeal or in any way affect this Code of Ordinances, may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the city commission.

(b) Amendments to any of the provisions of this Code should be made by amending the provisions by specific reference to the section number of this Code in substantially the following language: "That section _____ of the Code of Ordinances of Gainesville, Florida, is hereby amended to read as follows: _____." The new provisions should then be set out in full as desired.

(c) If a new section not heretofore existing in the Code is to be added the following language should be used: "That the Code of Ordinances of Gainesville, Florida, is hereby amended by adding a section, to be numbered _____, which section reads as follows: _____." The new section should then be set out in full as desired.

(d) All sections, articles, chapters or provisions desired to be repealed should be specifically repealed by section, article or chapter number, as the case may be.

(Code 1960, § 1-4)

Cross reference(s)—For explanation of numbering system for adding new sections, see Preface.

Sec. 1-6. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the city commission. A supplement to the Code shall include all substantive permanent and general parts of ordinances passed by the commission or adopted by initiative and referendum during the period covered by the supplement and all changes made thereby in the Code, and shall also include all amendments to the Charter during the period. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in the catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but, in no case, shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Sec. 1-7. Effect of repeal of ordinances.

(a) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(b) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed.

(Code 1960, § 1-5)

State law reference(s)—"No bill of attainder, ex post facto law, nor any law impairing the obligation of contracts, shall ever be passed." Fla. Const. 1968, Art. I, § 10.

Sec. 1-8. Severability of parts of Code.

If any phrase, clause, sentence, paragraph, or section of this Code shall be declared unconstitutional by the valid judgment or decree of any court, such unconstitutionality shall not affect any of the remaining provisions of this Code.

(Code 1960, § 1-6)

Sec. 1-9. General penalty; abatement.

(a) Whenever in this Code or in any ordinance of the city or in any rule or regulation adopted pursuant to this Code, any act is prohibited or is made or declared to be unlawful or an offense, misdemeanor or public nuisance, or whenever in such Code, ordinance, rule or regulation the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty, is provided therefor, the violation of any such provision of this Code or any ordinance, rule or regulation shall be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment for a term not exceeding sixty (60) days, or by both such fine and imprisonment. Each day any violation of any provision of this Code or of any ordinance shall continue shall constitute a separate offense.

(b) In addition to the penalty provided in subsection (a), any condition which has been declared a nuisance may be abated as provided in this Code.

(Code 1960, § 1-8)

State law reference(s)—Fines and forfeitures in county court payable to municipality, F.S. § 34.191; punishment for misdemeanors, F.S. §§ 775.082, 775.083.

Chapter 2 ADMINISTRATION[2]

ARTICLE I. IN GENERAL

Sec. 2-1. City seal.

The corporate seal of the city shall be an impression showing a locomotive with the year 1869 enclosed by the words "City of Gainesville, State of Florida" in a circle as shown by the following impress, and such impress shall be the corporate seal of the city:

City Seal

(Code 1960, § 1-10)

Editor's note(s)—The corporate seal of the City of Gainesville is the same as that of the Town of Gainesville, incorporated in 1869.

[2]Cross reference(s)—Construction trades advisory board, § 6-211 et seq.; human relations advisory board, § 8-21 et seq.; elections, Ch. 9; fire prevention bureau, § 10-1; smoking in government-owned or government-operated buildings, § 11.5-20; affordable housing advisory committee, § 14-6; public recreation board, § 18-36 et seq.; nature centers commission, § 18-56 et seq.; police, Ch. 21; taxation, Ch. 25; utilities, Ch. 27; administration of land development code, § 30-348 et seq.; schedule of fees, rates and charges, App. A.

State law reference(s)—Municipal Home Rule Powers Act, F.S. Ch. 166.

Cross reference(s)—Clerk of the commission as custodian to city seal and records, § 2-164.

Secs. 2-2—2-65. Reserved.

ARTICLE II. CITY COMMISSION[3]

Sec. 2-66. Salaries.

(a) *Definitions.*

(1) The *"Annual factor"* means one plus the lesser of:

A. The average percentage increase in the salaries of state career service employees for the current fiscal year as determined by the department of management services or as provided in the General Appropriations Act: or

B. Seven percent.

(2) *"Cumulative annual factor"* means the product of all annual factors certified under F.S. § 145.19, prior to the fiscal year for which salaries are being calculated.

(3) *"Initial factor"* means a factor of 1.292.

(4) *"Enhanced base salary"* is the base salary listed in the table below (based upon the estimated population of the City of Gainesville, as published by the U.F. Bureau of Economic and Business Research, or a comparable credible source selected by the human resources department) plus the product of the population in excess of the minimum population times the group rate. The enhanced base salary is compensation for population increments over the minimum for each population group.

Table 1

Pop. Group	City Pop. Range		Base Salary	Group Rate
	Minimum	Maximum		
I	0	9,999	$4,500	$0.150
II	10,000	49,999	6,000	0.075
III	50,000	99,999	9,000	0.060
IV	100,000	199,999	12,000	0.045
V	200,000	399,999	16,500	0.015
VI	400,000	999,999	19,500	0.005
VII	1,000,000		22,500	0.000

[3]Charter reference(s)—City commission, § 2.01 et seq.

State law reference(s)—Code of ethics for public officers and employees, F.S. § 112.311 et seq.; public records, F.S. Ch. 119; minimum procedural requirements for adoption of ordinances and resolutions, F.S. § 166.041; public meetings and records, F.S. § 286.011.

(5) *"Adjusted salary"* shall be the product, rounded to the nearest dollar, of the enhanced base salary multiplied by the initial factor, then multiplied by the cumulative annual factor, and then multiplied by the annual factor.

(b) *Calculation of salary.*

(1) Each member of the city commission shall receive a salary that is equal to the amount of the adjusted salary based upon the most recent population data available to the human resources department at the time the budget is developed in May of each year.

(2) The human resources department shall certify the annual factor and cumulative annual factor and shall use the same factors as the Florida Department of Management Services, to the extent possible. If, after due diligence, the human resources department is unable to obtain the annual factor and cumulative annual factor from the Florida Department of Management Services, or other department of the State of Florida which is responsible for determining the factors, the human resources department shall use the annual factor and cumulative annual factor from the most recent year that the Florida Department of Management Services certified the factors.

(3) In any given year, the mayor's salary shall be that of a commissioner plus 25 percent of the commissioner salary.

(c) *Frequency of pay.* The annual salaries calculated according to the formula in this section will become effective beginning the first full biweekly pay period in January of each year. The salaries shall be paid on a biweekly pay cycle from the general fund of the city in equal amounts for each biweekly period of service, except for the first and last payment that shall be made on a pro rata basis. Such salary shall be calculated from the date the commissioner or mayor respectively, takes office and shall continue until the mayor or commissioner no longer holds such office.

(Code 1960, § 2-7.1; Ord. No. 3257, § 1, 9-22-86; Ord. No. 3584, § 1, 12-18-89; Ord. No. 961118, § 1, 7-14-97; Ord. No. 991293, § 1, 5-15-00; Ord. No. 002300, § 1, 2-25-02; Ord. No. 2022-758 , § 1, 12-15-22)

Sec. 2-67. Mayor may declare state of emergency, water emergency.

(a) *State of emergency.* The mayor, or mayor pro-tem if the mayor is unavailable, may declare a state of emergency within the City of Gainesville pursuant to authority granted in section 2.08 of the Charter Laws of the City of Gainesville, F.S. § 870.042 and F.S. § 252.38, and exercise the powers granted therein. In addition, it is recognized that the Federal Government and State of Florida Government may declare a state of emergency pursuant to their authority granted by federal and/or state law and Alachua County Government may declare a state of emergency within the entire geographical area of the county pursuant to the authority granted in Sections 27.04 and 27.07 of the Alachua County Code of Ordinances and F.S. § 252.38(1).

(b) *Water emergency.*

(1) *Declaration of water emergency.* Upon the recommendation of the general manager for utilities or his/her designee, the mayor may declare a water emergency, and in consultation with the general manager, impose water use restrictions up to and including water rationing by the city's water utility and the prohibition of any and all uses as may be nonessential and make such other orders relating to the potable water supply as may be necessary to protect the public health, safety and welfare.

(2) *Definition of nonessential water use.* For purposes of this section, nonessential water uses include those uses that are deemed by the mayor as not essential for the preservation of public health and safety. The term "nonessential uses" may include but is not limited to water used for the irrigation of vegetation.

(3) *Special relief.* Any order issued under authority of this section shall include a provision whereunder consumers who believe they will suffer undue hardship or believe their health and/or safety is jeopardized under the provisions of the order may request that the general manager for utilities or his/her designee grant special, administrative relief from the water use restrictions and be afforded an opportunity to be heard on such request.

(4) *Enforcement.* Enforcement of the provisions of orders issued under the authority of this section shall be as provided under sections 2-336 through 2-339 of this Code. In addition to the foregoing, the general manager for utilities or his/her designee is authorized to discontinue water service to any consumer as necessary to enforce such orders. The general manager shall adopt rules regarding such discontinuance to afford the consumer notice and an opportunity to be heard.

(5) *Penalties.* Penalties for violation of orders issued under the authority of this section shall be as provided under chapter 2, article V, division 6 of this Code.

(c) *Penalties.* Except as provided in subsection (b)(5) above:

(1) Any violation of a provision of any emergency measure established pursuant to F.S. § 870.043 shall be misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or § 775.083.

(2) Any violation of a provision of any emergency measure established pursuant to F.S. § 252.38 by the city or Alachua County may be enforced by civil citation if allowed by the emergency declaration, order, or other measure, or by criminal penalties pursuant to F.S. § 252.50. Any violation of a provision of any emergency measure established pursuant to federal and/or state law by the Federal Government or State of Florida Government may be enforced as provided in the federal or state emergency declaration, order or other measure. Each violation shall be considered a separate offense, which can be prosecuted separately.

(Code 1960, §§ 10A-1—10A-5; Ord. No. 980128, § 1, 7-27-98; Ord. No. 000866, § 1, 2-26-01; Ord. No. 040459, § 1, 10-25-04; Ord. No. 191242 , § 1, 6-18-20)

State law reference(s)—State Disaster Preparedness Act, F.S. Ch. 252; emergency continuity of government, F.S. Ch. 22; enabling authority for local officers, F.S. § 22.05; Florida Mutual Aid Act, F.S. § 23-12 et seq.; emergency measures by local authorities, F.S. § 870.041 et seq.

Sec. 2-68. Reserved.

Editor's note(s)—Ord. No. 960107, § 1, adopted Aug. 12, 1996, repealed the provisions of former § 2-68, which pertained to granting or extending of franchises by majority vote of city commission, as derived from Ord. No. 3544, § 2(2-5.3), adopted July 10, 1989.

Secs. 2-69—2-140. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES[4]

[4]Cross reference(s)—Electrical inspector, § 6-71 et seq.; plumbing inspector, § 6-94; director of parks, recreation and cultural affairs, § 18-1; chief of police, § 21-1.

State law reference(s)—Code of ethics for public officers and employees, F.S. § 112.311 et seq.

DIVISION 1. GENERALLY

Sec. 2-141. Residence requirements for city manager, general manager for utilities, city attorney, city clerk.

Except as provided below, the city manager, the general manager for utilities, the city attorney and the city clerk shall be and remain bona fide residents of the City of Gainesville. If at any time the city manager, the general manager for utilities, the city attorney, or the city clerk fail to be and remain a resident of the city, such person shall be automatically disqualified and their employment shall be terminated for cause. Persons may be appointed as city manager, the general manager for utilities, the city attorney and the city clerk even though they are not a resident of the city at the time of appointment provided, however, that such person shall have six months after their appointment as city manager, the general manager for utilities, the city attorney and the city clerk to become a bona fide resident of the city, unless upon good cause shown they are granted additional extensions by the city commission.

(Code 1960, § 2-4.1; Ord. No. 3543, § 1, 6-12-89; Ord. No. 3709, § 1, 4-1-91; Ord. No. 210562 , § 3, 6-16-22)

Sec. 2-142. Reserved.

Editor's note(s)—Ord. No. 070833, § 1, adopted Feb. 25, 2008, repealed § 2-142 which pertained to terms of city manager, city attorney, clerk of the commission and the internal auditor, and derived from § 2-5 of the 1960 Code.

Sec. 2-143. Reserved.

Sec. 2-144. Physical examinations for employees.

(a) No applicants for the employee classifications of police officer and firefighter shall be employed by the city until they have successfully met the physical and mental requirements prescribed by the state and the city manager.

(b) All applicants for full-time employment with the city, other than those specified above in subsection (a) shall be required to complete a health history and physical assessment as part of the screening for employment to be prescribed and approved by the administrative department head. However, such applicant shall not have to submit himself/herself to a preemployment physical or mental examination unless the administrative department head, in his/her discretion, determines that there is a health irregularity of the applicant which requires same.

(c) All permanent full-time employees shall be offered a physical and/or mental examination as prescribed and made by the administrative department head at:

(1) Age 30;

(2) Age 40; and

(3) Every five years thereafter.

(d) Annual physical and/or mental examinations may be required of employees in the fire and police departments at the discretion of the city manager.

(Code 1960, § 2-8; Ord. No. 3197, § 1, 3-17-86)

Sec. 2-145. Standards of fitness; special examinations; discharge of physically unfit.

(a) It shall be the duty of the administrative department head to establish such standards of fitness as shall, in his/her opinion, be necessary for the different occupations of city employees, and his/her opinion upon such standards shall be final. The administrative department head may require the employee to submit himself/herself to the administrative department head for a physical or mental examination, should the administrative department head, with his/her discretion, feel that the employee might be mentally or physically unable to perform his/her required duties satisfactorily. The administrative department head shall be furnished a copy of each examination made.

(b) It shall be the duty of every city employee to submit to a physical or mental examination when required to do so by the administrative department head. The failure or refusal of any city employee to submit to a physical or mental examination shall be cause for dismissal. If the administrative department head finds any such employee to be mentally or physically unfit to perform his/her duties, it shall be the duty of the administrative department head to report same to the department head in the department in which the employee is employed. Upon receiving the report, the department head under whom the employee works shall, with the approval of the administrative department head, investigate a disability retirement for the employee, or if the employee does not qualify for disability retirement under the ordinances of the city, the department head shall preemptorily discharge the person for such cause. The discharge shall be subject to the city's grievance procedures.

(Code 1960, § 2-9)

Sec. 2-146. Personal interest prohibited.

Except for negotiated compensation package, salary, or wage, no officers, or employees shall have any personal interest in the profits of, nor derive any benefit from any contract, job, work, or service for the municipality. All terms of a negotiated compensation package shall be reduced to writing and executed by the employee and manager.

(Ord. No. 3635, § 1, 6-18-90; Ord. No. 4070, § 1, 4-10-95)

Secs. 2-147—2-160. Reserved.

DIVISION 2. CITY CLERK[5]

[5]Ordinance No. 210562 , § 4, adopted June 16, 2022, retitled division 2 from Clerk of the Commission to read as herein set out.

Sec. 2-161. Duty to attend meetings of commission and record proceedings; minute book.

It shall be the duty of the city clerk to attend all meetings of the city commission and to take and keep correct minutes of tire proceedings of the commission. The proceedings shall be recorded as soon as practicable in a book to be known as the minute book.

(Code 1960, § 2-1; Ord. No. 210562 , § 4, 6-16-22)

Sec. 2-162. Authority to appoint and remove subordinate employees.

In order to fulfill and discharge the duties of the city clerk as required by the Charter, this Code and by the city commission, the city clerk shall appoint and remove all subordinate employees in the office of the city clerk.

(Code 1960, § 2-1.1; Ord. No. 210562 , § 4, 6-16-22)

Sec. 2-163. Duty as to ordinances.

The city clerk shall record all ordinances passed by the commission and shall make the following certificate on the original: "I hereby certify that a true record of this ordinance was made by me in Ordinance Book No. ____ on this _____ day of ____, 20__." The city clerk shall also certify that the title of the ordinance was published, giving the date and length of time. The original ordinances shall be filed, noting date of filing.

(Code 1960, § 2-2; Ord. No. 210562 , § 4, 6-16-22)

State law reference(s)—Minimum procedural requirements for adoption of ordinances and resolutions, F.S. § 166.041.

Sec. 2-164. Custodian of city seal and certain city records; duty to give copies of records; fee.

The city clerk is hereby made the custodian of the city seal; records of the city commission, including but not limited to resolutions, ordinances, proclamations, minutes, agendas, meeting notices, digital/audio recordings of city commission meetings, and correspondence; lobbyist registration records; domestic partnership registration records; the records of any board or committee for which the clerk is appointed secretary; and any other records designated by the city commission. The city clerk shall at any time give certified copies of any of the records to any persons desiring the same, for which there shall be charged the same fees as are allowed the clerk of the circuit court under the then current Florida Statutes.

(Code 1960, § 2-3; Ord. No. 3586, § 1, 12-18-89; Ord. No. 080939, § 1, 5-7-09; Ord. No. 210562 , § 4, 6-16-22)

Cross reference(s)—City seal, § 2-1.

State law reference(s)—Service charges by clerk of the circuit court, F.S. § 28.24.

Secs. 2-165—2-175. Reserved.

DIVISION 3. CITY INTERNAL AUDITOR[6]

Sec. 2-176. Duties.

In addition to the duties stated in Section 3.05 of the City Charter, the city internal auditor shall:

(a) Perform financial and performance audits as well as attestation engagements in accordance with Generally Accepted Governmental Auditing Standards (GAGAS).

(b) Perform or cause to be performed investigations of fraud, waste, and abuse allegations.

(c) Perform all other duties, including GAGAS defined "nonaudit services" or "professional services other than audits or attestation engagements" assigned by the city commission.

(d) Assist the audit and finance committee in establishing factors to use for the evaluation of external auditors, issuing request for qualifications, evaluating and ranking external auditor candidates.

(e) Perform the duties of inspector general.

(Ord. No. 150284 , § 1, 2-18-16)

Sec. 2-177. Authority to appoint and remove subordinate employees.

The internal auditor shall appoint and remove all subordinate employees in the internal auditor's office.

(Ord. No. 150284 , § 1, 2-18-16)

Sec. 2-178. Audit committee; selection of external auditor.

Pursuant to F.S. § 218.391, the city commission shall appoint a committee who shall establish factors to use to evaluate external auditor candidates, cause a notice of issuance of request for proposals to be issued when the city seeks to contract with an external auditor, evaluate and rank the external auditor proposals and make recommendations to the city commission on the ranking of proposals.

(Ord. No. 150284 , § 1, 2-18-16)

Secs. 2-179—2-195. Reserved.

ARTICLE IV. DEPARTMENTS

[6]Editor's note(s)—Prior to the reenactment of Div. 3 by Ord. No. 150284 , § 1, adopted Feb. 18, 2016, said Div. 3, §§ 2-176—2-179, was repealed by Ord. No. 3974, § 1, adopted May 9, 1994. The former division pertained to the power planning and external power affairs officer and derived from § 2-5.2(a)—(c) of the 1960 Code.

DIVISION 1. GENERALLY

Sec. 2-196. Directors of departments.

(a) Pursuant to Section 3.02 of the Charter of the City of Gainesville, and Chapter 90-394, Laws of Florida, as amended, the following job titles are designated as directors of departments, who the city manager may appoint and remove at will:

(1) Assistant city manager.

(2) Recreation, parks and culture director.

(3) General services director.

(4) Public works director.

(5) Communications and marketing manager.

(6) Fire chief.

(7) Regional transit system director.

(8) Reserved.

(9) Planning and development services director.

(10) Police chief.

(11) Administrative services director.

(12) Building official.

(13) Reserved.

(14) Community redevelopment manager.

(15) Code enforcement manager.

(16) Housing and community development manager.

(17) Planning manager.

(18) Computer services director.

(19) Finance director.

(20) Human resources director.

(21) Management and budget director.

(22) Risk management director.

(23) Legislative and grants coordinator.

(b) Pursuant to Section 3.06 of the Charter of the City of Gainesville, and Chapter 90-394, Laws of Florida, as amended, the following job titles are designated as directors of departments, who the general manager may appoint and remove at will:

(1) Assistant general manager, customer and administrative services.

(2) Assistant general manager, energy delivery.

(3) Assistant general manager, energy supply.

(4) Assistant general manager, water/wastewater systems.

(5) Chief financial officer, utilities.

(6) Community relations director.

(7) Human resources director.

(Ord. No. 050567, §§ 1, 2, 12-12-05; Ord. No. 080762, § 1, 11-5-09; Ord. No. 120585, § 1, 1-3-13)

Secs. 2-197—2-210. Reserved.

DIVISION 2. DEPARTMENT OF PLANNING AND DEVELOPMENT SERVICES[7]

Sec. 2-211. Created; appointment of director.

(a) There is hereby created a department of planning and development services to be headed by a director appointed by the city manager. The department shall be under the immediate direction and control of the city manager, and the director shall report to and function directly under the city manager.

(b) The department of planning and development services shall be the administrative arm of city government combining all functions related to zoning, planning, building, inspections and such other duties and responsibilities as may be from time to time determined by the city manager.

(Code 1960, § 2-91; Ord. No. 080762, § 2, 11-5-09)

Sec. 2-212. Organization.

(a) The department of planning and development services shall be divided into three separate areas as follows:

(1) A planning division under a planning manager, which division shall be responsible for comprehensive and current planning and concurrency management throughout the city.

(2) A building division under a building official which will enforce all provisions of the building code, issue building permits, conduct required inspections, and shall be the enforcing arm and official of the zoning and building codes.

(3) A planning and development services division which will consist of overall administrative functions as well as economic development functions including the following: management of the Technology Enterprise Center, administration of the enterprise zone program, development activities associated with Airport Industrial Park, small business development activities, and all other duties as the city manager may assign from time to time.

[7]Editor's note(s)—Ord. No. 080762, § 2, adopted Nov. 5, 2009, changed the title of Div. 2 from "Department of Community Development" to "Department of Planning and Development Services."

Cross reference(s)—Buildings and building regulations, Ch. 6; housing, Ch. 13; land development code, Ch. 30.

(b) Additional divisions of the department of planning and development services may be created from time to time by ordinance and the several responsibilities of each division may be added to, amended, transferred to another division or reorganized in such fashion as from time to time may be determined necessary by the city commission.

(Code 1960, § 2-92; Ord. No. 080762, § 3, 11-5-09)

Sec. 2-213. Duties and responsibilities.

The department of planning and development services shall be the administrative department of the city government charged with the responsibility of performing the several clerical, investigative, inspection and other administrative duties for the city plan board, development review board, historic preservation board, and such other boards or committees as the city manager may from time to time designate and shall relate their activities to making studies and recommendations on matters that are under the supervision of the department of planning and development services.

(Code 1960, § 2-93; Ord. No. 080762, § 4, 11-5-09; Ord. No. 190201 , § 1, 10-17-19)

Secs. 2-214—2-225. Reserved.

DIVISION 3. DEPARTMENT OF FINANCE[8]

Sec. 2-226. Created; appointment of director.

There is hereby created a department of finance to be headed by a director of such department to be appointed by the city manager. The department of finance shall be under the immediate direction and control of the city manager, and the head of this department shall report to, and function directly under, the city manager.

(Code 1960, §§ 2-17, 2-17(b); Ord. No. 160951 , § 1, 6-1-17)

Sec. 2-227. Functions.

The department of finance shall be the administrative arm of city government, combining functions relating to purchasing, management information and reports, assessment and collection of taxes, billings, accounting, and all matters relating to finance, and such other duties and responsibilities as may be from time to time determined by the city manager. The director of finance shall be responsible for the investment of all funds of the city, and may delegate authority to conduct investment transactions and manage investments to one or more subordinates.

(Code 1960, § 2-17(a); Ord. No. 160951 , § 1, 6-1-17)

Sec. 2-228. Bond required for director.

Before entering upon his/her duties as the head of the department of finance, the director shall enter into a good and sufficient bond to be approved by the city commission in a sum to be set by the city commission, but in

[8]Cross reference(s)—Finances generally, § 2-431 et seq.; taxation, Ch. 25.

no event less than $100,000.00, to be written by a surety company authorized to do business in the state for the faithful performance of the duties of the director. The premium on the bond is to be paid by the city.

(Code 1960, § 2-17(e))

Sec. 2-229. Director to be tax collector.

In addition to the other duties and responsibilities required in this division of the department of finance, the director of that department shall be the city tax collector. The director of the department may appoint an assistant or assistants in the performance of his/her duties as tax collector, or in any other of his/her duties and responsibilities created by this division.

(Code 1960, § 2-17(b))

Secs. 2-230—2-244. Reserved.

ARTICLE V. BOARDS[9]

DIVISION 1. GENERALLY[10]

Sec. 2-245. Boards to report to city commission; annual reports; and review.

All boards created by the city commission shall report to the city commission, unless a charter provision or ordinance of the city provides otherwise. Each board created by the city commission shall submit an annual written report describing its activities during the previous year. The annual report must be submitted to the city commission in accordance with the schedule published by the city clerk. At least every five years, the city commission shall review the purpose, functions, and duties of all boards to determine if they should continue to exist.

(Ord. No. 210356 , § 1, 6-16-22)

[9]Ordinance No. 210356 , § 1, adopted June 16, 2022, retitled article V from boards, commissions and committees to read as herein set out.

Cross reference(s)—Construction trades board, § 6-211 et seq.; human rights board, § 8-21 et seq.; affordable housing advisory committee, § 14-6; public recreation and parks board, § 18-36 et seq.; nature centers commission, § 18-56 et seq.

[10]Ord. No. 210356 , § 1, adopted June 16, 2022, amended division 1 in its entirety to read as herein set out. Former division 1, §§ 2-245—2-249, pertained to similar subject matter, and derived from §§ 1-14, 1-15, 2-5.1 of the 1960 Code; Ord. No. 3164, § 1, 9-23-85; Ord. No. 3300, § 1, 11-17-86; Ord. No. 3367, § 1, 8-24-87; Ord. No. 3707, § 1, 3-18-91; Ord. No. 3988, §§ 1, 2, 7-11-94; Ord. No. 4049, § 1, 1-9-95; Ord. No. 960373, § 1, 5-27-97; Ord. No. 110658, § 1, 9-5-13.

Sec. 2-246. Members to remain in office until successors appointed; exceptions.

The members of all boards, appointed by the city commission may remain in office until their successors are appointed, unless a charter provision or ordinance of the city provides otherwise.

(Ord. No. 210356 , § 1, 6-16-22)

Sec. 2-247. Removal from office; attendance.

(a) For purposes of this section:

Advisory board means any board created by the city commission whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations.

Attend or *attendance* means presence at a board meeting for a duration of at least 50 percent of the entire meeting time as verified by the staff liaison on the attendance record.

Board means any advisory, quasi-judicial, or administrative board, commission, committee, council, or similar collegial body created by the city commission.

Quasi-judicial or *administrative board* means any board created by the city commission whose powers, jurisdiction, and authority include the final determination, or adjudication of any personal or property rights, duties, or obligations.

(b) Unless otherwise provided by law, the city commission may remove from office any appointed member of a board without cause or prior notice.

(c) With the exception of members of the Gainesville-Alachua County Regional Airport Authority, the board of trustees for the City of Gainesville Police Officers and Firefighters Consolidated Retirement Plan, the governing board of the Alachua County Library District, the Gainesville Housing Authority, the State Housing Initiatives Partnership-Affordable Housing Advisor Committee, and other boards whose appointment and removal is governed by state statutes, any appointed member of a board will be automatically removed from office under the following circumstances:

(1) *Quasi-judicial and administrative boards.* The board member has failed to attend two of the six most recent board meetings. Board members will be allowed one excused absence per calendar year for a medical reason or professional or educational obligation. Board members shall notify the staff liaison of an excused absence prior to the meeting, if practicable.

(2) *Advisory boards.* The board member has failed to attend three of the six most recent board meetings. Board members will be allowed two excused absences per calendar year for a medical reason or professional or educational obligation. Board members shall notify the staff liaison of an excused absence prior to the meeting, if practicable.

(d) The city commission may consider the attendance record of any current or former board member being considered for appointment or reappointment.

(Ord. No. 210356 , § 1, 6-16-22)

Sec. 2-248. Member appointment process; residency; limitations.

The city commission shall appoint all members of boards created by the city commission unless otherwise provided by law. Unless professional expertise is listed as a requirement or preference for board membership and

no resident applicant meets that criteria, board members must reside in the city and will be automatically removed from the board if they fail to remain residents of the city. Board members cannot serve on more than two city boards concurrently, or more than one quasi-judicial board.

Each staff liaison shall notify the city clerk of vacancies (due to resignation or removal) and of term expirations at least 60 days prior to the end of the term. The city clerk shall administer application, appointment, and removal processes. The city clerk shall issue notices of appointment and maintain copies of application and appointment correspondence. The city clerk shall coordinate with the charter officers to provide member orientation and training for new board members as needed.

(Ord. No. 210356 , § 1, 6-16-22)

Sec. 2-249. City staff liaison.

Except as provided otherwise by ordinance, the city commission shall designate a charter officer to provide administrative support to city boards. The applicable charter officer shall designate a staff liaison to administer the board.

The staff liaison shall provide orientation materials, the board rules of procedure, and applicable enabling code sections to board members. The staff liaison shall communicate relevant information between the board and the city clerk, including board reports and recommendations and other actions taken by the board.

The staff liaison shall provide reasonable notice of each board meeting to the city clerk prior to the meeting. The staff liaison shall make, or cause to be made, the recording of minutes of each meeting and shall verify the attendance of board members at each meeting. The staff liaison shall timely file the minutes, meeting recordings (if any), and attendance record with the city clerk using the city's agenda management system. Minutes must be posted monthly unless the board meets at a less frequent interval; in such case, a draft should be posted and updated after the board has approved the final version.

(Ord. No. 210356 , § 1, 6-16-22)

Sec. 2-250. Rules of procedure.

All boards shall adopt rules of procedure in a form approved by the city attorney

(Ord. No. 210356 , § 1, 6-16-22)

Secs. 2-251—2-260. Reserved.

DIVISION 2. CITY BEAUTIFICATION BOARD[11]

Sec. 2-261. Created.

A city beautification board is hereby created.

[11]Cross reference(s)—Land development code, Ch. 30.

(Code 1960, § 2-71)

Sec. 2-262. Membership.

(a) The city beautification board shall consist of nine members. The members shall be appointed by the city commission, one of whom shall be annually elected chair by the board. Each member shall be appointed for a term of three years that shall begin on the first day of November of the year the member is appointed. A board member may not serve on the board for more than two consecutive three-year terms.

(b) Vacancies on said board shall be filled by the city commission for the unexpired term of the member whose vacancy is being filled.

(c) All members of the board shall be residents of the county.

(Code 1960, § 2-72; Ord. No. 3195, § 1, 3-17-86; Ord. No. 3222, § 1, 6-2-86; Ord. No. 950289, § 1, 7-24-95; Ord. No. 960368, § 1, 11-25-96; Ord. No. 190264 , § 1, 1-16-20)

Sec. 2-263. Authority to adopt bylaws.

The board shall adopt such bylaws as may be necessary to provide for the organization and transaction of the business of the board, which bylaws shall become effective upon their being submitted in writing to and approved by the city commission.

(Code 1960, § 2-73; Ord. No. 950289, § 2, 7-24-95)

Sec. 2-264. Function and duties.

The city beautification board shall study, investigate, develop, assist, advise and recommend to the city commission any and all matters pertaining to beautification, environment and citizens' participation relating to same. In carrying out its function and duties, the board shall advise and recommend plans to organizations and groups in the city and promote public interest in the general improvement of the appearance of the city.

(Code 1960, § 2-74; Ord. No. 190264 , § 2, 1-16-20)

Sec. 2-265. Reports required.

On or before the first day of November of each year, the city beautification board shall cause to be filed with the city clerk a written report of the work performed and the results accomplished by the board, including the receipt and disbursement of all funds handled by the board.

(Code 1960, § 2-75; Ord. No. 210562 , § 5, 6-16-22)

Secs. 2-266—2-280. Reserved.

DIVISION 3. GAINESVILLE CULTURAL AFFAIRS BOARD[12]

Sec. 2-281. Created.

The Gainesville Cultural Affairs Board is hereby created.

(Ord. No. 170526 , § 1, 3-1-18)

Sec. 2-282. Composition; appointment, term of members; filling of vacancies.

The Gainesville Cultural Affairs Board shall be composed of ten persons appointed for three-year terms by the city commission. Members should have a strong interest in the arts and should represent a broad spectrum of society; including, but not limited to, practicing artists, recreation specialists, business persons, educators, art historians, tourism professionals and citizens interested in arts advocacy.

No member may be the owner or operator of, or consultant for, a for-profit enterprise engaged in the appraisal, sale, leasing or showing of art to the public on a retail or wholesale basis. The city commission shall fill vacancies for the unexpired terms of members.

(Ord. No. 170526 , § 1, 3-1-18)

Sec. 2-283. Duties generally.

The duties of the Gainesville Cultural Affairs Board shall be to advise the city commission in regard to interest in and promotion of the arts and eco-heritage tourism, to develop local cultural resources and to assist the cultural affairs manager in the planning and implementation of community cultural involvement.

(Ord. No. 170526 , § 1, 3-1-18)

Sec. 2-284. Committees.

The Gainesville Cultural Affairs Board may create, alter and abolish committees, which bodies shall advise the board on matters concerning the cultural activities or programs desired by the citizens of the area. The board shall determine the committees' composition, structure and duties.

(Ord. No. 170526 , § 1, 3-1-18)

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[12]Editor's note(s)—Ord. No. 170526 , § 1, adopted March 1, 2018, amended division 3 in its entirety to read as herein set out. Former division 3, §§ 2-281—2-285, pertained to Gainesville-Alachua County Cultural Affairs Board. See Code Comparative Table for complete derivation.

Cross reference(s)—Art in public places, Ch. 5.5.

Sec. 2-285. Selection of officers; meetings.

(a) The Gainesville Cultural Affairs Board and its committees shall select one of their members as chairperson and such other officers as they may determine.

(b) The board and its committees shall meet at such time and place as provided in their rules or procedures which rules shall also provide for the transaction of the business. Such rules and procedures shall become effective after approval by the city commission.

(Ord. No. 170526 , § 1, 3-1-18)

Secs. 2-286—2-300. Reserved.

DIVISION 4. POLICE ADVISORY COUNCIL

Sec. 2-301. Intent and purpose.

It is the intent of the city commission to create, empower, staff, and fund a police advisory council whose purpose is to study the city's police department, gather information, receive community input concerning public safety issues and law enforcement needs and concerns, and make policy recommendations to the city regarding all aspects of the delivery of public safety services with the goal of maintaining a safe city that enjoys a strong, positive and trusting relationship between the community and the city police department.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-302. Advisory board.

The police advisory council (the "council") is hereby created as an advisory board to advise the city commission, city manager and the chief of police regarding all matters of public safety services and community law enforcement needs and concerns as more fully described in section 2-305.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-303. Appointment of members; terms; officers; no compensation; attendance; removal; procedural rules.

(a) *Appointment.* The city commission shall appoint 11 members to the council. It is desired that the members be reflective of the racial, age, socio-economic and geographic diversity of the city. All members' permanent residence shall be within the municipal corporate limits of the City of Gainesville, Florida. Current employees of the city's police department are not eligible to serve on the council.

(b) *Terms.*

(1) Each member shall be appointed to a four-year term. However, to establish staggered terms, three initial appointees shall be appointed to a two-year term, four initial appointees shall be appointed to a three-year term and four initial appointees shall be appointed to a four-year term.

(2) Members may be reappointed for consecutive terms. A member may remain on the council until a successor has been appointed; however, the successor will serve only the remaining term of that seat in order to preserve the staggered terms.

(3) When a seat becomes vacant before the end of that seat's term, the city commission shall may appoint a substitute member to fill the vacancy for the duration of that seat's term.

(c) *Officers.* The council shall annually elect a chair and vice-chair from among its membership.

(d) *Compensation; expenses.* The members of the council shall not be deemed employees of the city, nor entitled to compensation, pension, or other benefits on account of service on the council. Council members may be reimbursed for mileage, travel and any other such expenses incurred on council business from funds budgeted by the city commission and expended pursuant to city financial policies and procedures.

(e) *Attendance.* Council members are required to attend all regular and special meetings of the council. Each council member may be granted four excused absences per calendar year. Each council member shall notify the council clerk of an absence prior to the meeting, if practicable.

(f) *Removal.* A member may be removed from the council with or without cause by the city commission.

(g) *Rules of procedure and meetings.*

(1) The council shall adopt rules of procedure to govern the conduct of its meetings and carry out its purposes. All rules must conform to this code and state law and must be approved by the city commission and approved as to form and legality by the city attorney.

(2) The council shall meet at least once each calendar month, unless cancelled by the council or its chair. The council may meet more often at the call of the chair or the city commission.

(3) A quorum shall consist of a majority of the voting members of the council; however, a smaller number may adjourn a meeting. Official action may only be taken by majority vote when a quorum is present.

(4) The council and its members are subject to the applicable provisions of Florida's Government in the Sunshine Law (F.S. § 286.012), Florida's Code of Ethics for Public Officers and Employees (F.S. Ch. 112, Pt. III), and Florida's Public Records Law (F.S. Ch. 119), all as may be amended from time to time.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-304. Training.

To assist each member in gaining a fundamental understanding of the police department and public safety services, the city will give, or arrange for, training in the following areas within one year of each member's appointment: organizational structure, communications, facilities and equipment, the internal affairs process, the hiring process, community policing and information led policing, and high liability areas. Additional training will be provided on an as-needed or as-requested basis.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-305. Authority, functions and duties of the police advisory council.

The council shall make independent recommendations regarding all aspects of public safety to the city commission, the city manager and the chief of police. The functions and duties of the council include, but are not limited to:

(a) Review how existing police operations and procedures affect communities and individuals of color, especially black residents, as well as other historically and currently marginalized communities and individuals.

(b) Consider what, if any, current police department programs, functions and practices should be ended, are having a positive impact and should be better-supported or might best be delivered by a different existing city department.

(c) Offer proposals for reform as clear, stand-alone modules that consider logistical and funding concerns, with special attention to how they affect communities and individuals of color, in particular black residents, as well as other historically and currently marginalized communities and individuals.

(d) Serve as a panel to review closed cases of use of force, internal investigations against police officers and/or complaints against the department with the purpose being to make recommendations on controls, processes and/or systems that should be considered in order to prevent the occurrence of future issues.

(e) Host summits on police transformation.

(f) Study increasing the use of police service technicians and renaming the program "community service technicians" to have more non-weaponized officers respond to calls.

(g) Assist in generating community interest and involvement in crime prevention, to include community oriented policing and other areas of community relations and distribution of material on crime deterrence; and

(h) Review and make recommendations concerning such other matters as may be referred to the council from time to time by the city commission, city manager and/or chief of police.

The council does not have the authority to direct the city commission, the city manager, the chief of police or any other city employee to take or not take any action.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-306. Work plan; reports; referrals.

The council shall develop its goals and priorities each year and recommend such annually in the form of a work plan for consideration and approval by the city commission. At the end of each quarter of the fiscal year (January 1, April 1, July 1), the council shall provide a report to the city commission on the activities of the council during that quarter. The city commission, city manager and/or chief of police may refer issues, questions of interests, or areas of study to the council. Upon receipt of the referral, the council shall meet, review, prioritize and study the referred issue and shall subsequently provide a recommendation to the city commission, city manager and/or chief of police as soon as practicable.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-307. Council member guidelines.

Council members are is expected to actively engage in the collection and evaluation of information related to the provision of police and public safety services. Council members shall conduct research, gather information and learn from the experiences of industry experts and other councils/boards/committees from throughout the country in order to make informed and independent recommendations to the city commission, the city manager and/or the chief of police.

(Ord. No. 200056 , § 1, 10-15-20)

Sec. 2-308. City resources.

(a) The council may request information from the city manager and other city charter officers as necessary. At the direction of the city charter officers, city staff shall prepare such reports, analysis, and recommendations as are reasonably requested by the council to allow it to carry out its functions and duties as set forth in this division.

(b) The city attorney, or designee, shall serve as legal advisor to the council.

(c) The city manager, or designee, shall designate a staff member to serve as clerk to the council. The clerk may prepare an agenda, shall prepare minutes of each council meeting and shall work with the city clerk to properly notice each meeting and retain records in the city's legislative system.

(Ord. No. 200056 , § 1, 10-15-20; Ord. No. 210562 , § 6, 6-16-22)

Secs. 2-309—2-320. Reserved.

DIVISION 5. REGIONAL TRANSIT SYSTEM ADVISORY BOARD[13]

Sec. 2-321. Created, composition, appointment, terms.

There is hereby created the Regional Transit System Advisory Board composed of nine persons. Members shall serve three-year terms, except that the initial term of three members shall be for two years and three members for one year. All subsequent terms shall be for three years.

The membership board shall consist of:

(a) Six residents of the city appointed by the city commission from among the following individual groups:

1. Regular user of the transit system.
2. Senior citizen.
3. Person with a disability.
4. University of Florida student nominated from a list of at least three names submitted by the University of Florida Student Senate.
5. Chamber of Commerce representative.
6. Major employer in the local area.
7. Environmental community.
8. Neighborhood/homeowners associations.
9. Student oriented housing developments.

[13]Editor's note(s)—Ord. No. 960051, § 1, adopted March 3, 1997, enacted §§ 2-321—2-323, as set out herein. Ord. No. 951464, § 2, adopted May 13, 1996, deleted the provisions of former §§ 2-321—2-324, which pertained to similar subject matter, as derived from Ord. No. 3111, § 2(2-160—2-162), adopted Feb. 25, 1985; Ord. No. 3256, § 1, adopted Sept. 22, 1986; Ord. No. 3537, § 1, adopted May 8, 1989; Ord. No. 3987, § 1, adopted July 11, 1994.

10. Santa Fe Community College student.

11. Metropolitan Transportation Planning Organization Citizen Advisory Committee.

(b) City manager or designee will request the county to appoint three residents of Alachua County from among the groups listed in subsection (a).

Each appointing authority shall make appointments and fill vacancies which occur by motion or by other appropriate action of the appointing authority.

(Ord. No. 960051, § 1, 3-10-97)

Sec. 2-322. Duties of the board generally.

The duties of the Regional Transit System Advisory Board shall be as follows:

(a) To advise the city commission on all matters relating to public transit development in the city and the county including:

1. To develop and analyze policies concerning the operation of the regional transit system.

2. To develop approaches for financing the regional transit system on a long-term basis.

3. To review ridership, routes, rates and other related matters.

4. To consider questions referred to it by the city commission, from other sources and to self-initiate recommendations for consideration by the city commission. All recommendations must include city manager or designee comments.

(b) To review all matters relating to the Regional Transit System that must be approved by the city commission. The issues will then be sent to the commission with the recommendations of both the board, and city manager or designee.

(Ord. No. 960051, § 1, 3-10-97)

Sec. 2-323. Meetings, rules.

There shall be a chair elected by the membership of the board. The board shall adopt rules as approved by the city commission for the transaction of its business and which provide for the time and place of regular meetings and for the calling of special meetings. The board shall hold regular meetings once a month unless otherwise notified by the chair. The chair may call special meeting as needed. No business shall be conducted by the board without a quorum of at least five members, and all action must be taken by a majority of the quorum.

(Ord. No. 960051, § 1, 3-10-97)

Secs. 2-324—2-335. Reserved.

DIVISION 6. CIVIL CITATIONS[14]

[14]Editor's note(s)—Ord. No. 950796, adopted October 23, 1995, created Div. 4, consisting of §§ 2-301—2-304, pertaining to civil citations. At the editor's discretion said sections have been redesignated as Div. 6, §§ 2-336—2-339. Former Div. 6 of Art. V, which consisted of §§ 2-336—2-341 and pertained to the hazardous

materials committee, was repealed by Ord. No. 3846, § 2, adopted Mar. 15, 1993. The repealed provisions derived from §§ 2-166—2-172 of the 1960 Code.

Sec. 2-336. Authority and purpose.

This division is adopted pursuant to F.S. Ch. 162, Part II, as a supplemental municipal code and ordinance enforcement procedure.

(Ord. No. 950796, § 1, 10-23-95)

Sec. 2-337. Code enforcement citation procedures.

(a) *Designation of code enforcement officer.* For the purpose of this division, the term "code enforcement officer" shall mean any designated employee or agent of the City of Gainesville whose duty it is to enforce codes and ordinances enacted by the city, and who has received appropriate training as determined by the City of Gainesville. This shall include, but not be limited to, code inspectors, including building inspectors, law enforcement officers, and municipal fire safety inspectors as defined in F.S. Ch. 633. Designation of a code enforcement officer and appropriate training for such officer shall be determined by city manager or designee, but shall include at a minimum at least a forty-hour minimum standards training course in the appropriate area of expertise.

(b) *Citation procedure.*

(1) Any code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance of the City of Gainesville and that the county court will hear the charge.

(2) Prior to issuing a citation, a code enforcement officer shall provide notice to the person that the person has committed a violation of a city code or ordinance and shall establish a reasonable time period within which the person must correct the violation. Such time period shall be no more than 30 days. If, upon personal investigation, a code enforcement officer finds that the person has not corrected the violation within the time period, the code enforcement officer may issue a citation to the person who has committed the violation. A code enforcement officer shall not be required to provide the person with a reasonable time period to correct the violation prior to issuing a citation and may immediately issue a citation if the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety or welfare, if a repeat violation is found or if the violation is irreparable or irreversible.

(3) A citation issued by a code enforcement officer shall be in a form prescribed by the city and shall contain:

a. The date and time of issuance.

b. The name and address of the person to whom the citation is issued.

c. The date and time the civil infraction was committed.

d. The facts constituting reasonable cause.

e. The number or section of the code or ordinance violated.

f. The name and authority of the code enforcement officer.

g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

h. The applicable civil penalty if the person elects to contest the citation.

i. The applicable civil penalty if the person elects not to contest the citation.

j. A conspicuous statement that, if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, the person shall be deemed to have waived the right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(4) After issuing a citation to an alleged violator, a code enforcement officer shall deposit the original and one copy of the citation with the county court.

(c) *Penalties.*

(1) A violation of a code or an ordinance cited and enforced under the provisions of this division shall be deemed a civil infraction.

(2) The maximum civil penalty shall not exceed $500.00.

(3) A civil penalty of less than the maximum civil penalty shall be assessed if the person who has committed the civil infraction does not contest the citation.

(4) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082 or § 775.083.

(e) If a person fails to pay the civil penalty or request a hearing, fails to appear in court to contest the citation when a hearing has been requested, or fails to appear in court as may be required, the court may enter judgment for an amount not to exceed $500.00 per infraction and/or may issue a rule to show cause upon the request of the city. The court rule shall require such person to appear before the court to explain why action on the citation has not been taken. If any person who is issued such rule fails to appear in response to the court's directive, the person may be held in contempt of court. The city as an additional remedy may refer cases of violations not paid and not contested within 15 days of issuance to a collection agency for processing, collection, and notification of failure of payment to the credit bureau. At any hearing pursuant to this division, the commission of a violation of a code or ordinance must be proved by a preponderance of the evidence. The Florida Rules of Civil Procedure and the Florida Evidence Code shall be applicable to any hearing.

(f) All civil penalties shall be paid to and collected by the clerk of the court. All penalties collected by the clerk shall be turned over to the city finance department. A total of $2.00 per citation collected shall be credited to the revenues of the city and earmarked for training of code enforcement officers. The remaining funds shall be deposited in the general revenues of the City of Gainesville. An exception to the general revenues deposit requirement shall only be allowed when specifically designated otherwise by ordinance.

(g) The provisions of this division shall not apply to the enforcement pursuant to sections of the standard building codes adopted pursuant to section 553.73 as they apply to construction, provided that a building permit is either not required or has been issued by the city.

(h) The provisions of this division are additional and supplemental means of enforcing city codes or ordinances and may be used for the enforcement of all codes and ordinances as designated to the city commission by ordinance, adopting a schedule of violations and penalties. Nothing contained in this division shall prohibit the City of Gainesville from enforcing its codes or ordinances by other means.

(Ord. No. 950796, § 1, 10-23-95; Ord. No. 970538, § 1, 11-24-97)

Sec. 2-338. Jurisdiction.

The terms and provisions of this division shall apply to all real property lying within the City of Gainesville. All civil infractions of applicable codes and/or ordinances, as determined by the city commission, may be enforced by

this division by citation to the appropriate county court of Alachua County, except where prohibited by law or statute.

(Ord. No. 950796, § 1, 10-23-95)

Sec. 2-339. Applicable codes and ordinances.

The following ordinances are enforceable by the procedures described in this division:

Section	Description	Class	Penalty
2-67(a)	Declaration of state of emergency by state, federal, county or city government	As set forth in the emergency declaration, order or other measure	As set forth in the emergency declaration, order or other measure
2-67(b)	Declaration of water emergency imposing water use restrictions	I	$50.00
4-4	Open consumption of and/or possession of an open container of alcoholic beverage between the hours of 2:30 a.m. and 7:00 a.m. each day	IV	$200.00
4-52 4-53(a)(1) 4-53(a)(2) 4-53(c)(10)a	Underage prohibition in alcoholic beverage establishments	IV	$500.00
Chapter 5	Animal control	I	$250.00
6-3	104.1.1 of adopted Standard Building Code, as amended Building, electrical, plumbing, gas, and/or mechanical work within a required permit	II	$75.00
6-23	Responsibilities of contractors and craftsmen	I	$125.00
6-24	Building Code violations	I	$125.00
Chapter 10	All adopted fire prevention and protection codes inclusive of the Florida Fire Prevention Code	II	$250.00
10-70(b)	Failure to obtain burning permit — Residential	I	$75.00
10-70(b)	Failure to obtain burning permit — Commercial	II	$150.00
10-70(d)	Failure to obtain burning permit — Boiler	I	$75.00
10-71	Failure to obtain burn permit — Pyrotechnic	II	150.00
11.5-1	Availability of potable water	I	$50.00
11.5-18	Use of a nicotine dispensing device where smoking prohibited	II	$25.00
11.5-41	Prohibition of smoking outdoors at or around all RTS bus facilities	II	$25.00

11.5-42	Prohibition of smoking outdoors in City parks	II	$25.00
Article II of Chapter 13	International Property Maintenance Code, when the violation is committed by the tenant, occupant or property owner	I	$250.00
Article II of Chapter 14.5	Merchandising of tobacco products	II	$75.00
Article III of Chapter 14.5	Towing from or immobilizing vehicles on certain private property	II	$125.00
Article VIII of Chapter 14.5	Failure to implement and maintain an approved shopping cart retention system	I	$250.00
Article IX of Chapter 14.5	Fair Chance Hiring	IV	$500.00
14.5-3	Not having a residential rental unit permit	II	$250.00
14.5-171	Violation of security and safety standards for convenience businesses	II	$250.00
Chapter 15	Noise violations other than section 15-3(d)(9)	I	$250.00
15-3(d)(9)	Operation of radios or other mechanical sound making devices or instruments in vehicles	I	$150.00
16-19	Dangerous buildings/hazardous lands	I	$250.00
17-2	Fliers on utility poles or other fixtures	I	$250.00
17-6	Synthetic drug violations	IV	$250.00
17-8	Urinating in public	II	$125.00
17-34	Knowingly rent or let a residence to a sexual offender or sexual predator to use as a temporary or permanent residence contrary to the Sexual Predator Ordinance	II	$125.00
17-38	Practicing conversion therapy on a minor	II	$250.00
18-20(28)	Prohibition of smoking outdoors in all City parks	II	$25.00
19-2	Violation of regulations for peddling in Downtown Plaza	I	$50.00
19-92	Operation of a vending booth or a game day vending booth without a permit	I	$250.00
19-93	Violation of regulations on permitted vending booth or game day vending booth	I	$250.00

19-95	Maintaining display, stand, article or item of personal property without proper permit	I	$50.00
19-127	Violation of prohibition on throwing or distributing handbills upon property displaying a "No Handbills" sign	I	$125.00
21-52(a)	Non-permitted, revoked or suspended alarm system	IV	$200.00
21-58(a)	Failure to register alarm monitoring company	II	$125.00
21-58(c)	Failure to maintain records	II	$125.00
21-59	Failure to make alarm verified call	II	$125.00
21-60(a)	Failure to register—Alarm system contractors	II	$125.00
21-60(b)	Maintenance, repair, alter or service of system for compensation by noncontractor	II	$125.00
21-60(c)	Failure to issue ID	I	$50.00
21-60(d)	Use of equipment or methods below minimum standards	II	$125.00
21-60(e)	Activation/servicing non-permitted alarm	II	$125.00
21-60(f)	Causing false alarm during servicing	II	$125.00
21-60(g)	Failure to provide blank alarm permit application	I	$50.00
21-61(a)	Operating automatic dialing device	II	$125.00
21-61(b) 21-61(c)	Failure to remove non-permitted features	I	$50.00
21-62	Operating alarm system without auxiliary power	II	$125.00
Chapter 22	Secondhand Goods Secondhand Dealers	III	$125.00
26-137	Abandoned vehicles	I	$250.00
26-138	Major repair of vehicles on residential property prohibited	I	$125.00
26-139	Abandoned dangerous vehicles	I	$125.00
26-190	Pedestrians prohibited in traffic separators	I	$50.00
27-73	Solid waste violations: (1)—(7), (9)—(11), (17), (18), and (23)	I	$250.00
27-73	Solid waste violations: (8)	III	$150.00
27-73	Solid waste violations: (12)—(16) and (19)—(22)	I	$50.00
27-75	Commercial service violations	III	$100.00
27-76	Residential service violations	I	$50.00
27-79	Commercial franchise violations	III	$200.00
27-85	Commercial recycling violations	I	$125.00

27-86	Recovered materials registration violations	III	$200.00
27-90	Single-use plastic straws and single-use plastic stirrers	I	$150.00
27-91	Single-use plastic food accessories	I	$150.00
27-92	Expanded polystyrene containers on city property	I	$125.00
27-93	Release of plastic confetti, glitter and balloons	I	$250.00
27-95	Food waste registration violations	III	$200.00
27-95.2	Commercial food waste violations	I	$125.00
Chapter 28	Vehicle for hire regulation	I	$50.00
29-3	Registration of lobbyists	I	$50.00
30-1.8	Land Development Code Violations	I	$100.00

Second violation of the same Class I or Class II offense shall be double the amount shown on the penalty schedule.

Third and subsequent violations of the same Class I or II offense shall require a mandatory court appearance.

Second and subsequent violations of the same Class III or Class IV offense shall require a mandatory court appearance.

(Ord. No. 950796, § 1, 10-23-95; Ord. No. 970512, § 1, 12-8-97; Ord. No. 970127, § 2, 11-10-97; Ord. No. 990697, § 2, 1-10-00; Ord. No. 990698, § 1, 1-10-00; Ord. No. 980475, § 4, 5-8-00; Ord. No. 990442, § 3, 8-28-00; Ord. No. 00053, § 2, 8-28-00; Ord. No. 000055, § 1, 10-9-00; Ord. No. 000866, § 2, 2-26-01; Ord. No. 001700, § 2, 9-10-01; Ord. No. 020023, § 3, 11-12-02; Ord. No. 021104, § 1, 10-27-03; Ord. No. 030785, § 6, 12-13-04; Ord. No. 021198, § 2, 5-23-05; Ord. No. 050115, § 2, 11-28-05; Ord. No. 060275, § 2, 3-26-07; Ord. No. 051236, § 2, 6-25-07; Ord. No. 070133, § 1, 8-27-07; Ord. No. 080261, § 1, 10-2-08; Ord. No. 070941, § 2, 2-5-09; Ord. No. 080284, § 4, 3-19-09; Ord. No. 090326, § 2, 10-1-09; Ord. No. 090296, § 3, 10-15-09; Ord. No. 090119, § 2, 1-21-10; Ord. No. 090657, § 3, 8-5-10; Ord. No. 100217, § 2, 2-17-11; Ord. No. 100840, § 6, 5-19-11; Ord. No. 080481, § 2, 6-16-11; Ord. No. 110017, § 2, 8-18-11; Ord. No. 120139, § 4, 9-5-13; Ord. No. 130695, § 1, 3-6-14; Ord. No. 130679 , § 4, 11-20-14; Ord. No. 130769 , § 2, 3-5-15; Ord. No. 140495 , § 1, 3-5-15; Ord. No. 140190 , § 1, 4-16-15; Ord. No. 130141 , § 1, 7-16-15; Ord. No. 140741 , § 2, 9-3-15; Ord. No. 150406 , § 4, 3-16-17; Ord. No. 160200 , § 2, 4-5-18; Ord. No. 170487 , § 2, 1-17-19; Ord. No. 180678 , § 2, 8-15-19; Ord. No. 190278 , § 2, 9-12-19; Ord. No. 190222 , § 2, 8-6-20; Ord. No. 191242 , § 2, 6-18-20; Ord. No. 200249 , § 4, 9-17-20; Ord. No. 200247 , § 5, 9-17-20; Ord. No. 200464 , § 2, 2-4-21; Ord. No. 210005 , § 4, 8-19-21; Ord. No. 200381 , § 2, 6-2-22; Ord. No. 210129 , § 3, 6-2-22; Ord. No. 2022-275 , § 6, 9-15-22; Ord. No. 2022-617 , § 2, 12-15-22; Ord. No. 2023-07 , § 1, 2-2-23)

Secs. 2-340—2-355. Reserved.

DIVISION 7. UTILITY ADVISORY BOARD[15]

[15]Editor's note(s)—Ord. No. 170808 , § 1, adopted August 2, 2018, amended division 7 in its entirety to read as herein set out. Former division 7, §§ 2-356—2-362, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Sec. 2-356. Intent and creation.

It is the intent of the city commission to hereby create, empower, staff, and fund a utility board to study the city's utility and make policy recommendations regarding the utility's management, operations, and finances.

(Ord. No. 170808 , § 1, 8-2-18)

Sec. 2-357. Definitions.

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

Customer means the natural person or legal entity that has a utility services account in his/her/its name and is responsible for payment for utility services at that specific location.

Utility means the city doing business as Gainesville regional utilities.

Utility board means the advisory board created by this division and includes both voting and non-voting members.

Utility governance means the making and administering of the utility's course of action. Governance decisions are those decisions designed to influence and guide management's decisions, actions and other matters of the utility. The responsibilities of utility governance are more specifically described in Subsections 1.04(2), (3), (4), (5), (6), (7), and (8), of the City Charter.

Utility management means the directing, supervising or carrying on of utility business affairs in a manner as directed by the city commission. The responsibility for utility management is more specifically described in Section 3.06 of the City Charter.

Utility services means the electric, gas, telecommunications, water, and wastewater services provided by the utility.

(Ord. No. 170808 , § 1, 8-2-18)

Sec. 2-358. Utility board; membership; terms; officers; procedural rules.

(a) *Voting members.* The utility board shall have seven voting members. All voting members' permanent residence shall be within the utility service area and receive utility service. A minimum of one voting member shall reside outside the Gainesville city limits. Applicants with any of the following types of experience are encouraged to apply for a voting member seat:

(1) Experience as a utility demand customer;

(2) Experience as a utility service provider;

(3) Investment banking, financial or certified public accounting experience;

(4) Experience in energy and water conservation;

(5) Experience with business, contract or corporate law, or contract administration; or

(6) Engineering experience.

The city commission may appoint voting members with any qualifications or experience the city commission deems relevant or beneficial to service on the utility board.

(b) *Non-voting members.* The Alachua County Board of County Commissioners and the Alachua County School Board may each appoint one non-voting member to the utility board, subject to the approval of the city commission. Elected officials, or a person appointed to fill an elected official's seat until the next election, may not be appointed or serve as a non-voting member. Non-voting members shall have the same rights and privileges as voting members, except non-voting members shall not make motions or vote on motions under consideration.

(c) *Term.*

(1) Each voting and non-voting member shall be appointed to a four-year term.

(2) Members may be reappointed for consecutive terms and may remain a member after expiration of their term until a successor has been appointed and qualified. Members may serve no more than three consecutive terms.

(3) When a voting position becomes vacant before the end of the term, the city commission may appoint a substitute voting member to fill the vacancy for the duration of the vacated term. When a non-voting position becomes vacant before the end of the term, the respective appointing board may appoint a substitute non-voting member to fill the vacancy for the duration of the vacated term, subject to approval by the city commission.

(d) *Officers.* The voting members of the utility board shall annually elect a chair and vice-chair from among the voting members.

(e) *Compensation of members.* The utility board members shall not be deemed employees of the city, nor entitled to compensation, pension, or other retirement benefits on account of service on the utility board. Utility board members may be paid for mileage, travel and any other such expenses incurred on board business from funds budgeted by the city commission pursuant to city financial policies and procedures.

(f) *Attendance.* Voting members are required to attend all regular and special meetings of the utility board. Each voting member may be granted four absences per calendar year. A voting member shall notify the board secretary of an absence prior to the meeting, if practicable.

(g) *Removal from board.* A utility board member may be removed by the city commission. Non-voting members may also be removed by official action of their respective appointing board.

(h) *Rules of procedure.*

(1) The utility board shall adopt rules of procedure to carry out its purposes. All rules must conform to this code and state law and must be approved by the city commission and approved as to form and legality by the city attorney.

(2) The utility board shall meet at least once each calendar month, unless cancelled by the board or its chair. The utility board may meet more often at the call of the chair, the city commission, or at the request of two or more voting members of the utility board. When the most efficient use of utility staff time and city resources dictate, the utility board may meet concurrently with the city commission.

(3) A quorum shall consist of a majority of the voting members of the utility board; however, a smaller number may adjourn a meeting. Official action can only be taken by majority vote when a quorum is present.

(Ord. No. 170808 , § 1, 8-2-18; Ord. No. 180479 , § 1, 12-6-18)

Sec. 2-359. Functions, powers and duties of the utility board.

The utility board has full authority to make and shall make independent recommendations regarding all aspects of utility governance to the city commission. Utility board recommendation prior to city commission

consideration of an item is not required if the utility business item is an emergency or a time-sensitive item. If the utility board fails to timely make recommendations to the city commission, the city commission may take action on the item as it deems necessary. The functions, powers, and duties of the utility board include, but are not limited to:

(a) *Utility Policy.* The utility board shall develop and recommend a utility policy for consideration and adoption by the city commission. The utility policy shall evaluate energy and utility issues based on a triple bottom line approach of equity, economy, and environment. The utility board shall recommend updates and revisions to the utility policy, as necessary. Issues addressed by the utility policy shall include, but not be limited to:

(1) Delivering safe, reliable, cost-effective (which shall include a reasonable return on the city's investment), and environmentally responsible utility service:

(2) The future utility needs of the city;

(3) Opportunities to coordinate integrated planning;

(4) Promoting cooperation between the utility, city commission, other city boards and committees, city departments, and other individuals, institutions, and agencies in the community so that similar activities within the city can be coordinated. Such activities may include, but are not limited to, initiatives on energy affordability, affordable housing, economic development, renewable energy, environmental stewardship, and transportation.

(b) *Budget.* The utility board shall consider and make recommendations regarding the utility's budget. In particular, the utility board shall:

(1) Engage in budget planning and make recommendations for future budget items with reference to the goals of the utility policy;

(2) Review and track the utility's budget on an ongoing basis, with special attention given to capital and operations/maintenance projects in excess of ten million dollars ($10,000,000.00);

(3) Review quarterly reports of utility staff comparing budget estimates to actuals and issue observations and recommendations regarding such to the city commission.

(c) *Work plan.* The utility board shall develop its goals and priorities each year with reference to the utility policy, and recommend such annually in the form of a work plan for consideration and approval by the city commission.

(d) *City commission referrals.* The city commission may refer issues, questions of interests, or areas of study to the utility board. Upon receipt of the referral, the utility board shall meet, review, and study the referred issue and shall subsequently provide a recommendation to the city commission within six months (or sooner if so specified by the city commission) of the referral.

(e) *General manager for utilities items.* The utility board shall review and make a recommendation on all items the general manager of utilities intends to place on a city commission agenda. However, the utility board review and recommendation prior to city commission consideration of an item is not required if the utility business item is an emergency or a time-sensitive item. Where such items would appear on the consent agenda of the city commission, the utility board may also address such items on consent.

(Ord. No. 170808 , § 1, 8-2-18)

Sec. 2-360. Utility board guidelines.

(a) The utility board is expected to actively engage in the collection and evaluation of information related to utility management and governance. The utility board members shall conduct research, gather information and learn from the experiences of industry experts. The utility board may consider information from various sources including, but not limited to, standards setting organization in the engineering and utilities sectors, prominent conservation organizations, municipal and investor-owned utilities, and public and private research institutes.

(Ord. No. 170808 , § 1, 8-2-18)

Sec. 2-361. City resources.

(a) The utility board may request information and assistance from the general manager for utilities and such other city charter officers as the utility board finds necessary. At the direction of the city charter officers, city staff shall prepare such reports, analysis, and recommendations as the utility board deems necessary to remain fully informed and to carry out its responsibilities as set forth in this division.

(b) The utility board may make requests, through the city commission, to the city auditor for specified audits of utility services.

(c) The city attorney, or designee, shall serve as legal advisor to the utility board.

(d) The city clerk shall designate a staff member to serve as clerk to the utility board. The clerk shall prepare notices of meetings, shall prepare an agenda and shall record and keep minutes of each utility board meeting.

(Ord. No. 170808 , § 1, 8-2-18; Ord. No. 210562 , § 7, 6-16-22)

Secs. 2-362—2-375. Reserved.

DIVISION 8. CODE ENFORCEMENT BOARD; SPECIAL MAGISTRATE[16]

Sec. 2-376. Declaration of intent; authorization of board or special magistrate.

It is the intent of this division to promote, protect, and improve the health, safety, and welfare of the citizens of this city by authorizing the creation of an administrative board and provision for a special magistrate, both of whom would be vested with authority to impose administrative fines and other noncriminal penalties to provide an equitable, expeditious, effective, and inexpensive method of enforcing any applicable codes, where a pending or repeated violation continues to exist. The board and special magistrate would not exercise such powers concurrently, but rather the city commission would by resolution adopted from time to time, specify whether the

[16]Editor's note(s)—Ord. No. 121102, § 1, adopted Aug. 1, 2013, changed the title of Div. 8 from "Code Enforcement Board" to "Code Enforcement Board; Special Magistrate."

Cross reference(s)—Buildings and building regulations, Ch. 6; fire prevention and protection, Ch. 10; nuisances, Ch. 16; streets, sidewalks and other public places, Ch. 23; occupational license tax, § 25-40 et seq.; vehicles for hire, Ch. 28; land development code, Ch. 30.

State law reference(s)—Local Government Code Enforcement Boards Act, F.S. Ch. 162.

board or the special magistrate is authorized to exercise such powers. This division is specifically authorized by F.S. ch. 162, known as the Local Government Code Enforcement Boards Act.

(Code 1960, § 29B-1; Ord. No. 020196, § 1, 9-9-02; Ord. No. 121102, § 1, 8-1-13)

State law reference(s)—Similar provisions, F.S. § 162.02.

Sec. 2-377. Applicability; jurisdiction.

(a) The Gainesville Code Enforcement Board shall have jurisdiction to hear and decide cases in which violations are alleged of any provisions of the following provisions of this Code of Ordinances as they may exist or may hereafter be amended by ordinance:

(1) Chapter 6, Article II, "Building Code;"

(2) Chapter 6, Article III, "Electrical Code;"

(3) Chapter 6, Article IV, "Plumbing Code;"

(4) Chapter 6, Article V, "Gas Code;"

(5) Chapter 6, Article VI, "Mechanical Code;"

(6) Chapter 6, Article VII, "Swimming Pools;"

(7) Chapter 6, Article IX, "Downtown Minimum Property Standards;"

(8) Chapter 10, "Fire Prevention and Protection;"

(9) Chapter 13, "Housing and Commercial Building Code" when the violation is committed by other than the tenant or occupant.

(10) Chapter 16, Article II, "Dangerous Building and Hazardous Land Code;"

(11) Chapter 16, Article III, "Perilous Land Code;"

(12) Chapter 16, Article IV, "Mosquito Breeding Grounds;"

(13) Chapter 16, Article V, "Public Nuisance Abatement;"

(14) Chapter 23, "Streets, Sidewalks and Other Public Places;"

(15) Chapter 25, Article III, "Business Tax;"

(16) Chapter 26, Article III, Division 5, "Abandoned, Wrecked, Nonoperating Vehicles;"

(17) Chapter 27, Article III, "Solid Waste Disposal;"

(18) Chapter 27, Article IV, Sections 27-180 through 27-182.2, "Sewerage;"

(19) Chapter 30, "Land Development Code;"

(20) Chapter 14.5, Article I, "Residential Rental Unit Permits;

(21) Chapter 14.5, Article II, "Merchandising of Tobacco Products."

(b) Any alleged violation of the aforesaid provisions may also be enforced in any court of competent jurisdiction.

(Code 1960, § 29B-2; Ord. No. 3566, § 1, 9-18-89; Ord. No. 3866, § 4, 6-7-93; Ord. No. 980470, § 2, 10-12-98; Ord. No. 990698, § 2, 1-10-00; Ord. No. 990442, § 4, 8-28-00; Ord. No. 020023, § 2, 11-12-02; Ord. No. 031205, § 1, 6-28-04; Ord. No. 070022, § 1, 6-25-07; Ord. No. 140292 , § 1, 7-21-16; Ord. No. 190201 , § 1, 10-17-19; Ord. No. 200247 , § 6, 9-17-20; Ord. No. 200249 , § 5, 9-17-20)

Sec. 2-378. Definitions.

As used in this chapter:

Board shall mean the Gainesville Code Enforcement Board.

City shall mean the City of Gainesville, Florida.

Clerk or *clerk of the board* shall mean the administrative staff person in the city responsible for the preparation, development and coordination of all administrative and case management services necessary for the proper functioning of the board.

Code shall mean any of the Code of Ordinances of the City of Gainesville, Florida, as described in section 2-377 above.

Code inspector or *code officer* shall mean any employee or other agent of the city designated by law, ordinance, the city manager, or the general manager for utilities, whose duties are to ensure compliance and enforce city codes or ordinances.

Commission shall mean the city commission which is the legislative body of the City of Gainesville, Florida.

Special magistrate shall mean a person authorized to hold quasi-judicial hearings and assess fines against violators of the City Code of Ordinances and such other authority as may be conferred by F.S. ch. 162, or any other law.

(Code 1960, § 29B-3; Ord. No. 3566, § 2, 9-18-89; Ord. No. 020196, § 2, 9-9-02; Ord. No. 031205, § 2, 6-28-04; Ord. No. 121102, § 1, 8-1-13)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

State law reference(s)—Similar provisions, F.S. § 162.04.

Sec. 2-379. Composition.

(a) The board shall be composed of seven members and shall be appointed by the commission. The commission may appoint up to two alternate members for each board member to serve on the board in the absence of board members. The membership of each enforcement board shall, whenever possible, include:

(1) An architect;

(2) A business person;

(3) An engineer;

(4) A general contractor;

(5) A realtor;

(6) A subcontractor.

(b) Qualifications. Each member appointed to the board shall possess, in addition to experience or interest in the fields of zoning and building control, the following minimum qualifications at time of appointment:

(1) Any architect and any engineer so appointed shall be registered under the laws of the state regulating the practice of architecture and engineering, respectively, or shall possess similar qualifications under the laws of other states or shall have actual experience deemed by the commission to be equivalent to such registration.

(2) Any general contractor or subcontractor so appointed shall possess a valid certificate of competency and business tax receipt, recognized and accepted under the laws of the state and the ordinances of the city regulating the business of contracting or subcontracting and where required, state registration as a contractor or subcontractor, or shall possess similar qualifications under the laws of other states, or shall have actual experience deemed by the commission to be equivalent to such certification.

(3) Any realtor shall be licensed under the laws of the state which license a real estate broker as either a broker or a salesperson or shall possess similar qualifications under the laws of other states or shall have actual experience deemed by the commission to be equivalent to the licensing, and shall hold a current and valid business tax receipt issued by the city.

(4) Any businessperson shall be actively engaged in any lawful business within the city, and shall hold a current and valid business tax receipt issued by the city, or shall be an officer or employee of a business entity holding a current and valid business tax receipt issued by the city.

(5) Each member of the board shall be a resident of the city.

(6) No person shall be eligible for appointment to the board should the person have pending, either before the board or in any county, circuit or appellate court of the state, a case concerning cited or proven violation of any of the codes or ordinances enumerated in section 2-377. The members shall serve in accordance with ordinances of the city and may be suspended and removed for cause as provided in such ordinances for removal of members of boards.

(c) All appointments after the initial appointments shall be made by the commission for a term of three years.

(d) Appointments to fill any vacancy to the board shall be for the remainder of the unexpired term of office.

(e) If any member fails to attend two of three successive meetings without cause and without prior approval of the chair, the board shall declare the member's office vacant, and the local governing body shall promptly fill such vacancy. Any member, who becomes a candidate for public elective office or becomes an employee of the city, shall automatically forfeit his/her membership. Should a member of the board be adjudicated guilty of a violation of any of the codes or ordinances enumerated in Division 6, Civil Citations or Division 8, Code Enforcement Board, the matter shall be placed on the next agenda of the city commission for a determination as to whether the member should be allowed to continue, be temporarily suspended, or be removed from the board. In making this determination, the city commission shall consider, among other things, the nature of the code or ordinance cited, the severity and extent of the cited violation and the past history of the member concerning previous violations of the subject codes or ordinances.

(Code 1960, § 29B-4; Ord. No. 020196, § 3, 9-9-02; Ord. No. 070022, § 1, 6-25-07)

State law reference(s)—Similar provisions, F.S. § 162.05(1), (2).

Sec. 2-380. Organization.

The members of the board shall elect a chair, who shall be a voting member, from among the members of the board. The presence of four or more members shall constitute a quorum of the board. Members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by the commission or as are otherwise provided by law.

(Code 1960, § 29B-5; Ord. No. 020196, § 4, 9-9-02)

State law reference(s)—Similar provisions, F.S. § 162.05(3).

Secs. 2-381, 2-382. Reserved.

Editor's note(s)—Ord. No. 020196, §§ 5, 6, adopted Sept. 9, 2002, repealed §§ 2-381 and 2-382 which pertained to quorum and compensation, respectively, and derived from Code 1960, §§ 29B-6 and 29B-7.

Sec. 2-383. Powers of the board.

The board shall have the power to:

(1) Adopt rules for the conduct of its hearings.

(2) Subpoena alleged violators and witnesses to its hearings. Police department of the city or the sheriff of Alachua County may serve subpoenas.

(3) Subpoena evidence to its hearings.

(4) Take testimony under oath.

(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

(Code 1960, § 29B-8; Ord. No. 3566, § 3, 9-18-89; Ord. No. 020196, § 7, 9-9-02)

Sec. 2-384. Legal counsel.

The commission shall appoint an attorney who is a member of The Florida Bar, either residing or practicing in the city, to represent and act as counsel to the code enforcement board, and such person shall attend all meetings of the board. The attorney shall be compensated as provided for by the commission.

(Code 1960, § 29B-9)

State law reference(s)—Authority to appoint legal counsel to the board, F.S. § 162.05(1).

Sec. 2-385. Enforcement procedures.

(a) It shall be the duty of the code inspector to initiate enforcement proceedings of the various codes; however, no member of a board shall have the power to initiate such enforcement proceedings.

(b) Except as provided in subsections (c) and (d), if a violation of the codes is found, the code inspector shall notify the alleged violator and give him or her a reasonable time to correct the violation. Should the violation continue beyond the time specified for correction, the code inspector shall notify the board and request a hearing. The board, through its clerical staff, shall schedule a hearing, and written notice of such hearing shall be hand delivered or mailed as provided in section 2-390 to said alleged violator. In the case of notice provided under section 2-390(a), such shall be given at least seven days in advance of the hearing, not counting the day of the hearing. At the option of the board, notice may additionally be served by publication or posting as provided in section 2-390. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code inspector, the case may be presented to the board even if the violation has been corrected prior to the board hearing, and the notice shall so state.

(c) If a repeat violation is found, the code inspector shall notify the alleged violator but is not required to give the alleged violator a reasonable time to correct the violation. The code inspector, upon notifying the alleged violator of a repeat violation, shall notify the board and request a hearing. The board, through its clerical staff, shall schedule a hearing and shall provide notice pursuant to section 2-390. In the case of notice provided under section 2-390(a), such shall be given at least seven days in advance of the hearing, not

counting the day of the hearing. The case may be presented to the board even if the repeat violation has been corrected prior to the board hearing, and the notice shall so state. If the repeat violation has been corrected, the board retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the alleged repeat violator. The alleged repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the board.

(d) If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the alleged violator and may immediately notify the board and request a hearing.

(e) If the owner of property which is subject to an enforcement proceeding before the board transfers ownership of such property between the time the initial pleading was served and the time of the hearing such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.

(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.

(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.

(4) File a notice with the code enforcement official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within five days after the date of the transfer. A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

(Code 1960, § 29B-10; Ord. No. 3566, § 4, 9-18-89; Ord. No. 020196, § 8, 9-9-02; Ord. No. 200431 , § 1, 11-19-20)

State law reference(s)—Similar provisions, F.S. § 162.06.

Sec. 2-386. Reserved.

Editor's note(s)—Ord. No. 020196, § 9, adopted Sept. 9, 2002, repealed § 2-386 which pertained to initiation of actions and derived from Code 1960, § 29B-11; Ord. No. 3179, § 2, adopted Nov. 18, 1985; and Ord. No. 3566, § 5, adopted Sept. 18, 1989.

Sec. 2-387. Hearing; proceedings; orders.

(a) Upon request of the code inspector, or at such other times as may be necessary, the chair of the board may call a hearing of an enforcement board; a hearing also may be called by written notice signed by at least three members of the seven-member board. Minutes shall be kept of all hearings by the board, and all hearings and proceedings shall be open to the public and any person whose interests may be affected by the matter before the board shall be given an opportunity to be heard. The commission shall provide clerical and administrative personnel as may be reasonably required by each board for the proper performance of its duties. The chairperson of the board shall provide the clerk of the board with sufficient signed and blank witness and document subpoenas to be provided to alleged violators and the code inspector for the purpose of having witnesses and records subpoenaed. The alleged violator shall pay the board for each subpoena served at his or her request.

(b) The board shall proceed to hear the cases on the agenda for that day. Each case before the board shall be presented by the city's code inspector. The board shall take testimony from the code inspector and alleged violator. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. All relevant evidence shall be admitted if, in the opinion of the board, it is the type of evidence upon which reasonable and responsible persons would normally rely in the conduct of business affairs, regardless of the existence of any common law or statutory rule which might make the evidence inadmissible over objections in civil actions. The chairperson of the board may exclude irrelevant or unduly repetitious evidence. Hearsay evidence may be accepted for the purpose of supplementing or explaining any direct evidence, but such hearsay evidence shall not in and of itself be considered sufficient to support a finding or decision unless the evidence would be admissible over objections in a civil action. Each party to the hearing shall have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses, impeach witnesses and rebut evidence. The alleged violator has the right to be represented by an attorney at any board hearing. All testimony before the board shall be under oath and shall be recorded. The alleged violator or the city may cause the proceedings to be recorded by a certified court reporter or by a certified recording instrument. The burden of proof shall be with the code inspector, to show by the greater weight of the evidence that a code violation exists and that the alleged violator committed or was responsible for the violation.

(c) If notice has been provided to an alleged violator of the formal hearing, a hearing may be conducted and an order rendered in the absence of the alleged violator. The board may, for good cause shown, postpone or continue a formal hearing upon a majority vote of those members present and voting. The board shall in every proceeding make a decision without unreasonable or unnecessary delay.

(d) At the conclusion of the hearing, the board shall issue findings of fact, based on evidence of record and conclusions of law, and shall issue an order affording the proper relief consistent with powers granted herein. The finding shall be by motion approved by a majority of those members present and voting, except that at least four members of the board, must vote in order for the action to be official. Every enforcement order shall be signed by the chairperson, or in his/her absence, the vice-chairperson, and shall be filed in the office of the clerk of the board. A copy of the signed order shall be sent by regular mail, within five working days of the hearing, or where hand delivery would be effective, by hand delivery by the code inspector, to the alleged violator, within five working days of the hearing. If the city prevails in prosecuting a case before the board, it shall be entitled to recover all costs incurred in prosecuting the case before the board and such costs may be included in the lien authorized under section 2-388.1. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed and, under the conditions specified in section 2-388.1, the cost of repairs and/or other remedy may be included along with the fine if the order is not complied with by said date. A certified copy of such order may be recorded in the public records of the county and shall constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein shall be binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an order is recorded in the public records pursuant to this subsection and the order is complied with by the date specified in the order, the board shall issue an order acknowledging compliance that shall be recorded in the public records. A hearing is not required to issue such an order acknowledging compliance.

(Code 1960, § 29B-12; Ord. No. 3179, § 3, 11-18-85; Ord. No. 3566, § 6, 9-18-89; Ord. No. 000928, § 1, 3-26-01; Ord. No. 020196, § 10, 9-9-02; Ord. No. 200431 , § 2, 11-19-20)

State law reference(s)—Similar provisions, F.S. § 162.09.

Sec. 2-388. Reserved.

Editor's note(s)—Ord. No. 020196, § 11, adopted Sept. 9, 2002, repealed § 2-388 which pertained to hearing procedures and derived from Code 1960, § 29B-13.

Sec. 2-388.1. Administrative fines; costs of repair; liens.

(a) The board, upon notification by the code inspector and upon conducting a hearing in which the board finds that an order of the board has not been complied with by the set time or in which the board finds that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector. In addition, if the violation is a violation that presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the board shall notify the city manager through the commission, which may make all reasonable repairs or undertake such other remedies which are required to bring the property into compliance or eliminate the violation, and the board charge the violator with the reasonable cost of such along with the fine imposed pursuant to this section. Undertaking such repairs or remedies does not create a continuing obligation on the part of the city to make further repairs or to maintain the property and does not create any liability against the city or its agents or assigns for any damages to the property if such repairs or other remedies were completed or undertaken in good faith.

(b) A fine imposed pursuant to this section shall not exceed $1,000.00 per day per violation for the first violation and shall not exceed $5,000.00 per day per violation for a repeat violation, and, in addition, may include all costs of repairs pursuant to subsection (a). However, if the board finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed $15,000.00 per violation.

(c) In determining the amount of the fine, if any, the board shall consider the following factors:

(1) The gravity of the violation;

(2) Any actions taken by the violator to correct the violation; and

(3) Any previous violations committed by the violator.

(d) The board may reduce fines or costs imposed pursuant to this section.

(e) A certified copy of an order imposing a fine, or a fine plus repair costs and/or remediation, shall be recorded in the public records and thereafter shall constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order shall be enforceable in the same manner as a court judgment by the sheriffs of this state, including execution and levy against the personal property of the violator, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this part shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit filed pursuant to this section, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the city, and the commission may execute a satisfaction or release of lien entered pursuant to this section. After three months from the filing of any such lien which remains unpaid, the board may authorize the city attorney to foreclose on the lien or to sue to recover a money judgment for the amount of the lien plus accrued interest or the city may authorize a collection agency to enforce and collect upon the lien. No lien created pursuant to the provisions of this part may be foreclosed on real property, which is a homestead under Section 4, Article X of the State Constitution. The money judgment provisions of this section shall not apply to real property or personal property, which is covered under Section 4, Article X of the State Constitution.

(Ord. No. 3566, § 7(29B-13.1), 9-18-89; Ord. No. 020196, § 12, 9-9-02; Ord. No. 051162, § 1, 7-10-06; Ord. No. 200431 , § 3, 11-19-20; Ord. No. 2023-07 , § 2, 2-2-23)

Editor's note(s)—Ord. No. 3566, § 7, adopted Sept. 18, 1989, amended the 1960 Code by the addition of § 29B-13.1, said provisions being included herein at the discretion of the editor as § 2-388.1.

Sec. 2-388.2. Duration of lien.

No lien provided under this division shall continue for a period longer than 20 years after the certified copy of an order imposing a fine has been recorded, unless within that time an action is commenced pursuant to section 2-388.1 of the Code, in a court of competent jurisdiction. In an action to foreclose on a lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The city commission shall be entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of the action shall not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(Ord. No. 020196, § 13, 9-9-02)

Sec. 2-389. Appeals.

An aggrieved party, including the city, may appeal a final administrative order of the board to the circuit court in Alachua County. Such an appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

(Code 1960, § 29B-14; Ord. No. 3179, § 4, 11-18-85); Ord. No. 020196, § 14, 9-9-02)

State law reference(s)—Appeals, F.S. § 162.11.

Sec. 2-390. Notices.

(a) All notices required by this part shall be provided to the alleged violator by:

(1) Certified mail, return receipt requested, provided if such notice is sent under this paragraph to the owner of the property in question at the address listed in the tax collector's office for tax notices, and at any other address provided to the city by such owner and is returned as unclaimed or refused, notice may be provided by posting as described in subparagraph (c) and by first class mail directed to the addresses furnished to the local government with a properly executed proof of mailing or affidavit confirming the first class mailing;

(2) Hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the city;

(3) Leaving the notice at the alleged violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or

(4) In the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) In addition to providing notice as set forth in subsection (a), at the option of the board, notice may also be served by publication or posting, as follows:

(1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county where the board is located. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements.

(2) Proof of publication shall be made as provided in F.S. §§ 50.041 and 50.051.

(c) In lieu of publication as described in subsection (b), such notice may be posted at least ten days prior to the hearing, or prior to the expiration of any deadline contained in the notice, in at least two locations, one of

which shall be the property upon which the violation is alleged to exist and the other of which shall be, in the case of municipalities, at the primary municipal government office, in the city. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.

(d) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a). Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b) and (c), shall be sufficient to show that the notice requirements of this part have been met, without regard to whether or not the alleged violator actually received such notice.

(Code 1960, § 29B-15; Ord. No. 020196, § 15, 9-9-02; Ord. No. 200431 , § 4, 11-19-20)

State law reference(s)—Subpoena power of code enforcement board, F.S. § 162.08.

Sec. 2-391. Special magistrates.

(a) *Alternative proceedings.* In lieu of having the code enforcement board hear and decide code violations, the city commission may appoint one or more special magistrates to hear and dispose of such matters. Special magistrates shall have the same status, jurisdiction and authority as the code enforcement board. All references to the code enforcement board in the Gainesville Code of Ordinances shall apply to the special magistrate, except that no section 2-384 legal counsel shall be appointed for magistrate hearings.

(b) *Minimum qualifications.* The minimum qualifications to be eligible for service as a special magistrate are as stated below. In addition, the city may specify further required qualifications in its solicitation for special magistrates.

(1) Be an active member in good standing of the Florida Bar with a minimum of five years recent experience practicing law, which experience shall include litigation and administrative hearing experience.

(2) Reside in Alachua County.

(3) Not be an employee of the city or hold any office with the city government, nor hold any other elective or appointive office in the county or state while serving as special magistrate.

(4) Comply with the Code of Ethics of the State of Florida.

(c) *Solicitation and appointment.* Eligible candidates for special magistrate shall be solicited through a request for proposals, or other competitive solicitation pursuant to the city's purchasing policy and procedures. The selection committee shall evaluate and make recommendations to the city commission for the appointment of special magistrates. Terms of appointment and compensation for the special magistrates shall be established pursuant to a contract approved by the city commission. The city commission may appoint up to two alternate special magistrates to serve in the event of legal conflict of interests or in the absence of the special magistrate.

(d) *Additional duties.* The city commission may, by ordinance and contract, specify that the special magistrate appointed under this section shall perform additional duties as a hearing officer conducting quasi-judicial hearings on other matters concerning the City Code of Ordinances.

(e) *Removal.* The special magistrate shall serve at the pleasure of the city commission and may be removed from service at any time, with or without cause, by a majority vote of a quorum of the city commission.

(f) *Conflicts.* In the event a legal conflict of interest prevents the special magistrate and any alternate special magistrate from hearing a case, the city manager, notwithstanding the language of section 2-391(b)(2) above, may contract with any current special magistrate of another Florida jurisdiction to hear the case.

(Ord. No. 121102, § 2, 8-1-13)

Editor's note(s)—Prior to the reenactment of § 2-391 by Ord. No. 121102, Ord. No. 020196, § 16, adopted Sept. 9, 2002, repealed § 2-391 which pertained to calling of hearings and derived from Code 1960, § 29B-16.

Sec. 2-391.1. Reserved.

Editor's note(s)—Ord. No. 020196, § 17, adopted Sept. 9, 2002, repealed § 2-391.1 which pertained to notices and derived from Ord. No. 3566, § 8(29B-16.1), adopted Sept. 18, 1989; Ord. No. 991278, § 1, adopted June 26, 2000.

Sec. 2-392. Other remedies.

The provisions and procedures contained in this division shall be in addition and supplemental to any other remedies now existing or subsequently provided for by law, regarding violations of municipal ordinances.

(Code 1960, § 29B-17)

State law reference(s)—Similar provisions, F.S. § 162.13.

Secs. 2-393—2-405. Reserved.

DIVISION 9. GAINESVILLE COMMUNITY REINVESTMENT AREA[17]

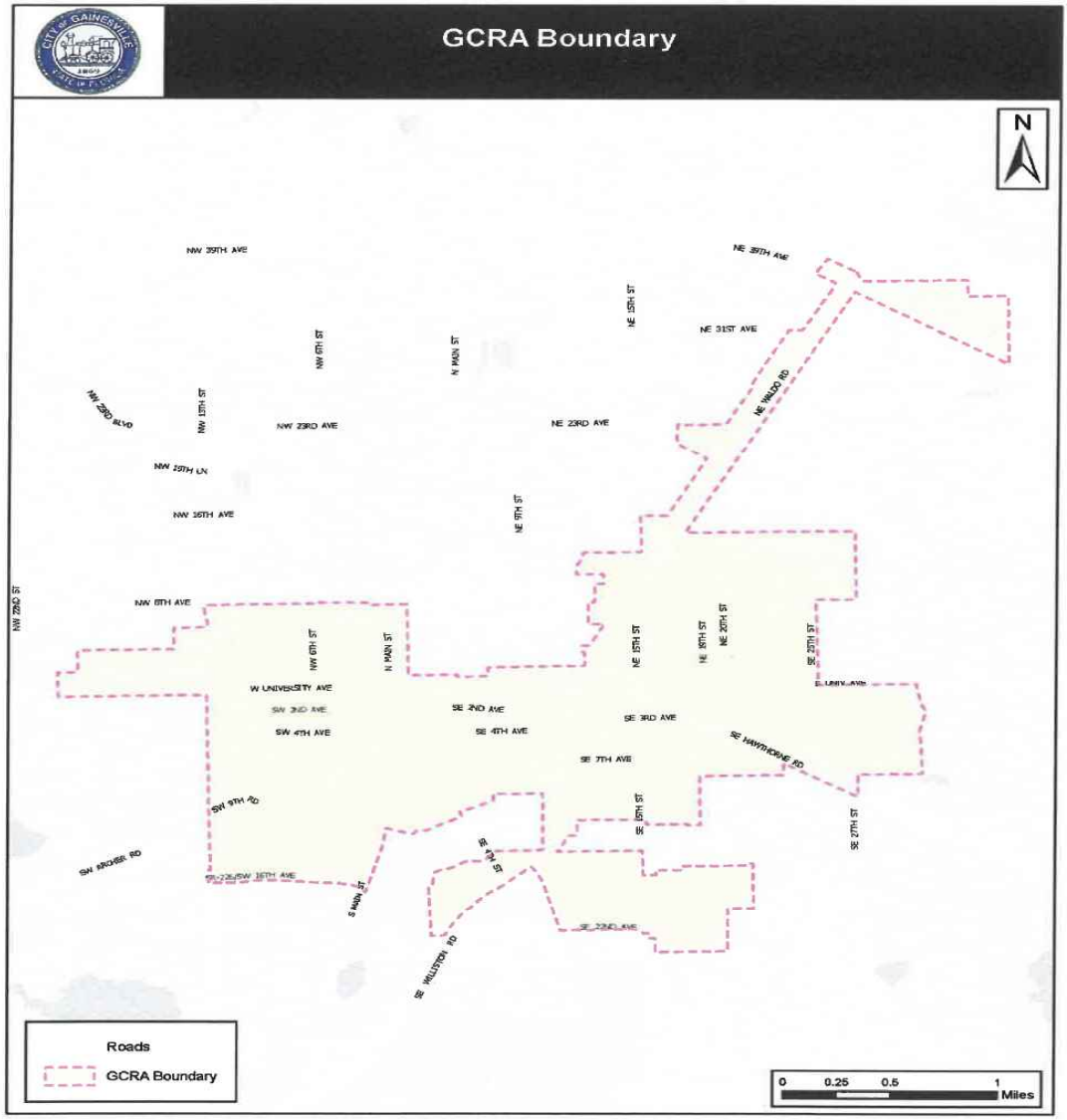
Sec. 2-406. Gainesville Community Reinvestment Area; city department; powers; definitions.

(a) There is hereby created the Gainesville Community Reinvestment Area (the "GCRA") within which the city shall undertake community redevelopment for the elimination and prevention of the development and spread of slums and blight in accordance with this division. The physical boundary of the GCRA is set forth below. A GIS map of the GCRA is available in the GCRA office.

(b) Physical boundary of the GCRA.

[17]Editor's note(s)—Ord. No. 181001 , § 1, adopted September 5, 2019, repealed the former Div. 9, §§ 2-406—2-415, and enacted a new Div. 9 as set out herein. The former Div. 9 pertained to community redevelopment agency. See Code Comparative Table for complete derivation.

GCRA Boundary



(c) The community redevelopment within the GCRA shall be managed and administered by a city department known as the GCRA department. The city manager shall employ necessary staff for the department. The department shall have all powers necessary and convenient to carry out and effectuate community redevelopment, including without limitation, the following powers, subject to all adopted city policies and procedures:

(1) To disseminate community redevelopment information.

(2) To acquire or dispose of personal or real property within the GCRA by purchase, lease, option, gift, grant, bequest, devise, or other method of acquisition, including disposition of property to private parties/persons for community redevelopment use.

(3) To demolish and remove buildings and improvements.

(4) To carry out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the reinvestment plan.

(5) To provide, or to arrange or contract for, the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with community redevelopment; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to include in any contract let in connection with such redevelopment and related activities provisions to fulfill such of the conditions as it deems reasonable and appropriate.

(6) To develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing affordable housing.

(7) To prepare plans for and assist in the relocation of persons (including individuals, families, business concerns, nonprofit organizations, and others) displaced from the GCRA and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made.

(8) To appropriate such funds and make such expenditures as are necessary to carry out the purposes of this division.

(9) To organize, coordinate, and direct the administration of the provisions of this division, in order that the objective of remedying slum and blighted areas and preventing the causes thereof within the GCRA may be most effectively promoted and achieved.

(10) To develop and implement community policing innovations.

(d) The following terms, wherever used or referred to in this division, have the following meanings:

"Blight" means an area in which there are a substantial number of deteriorated or deteriorating structures; in which conditions, as indicated by government-maintained statistics or other studies, endanger life or property or are leading to economic distress; and in which two or more of the following factors are present:

i. Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities.

ii. Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the five years prior to the finding of such conditions.

iii. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness.

iv. Unsanitary or unsafe conditions.

v. Deterioration of site or other improvements.

vi. Inadequate and outdated building density patterns.

vii. Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality.

viii. Tax or special assessment delinquency exceeding the fair value of the land.

ix. Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality.

x. Incidence of crime in the area higher than in the remainder of the county or municipality.

xi. Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality.

xii. A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality.

xiii. Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area.

xiv. Governmentally owned property with adverse environmental conditions caused by a public or private entity.

xv. A substantial number or percentage of properties damaged by sinkhole activity which have not been adequately repaired or stabilized.

"Community redevelopment" means undertakings, activities, or projects for the elimination and prevention of the development or spread of slum and blight (as defined below), or for the reduction or prevention of crime, or for the provision of affordable housing, whether for rent or for sale, to residents of low or moderate income, including the elderly, and may include slum clearance or rehabilitation and revitalization of tourist areas that are deteriorating and economically distressed, or rehabilitation or conservation, or any combination or part thereof, including the preparation of any plans for such community redevelopment.

"Slum" means an area having physical or economic conditions conducive to disease, infant mortality, juvenile delinquency, poverty, or crime because there is a predominance of buildings or improvements, whether residential or nonresidential, which are impaired by reason of dilapidation, deterioration, age, or obsolescence, and exhibiting one or more of the following factors:

i. Inadequate provision for ventilation, light, air, sanitation, or open spaces.

ii. High density of population, compared to the population density of adjacent areas within the county or municipality; and overcrowding, as indicated by government-maintained statistics or other studies and the requirements of the Florida Building Code.

iii. The existence of conditions that endanger life or property by fire or other causes.

(Ord. No. 181001 , § 1, 9-5-19; Ord. No. 2022-557 , § 1, 10-20-22)

Sec. 2-407. Annual work plan; annual report; action requiring county commission approval.

(a) On or before April 1 of each year, the city commission will hold a joint meeting with the county commission at which the city will present an annual (or longer duration) work plan that describes the community redevelopment that is planned to be undertaken within the GCRA.

(b) On or before April 1 of each year, the city shall provide to the county commission an annual report of its community redevelopment activities within the GCRA for the preceding calendar year and shall make such report available for inspection during business hours in the office of the city clerk.

(c) An affirmative vote of both the city commission and county commission shall be required to expand the boundary of the GCRA.

(Ord. No. 181001 , § 1, 9-5-19; Ord. No. 210562 , § 8, 6-16-22)

Sec. 2-408. GCRA advisory board.

The city commission shall appoint a nine-member GCRA advisory board to serve in an advisory capacity to the city commission on matters of community redevelopment within the GCRA. To the extent possible, members of the advisory board should reside or work within the GCRA and should be a demographically and educationally diverse representation of the GCRA. The advisory board should meet monthly and may adopt rules of procedure,

subject to approval by the city commission, to govern the conduct of its meetings. Staff support for the advisory board will be under the direction of the city manager.

(Ord. No. 181001 , § 1, 9-5-19; Ord. No. 210666 , § 1, 1-20-22)

Sec. 2-409. GCRA fund.

There is hereby established a restricted fund to be known as the GCRA fund. The GCRA fund shall be administered and accounted for by the city budget and finance department as follows:

(1) The four former CRA redevelopment trust funds (meaning the funds collected and held by the Gainesville Community Redevelopment Agency prior to its dissolution at 11:59 p.m. on September 30, 2019 in the Downtown Expansion redevelopment trust fund, College Park/University Heights redevelopment trust fund, NW Fifth Avenue Neighborhood/Pleasant Street redevelopment trust fund, and the Eastside Community redevelopment trust fund) will continue to be separately administered and accounted for and expended only to finance, refinance or pay-off debt and to carry out community redevelopment within the respective former CRA area (the Downtown Expansion area, College Park/University Heights area, NW Fifth Avenue Neighborhood/Pleasant Street area, and Eastside Community area) within which the trust funds were collected; and

(2) The funds received by the GCRA on or after 12:00 a.m. on October 1, 2019 will be separately administered and accounted for and expended to finance, refinance or pay-off debt and to carry out community redevelopment within the GCRA.

The following may not be paid for or financed by the GCRA fund:

(1) Construction or expansion of administrative buildings for public bodies or police and fire buildings, unless the construction or expansion is contemplated as part of a community policing innovation.

(2) Installation, construction, reconstruction, repair, or alteration of any publicly owned capital improvements or projects if such projects or improvements were scheduled to be installed, constructed, reconstructed, repaired, or altered within 3 years of the approval of the reinvestment plan by the city commission pursuant to a previously approved public capital improvement or project schedule or plan of the city commission, unless and until such projects or improvements have been removed from such schedule or plan of the city commission and 3 years have elapsed since such removal or such projects or improvements were identified in such schedule or plan to be funded, in whole or in part, with funds on deposit within the GCRA fund.

(3) General government operating expenses unrelated to the planning and carrying out of community redevelopment.

By Agreement dated April 9, 2019 and recorded in Official Record Book 4675, Page 2154, of the Public Records of Alachua County, Florida, the city and county agreed that each is obligated to annually remit, no later than the due date specified, the below listed contributions to the GCRA to be held in the GCRA fund, the expenditure of which is restricted as set forth above.

Due Date	County contribution	City Contribution
January 1, 2020	$4,191,460.39	$3,325,657.89
January 1, 2021	$4,091,460.39	$3,325,657.89
January 1, 2022	$3,991,460.39	$3,325,657.89
January 1, 2023	$3,891,460.39	$3,325,657.89
January 1, 2024	$3,791,460.39	$3,325,657.89

January 1, 2025	$3,691,460.39	$3,325,657.89
January 1, 2026	$3,591,460.39	$3,325,657.89
January 1, 2027	$3,491,460.39	$3,325,657.89
January 1, 2028	$3,391,460.39	$3,325,657.89
January 1, 2029	$3,325,657.89	$3,325,657.89

(Ord. No. 181001 , § 1, 9-5-19)

Sec. 2-410. Reinvestment plan.

The city commission shall adopt a reinvestment plan to guide community redevelopment within the GCRA, which plan includes, at a minimum, the below listed elements:

(1) A map of the boundary of the GCRA.

(2) Visuals and description in general terms of:

a. Existing conditions, including street layout.

b. Limitations on the type, size, height, number, and proposed use of buildings.

c. The approximate number of dwelling units.

d. Property that is used or intended for use as public parks, recreation areas, streets, public utilities, and public improvements of any nature.

(3) A description of the anticipated impact of redevelopment activities upon the residents of the GCRA in terms of relocation (including the provision of replacement housing for the temporary or permanent relocation of persons displaced from housing as a result of community redevelopment activities), traffic circulation, environmental quality, availability of community facilities and services, effect on school population, and other matters affecting the physical and social quality of the neighborhood.

(4) Identify publicly funded capital projects to be undertaken within the GCRA.

(5) Contain adequate safeguards that the work of redevelopment will be carried out pursuant to the plan.

(6) Provide for the retention of controls and the establishment of any restrictions or covenants running with land sold or leased for private use for such periods of time and under such conditions as the city commission deems necessary to effectuate the purposes of this part.

(7) Provide a description of existing and planned residential use in the GCRA and include whether the plan is intended to remedy a shortage of affordable housing.

(8) Contain a detailed statement of the projected costs of the redevelopment, including the amount to be expended on capital projects in the GCRA and any indebtedness, if such indebtedness is to be repaid with the GCRA fund.

(Ord. No. 181001 , § 1, 9-5-19)

Secs. 2-411—2-420. Reserved.

DIVISION 10. RESERVED[18]

Secs. 2-421—2-430. Reserved.

DIVISION 11. RESERVED[19]

Secs. 2-430.1—2-430.15. Reserved.

DIVISION 12. TREE BOARD OF APPEALS[20]

Sec. 2-430.16. Creation; composition; appointment; term of members; filling of vacancies.

(a) The tree board of appeals shall consist of three members nominated by the tree advisory board and appointed by the city commission. Any candidate for the tree board of appeals shall be qualified in arboriculture. The board is authorized to hear appeals from any order, decision, or determination made by the city manager or designee with respect to the removal of trees, documentation regarding failure to protect trees during development and construction, or the determination/interpretation of the tree appraised value with respect to the mitigation requirements for heritage trees. Appeals shall be filed with the city manager or designee The tree board of appeals shall apply standards and considerations found in section 30-254 and 30-254.1 of the Land Development Code and shall have authority to decide any question involving the interpretation of the city manager or designee's order. Each member shall be appointed for a term of three years and shall remain in office until a successor has been appointed and qualified. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant. Terms shall expire on January 1 of the year the term expires.

(b) Schedule. The terms and expiration of terms for the tree board of appeals are as follows: one term shall expire January 1, 1990; one term shall expire January 1, 1991; and one term shall expire January 1, 1992. After each term expires, appointments shall be made for three-year terms or for unexpired terms.

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[18]Editor's note(s)—Ord. No. 4087, §§ 1, 2, adopted June 12, 1995 deleted the provisions of former Div. 10, §§ 2-421—2-425, which pertained to Gainesville Sister Cities Board, as derived from Ord. No. 3238, § 1, 7-28-86, Ord. No. 3485, §§ 1, 2, 11-14-88.

[19]Editor's note(s)—Ord. No. 002071, § 1, adopted Jan. 14, 2002, repealed the provisions of former Div. 11, §§ 2-430.1—2-430.5, which pertained to the disabled and elderly citizens' advisory board, as derived from Ord. No. 3377, § 1, adopted Oct. 12, 1987.

[20]Editor's note(s)—Ord. No. 3529, § 1, adopted Apr. 10, 1989, adding §§ 2-224—2-229 to the 1960 Code, has been included as Div. 12, §§ 2-430.16—2-430.21 hereof at the discretion of the editor.

Cross reference(s)—Tree advisory board, § 2-430.31 et seq.; standards for yards and landscaped areas in Central City District, § 6-236; land development code, Ch. 30; landscape and tree management, § 30-251 et seq.

(Ord. No. 3529, § 1, 4-10-89; Ord. No. 3593, § 1, 1-22-90; Ord. No. 090878, § 17, 6-6-13)

Sec. 2-430.17. Officers and rules.

The tree board of appeals shall elect a chairperson from its membership and adopt rules for the conduct of its affairs which shall be in full force and effect when approved by the commission.

(Ord. No. 3529, § 1, 4-10-89)

Sec. 2-430.18. Meetings.

(a) *Schedule.* The board shall meet when directed by the appropriate authority or within ten working days of the filing of an appeal. Special meetings may be held upon the call of the chairperson or upon the written request of any two members of the board. All meetings shall be open to the public. The board shall keep minutes of its proceedings showing each member's absence, failure to vote, or vote, and shall keep records of its examinations and all other official actions which shall be filed immediately in the office of the board and which shall become public records.

(b) *Attendance.* Three board members must be present at the meeting. If one board member is unable to attend a specific meeting, an alternate, duly appointed by the chairperson of the tree advisory board, shall substitute for the aforementioned specific meeting only. Furthermore, only one substitute will be permitted at each meeting.

(Ord. No. 3529, § 1, 4-10-89; Ord. No. 3593, § 2, 1-22-90)

Sec. 2-430.19. Powers and duties.

(a) *General.* The tree board of appeals shall have all the powers and duties prescribed by this division. The tree board of appeals shall adopt such rules and regulations as may be necessary or proper to the performance of its powers and duties hereunder, and may amend or repeal the same. The rules and regulations shall be approved by resolution of the city commission prior to becoming effective.

(b) *Conditions and safeguards.* Upon reaching a decision, the board may attach such conditions and safeguards as may be required to protect the public health, safety, and general welfare.

(Ord. No. 3529, § 1, 4-10-89)

Sec. 2-430.20. Decisions.

Every decision of the tree board of appeals shall be final and binding on all persons. All decisions of the board shall be in writing and indicate the vote upon the decision. A decision shall be rendered on all appeals within ten working days of the filing of the appeal.

(Ord. No. 3529, § 1, 4-10-89)

Sec. 2-430.21. Notification to adjacent property owners for errors by administrative officials.

Notification of any appeal of the arborist's decision shall be given to all owners of property within 100 feet of the premises which are involved in the appeal.

(Ord. No. 3529, § 1, 4-10-89)

Secs. 2-430.22—2-430.30. Reserved.

DIVISION 13. TREE ADVISORY BOARD[21]

Sec. 2-430.31. Creation; composition; appointment; term of members; filling of vacancies.

The tree advisory board shall consist of five members who serve on the tree advisory board and are appointed by the city commission. At least four members of the tree advisory board shall have knowledge of urban forestry. Each member shall be appointed for a term of three years and shall remain in office until a successor has been appointed and qualified. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant. Terms shall expire on January first of the year the terms expire. Notwithstanding provisions of the previous subsection, one term shall expire January 1, 1993, one term shall expire January 1, 1994, one term shall expire January 1, 1995, one term shall expire January 1, 1996, and one term shall expire January 1, 1997. After each of said terms expires, appointments shall be made for three-year terms or for unexpired terms.

(Ord. No. 3592, § 1(2-230), 1-22-90)

Sec. 2-430.32. Meetings; records.

The board shall meet when directed by the appropriate authority or on the second Thursday of each month. Special meetings may be held upon the call of the chairperson or upon the written request of any two members of the board. All meetings shall be open to the public. The board shall keep minutes of its proceedings showing each member's absence, failure to vote, or vote, and shall keep records of its examinations and all other official actions which shall be filed immediately in the office of the board and which shall become public records.

(Ord. No. 3592, § 1(2-231), 1-22-90)

Sec. 2-430.33. Duties.

The duties of the tree advisory board shall include:

(1) To act as the technical information collector/exchange forum on tree issues where citizens need coordination of information from varied sources.

(2) To clarify tree regulations that exist in the city's codes and ordinances and make them known to city residents.

(3) To act on referrals from the city commission.

(4) To guide the creation of a master tree plan for the city.

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[21]Editor's note(s)—Ord. No. 3592, § 1, adopted Jan. 22, 1990, adding §§ 2-230—2-232 to the 1960 Code, has been included as Div. 13, §§ 2-430.31—2-430.33 hereof at the discretion of the editor.

Cross reference(s)—Tree board of appeals, § 2-430.16 et seq.; land development code, Ch. 30; landscape and tree management, § 30-251 et seq.

(5) To assist in the development of the goals and objectives for the city's comprehensive plan with respect to trees and to review proposed changes to the Land Development Code regarding tree and landscape regulations.

(6) To advise all departments of the city on tree issues.

(7) To communicate general tree information and develop tree projects that would benefit the community.

(8) To serve on the tree board of appeals (three of the five members will be recommended by the tree advisory board for appointment by the city commission).

(9) To determine species that qualify as high quality heritage trees, and to maintain a list of ratings that identify the relative value of trees in the urban forest for the purpose of calculating tree appraised value.

(10) To establish monetary values for trees as necessary to calculate tree appraised value, mitigation payment and other payments required for regulated trees.

(Ord. No. 3592, § 1(2-232), 1-22-90; Ord. No. 090878, § 17, 6-6-13)

Secs. 2-430.34—2-430.40. Reserved.

DIVISION 14. RESERVED[22]

Secs. 2-430.41—2-430.50. Reserved.

DIVISION 15. RESERVED[23]

Secs. 2-430.51—2-430.55. Reserved.

ARTICLE VI. FINANCES[24]

[22]Editor's note(s)—Former Div. 14 of Art. V, which consisted of §§ 2-430.41—2-430.44 and pertained to the youth advisory board, was repealed by Ord. No. 3845, § 3, adopted Mar. 15, 1993. The repealed provisions derived from Ord. No. 3575, § 1, adopted Oct. 9, 1989.

[23]Ord. No. 2022-343 , § 1, adopted September 15, 2022, repealed §§ 2-430.51—2-430.55, which pertained to student community relations advisory board and derived from Ord. No. 060431, § 1, 12-11-06.

[24]Cross reference(s)—Department of finance, § 2-226 et seq.; taxation, Ch. 25.

State law reference(s)—Municipal borrowing, F.S. § 166.101 et seq.; municipal finance and taxation, F.S. § 166.201 et seq.; financial matters pertaining to political subdivisions, F.S. Ch. 218.

Sec. 2-431. Fiscal year.

The fiscal year of the city shall begin on the first day of October and close on the 30th day of September of each year.

(Code 1960, § 2-14)

State law reference(s)—Mandate for fiscal year, F.S. §§ 166.241, 218.33.

Sec. 2-432. Accounts to be opened and closed in accordance with fiscal year.

The accounts of each and every officer of the city shall be open on the first day of October and closed on the 30th day of September of each year.

(Code 1960, § 2-15)

Sec. 2-433. Annual audit of accounts; report to be published.

The city commission shall employ a certified public accountant, not connected with the government of the city, to audit the accounts maintained and the financial statements prepared by the city during the fiscal year. The audit shall cover the period ending with the 30th day of September of each fiscal year. The report of the audit shall be furnished to the city commission as early as practicable after the 30th day of September of each fiscal year and shall be made available for viewing by the public on the city's website.

(Code 1960, § 2-16; Ord. No. 060553, § 1, 11-27-06)

State law reference(s)—Mandate for annual audit, F.S. §§ 166.241, 218.33.

Sec. 2-434. Security for city deposits.

Each bank or savings association operating within the state receiving funds from the city for deposit in demand or time accounts must be designated by the state treasurer as a qualified public depository in accordance with provisions of the Florida Security for Public Deposits Act, F.S. Ch. 280. All other funds of the city invested in government securities, government agency securities, corporate stocks, etc., will be evidenced by an appropriate receipt, from the agency holding such investment, to be held in the possession of the director of finance.

(Code 1960, § 2-21)

State law reference(s)—Investments by municipalities, F.S. § 166.261.

Sec. 2-435. Appraisal required of acquisition or disposition of certain real property.

The city commission shall not approve a contract for the purchase or sale of fee title to real property at a cost of $100,000.00 or more until the city has first obtained an appraisal of such real property.

(Code 1960, § 2-21.1; Ord. No. 3242, § 1, 8-25-86; Ord. No. 050470, § 1, 11-14-05; Ord. No. 100629, § 1, 5-2-13)

Sec. 2-436. Real property polices.

The acquisition or disposition of real property by the city shall be conducted in accordance with real property polices as adopted by and as may be amended from time to time by the city commission.

(Ord. No. 110629, § 3, 5-2-13)

Editor's note(s)—Ord. No. 110629, adopted May 2, 2013, repealed § 2-436 and enacted a new section as set out herein. The former § 2-436 pertained to sale of land obtained by the city through foreclosure and derived from § 2-21.2 of the 1960 Code.

Sec. 2-437. Payment of costs involved in obtaining and/or enforcing liens or special assessments.

Whenever under the provisions of any ordinance or law, the city or any of its officers or agents are expressly or impliedly required or authorized to secure a lien or special assessment on specific property, and the lien or special assessment is actually obtained, the court costs and attorney's fees required by the city or any of its officers and agents in obtaining or enforcing the lien or special assessment shall be paid by the owner of the property. Such costs and attorney's fees shall be in addition to any other charges and costs due to the city under any other ordinances or laws.

(Code 1960, § 1-12)

Sec. 2-438. Investment of funds of the city.

The director of finance and/or subordinates designated by the director of finance are authorized to invest and reinvest funds, execute trades and otherwise conduct business involving the investment of the funds of the city. Investments shall be made in accordance with the city's approved investment policy. The rules of this section and the city investment policy shall not apply to pension or retirement funds, OPEB funds, certain special use funds, or funds related to the issuance of debt where there are other existing policies or indentures in effect for such funds. Funds held by trustees or fiscal agents are excluded from these rules; however, all funds are subject to regulations established by the State of Florida. Except for excluded funds, and restricted and special funds, the city commingles its funds for investment purposes to maximize investment earnings and to increase efficiencies with regard to investment pricing, safekeeping and administration. Investment income is allocated to the various funds based on their respective participation and in accordance with generally accepted accounting principles. Funds of the city may be invested in any investments authorized by F.S. § 218.415(16), and/or in one or more of the following investment instruments:

(1) Any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies set forth in subsection (3) below to the extent unconditionally guaranteed by the United States of America and any certificates or any other evidences of an ownership interest in obligations or in specified portions thereof (which may consist of specified portions of the interest thereon) of the character described in this subsection;

(2) Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which at the time of their purchase are rated investment grade by a nationally recognized rating agency;

(3) Bonds, debentures or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may hereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America including securities issued by Federal Agencies and Government Sponsored Enterprises (GSEs) such as: Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Farm Credit Banks (FFCB), Federal Home Loan Banks (FHLB), Federal Home Loan Mortgage Corporation (FHLMC), Small Business Administration (SBA), and Tennessee Valley Authority (TVA);

(4) Mortgage Backed Securities (MBS), Commercial Mortgage Backed Securities (CMBS), Collateralized Mortgage Obligations (CMO), and Asset Backed Securities (ABS) issued by a federal agency or instrumentality, or by a private corporation, which at the time of their purchase are rated investment grade by a nationally recognized rating agency;

(5) Interest-bearing time deposits or savings accounts in qualified public depositories, including certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States or any national banking association which is a member of the Federal Deposit Insurance Corporation, savings and loan associations which are members of the Federal Savings and Loan Insurance Corporation and credit unions which are members of the National Credit Union Administration Insurance Fund, provided that the aggregate principal amount of all certificates of deposit issued by any such bank, trust company, national banking association, savings and loan association or credit union which are purchased with moneys of the city are fully insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration Insurance Fund; or secured to the extent not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration Insurance Fund by such securities as are described in subsections (1) through (3), inclusive, having a market value (exclusive of accrued interest, other than accrued interest paid in connection with the purchase of such securities) at least equal to the principal amount of such certificates of deposit (or portion thereof not insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration Insurance Fund) which shall be lodged with the city, or a depositary, as custodian, by such bank, trust company, national banking association, savings and loan association or credit union, and such bank, trust company, national banking association, savings and loan association or credit union shall furnish the city or the depositary, if any, with an undertaking satisfactory to it that the aggregate market value of all such obligations securing such certificates of deposit will at all times be an amount which meets the requirements of this subsection and the city or the depositary, if any, shall be entitled to rely on each such undertaking;

(6) Bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated investment grade by a nationally recognized rating agency;

(7) Any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association or government bond dealer reporting to, trading with and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities described in subsections (1), (2), or (3);

(8) Bankers Acceptances which are issued by institutions whose senior obligations are, at the time of purchase, rated investment grade by a nationally recognized rating agency;

(9) Commercial Paper rated at the time of purchase at least A-1 by Standard and Poor's, P-1 by Moody's, or F1 by Fitch;

(10) Local Governmental Investment Pools and Funds authorized pursuant to the Florida Interlocal Cooperation Act of 1969, including but not limited to the SBA Local Government Surplus Funds Trust Fund (Florida Prime), the Florida Education Investment Trust Fund (FEITF), the Florida Cooperative Liquid Assets Securities System (FLCLASS), the Florida Surplus Asset Fund Trust (FLSAFE), the Florida Local Government Investment Trust Day to Day Fund (FL Trust), and the Florida Treasury Investment Pool;

(11) SEC registered money market funds in good standing with the Securities and Exchange Commission which are rated investment grade by a nationally recognized rating agency, provided that such money market fund assets are limited to investments authorized by this section;

(12) Securities of, or other interests in, any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. ss. 80a-1 et seq., as amended from time to time, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States Government or any agency or instrumentality thereof and to repurchase agreements fully collateralized by such United States Government obligations, and provided that such investment company or investment trust takes delivery of such collateral either directly or through an authorized custodian.

(Code 1960, § 2-20; Ord. No. 3046, § 1, 8-27-84; Ord. No. 981207, § 1, 10-25-99; Ord. No. 020368, § 1, 10-28-02; Ord. No. 040466, § 1, 11-8-04; Ord. No. 160951 , § 2, 6-1-17)

Sec. 2-439. Electronic Signatures and Transactions Act.

Purpose and intent. In accordance with F.S. §§ 668.001 through 668.06, and § 668.50, the Electronic Signature Act of 1996 and the Uniform Electronic Transaction Act, respectively, the City of Gainesville intends to treat an electronic document as having the same force and effect as a document obtained by traditional, manual means. Electronic commerce, including the implementation and authorization of electronic signatures, records, and transactions, can benefit the City of Gainesville. Electronic commerce has the potential to facilitate economic development and improve the efficiency of government services, expedite business transactions, decrease paper use and reduce costs associated with manual signatures.

(Ord. No. 080515, § 1, 12-4-08)

Sec. 2-440. Permissible use of electronic signatures, records and transactions.

(1) *Authorization.* The charter officers of the city are authorized to use electronic signatures, records and transactions, and to conduct transactions electronically.

(2) *Use.* The charter officers of the city are authorized, to the extent consistent with F.S. §§ 668.001 through 668.06, and 668.50 to:

  (a) Determine appropriate use of electronic signatures, records and electronic transactions; and

  (b) Produce, receive, accept, acquire, transmit, forward, store, preserve, or maintain records in electronic form; and

  (c) Conduct transactions in electronic form.

(3) *Force and effect of an electronic signature.*

  (a) Unless otherwise provided by law, an electronic signature may be used to sign a writing and shall have the same force and effect as a manual signature.

  (b) The charter officers are authorized, to the extent consistent with F.S. §§ 668.001 through 668.06, and 668.50, when deemed appropriate:

    1. To determine the manner and format in which electronic signatures are used and accepted; and

    2. To adopt rules and regulations regarding the identification, security, confidentiality and use of electronic signatures to ensure the validity of electronic signatures.

(4) *Force and effect of an electronic record*. Electronic records shall be considered and treated the same as any other records for any other purpose.

(Ord. No. 080515, § 1, 12-4-08)

Secs. 2-441—2-450. Reserved.

ARTICLE VII. EMPLOYEE BENEFITS[25]

DIVISION 1. GENERALLY

Sec. 2-451. Payments on account of sickness and injury.

The city may make payments to its officers and employees for or on account of sickness and injury.

(Code 1960, § 2-7.2)

Sec. 2-452. Supplemental benefits to persons retiring prior to January 1, 1968.

Anything in this article or any other ordinance or provision notwithstanding, all persons who prior to January 1, 1968, were retired from the employment of the city under the retirement provisions of this article, whether by retirement for length of service or by disability, shall as of January 22, 1969, receive in addition to the amounts of pension otherwise provided for an additional $2.00 per month multiplied by the number of years the person had been retired from the employment of the city calculated from the date of the retirement to January 22, 1969, which sum shall be paid each and every month hereafter following January 22, 1969:

(1) The benefits provided for under this section shall be calculated as of January 22, 1969, and shall not thereafter be recalculated so as to include any additional persons or to provide any additional increases other than those expressly provided for as of January 22, 1969.

(2) No prorations of years or parts of years will be considered in determining benefits under this section, it being expressly intended that the multiplier for the number of years of retirement since one's initial retirement date multiplied by $2.00 per month shall be considered only as a whole year if the year has been completed as of January 22, 1969.

(Code 1960, § 20-95)

Secs. 2-453—2-465. Reserved.

DIVISION 2. RESERVED[26]

Secs. 2-466—2-480. Reserved.

[25]Cross reference(s)—Equal employment opportunity, § 8-47 et seq.

[26]Ord. No. 160313, § 1, adopted January 5, 2017 , repealed §§ 2-466—2-473, which pertained to compensation in the event of catastrophic conditions and mutual aid assistance. See Code Comparative Table for complete derivation.

DIVISION 3. LONGEVITY PAY

Sec. 2-481. Eligibility; amount.

(a) All regular, part-time and full-time city employees hired prior to March 2, 1992, who remain in the continuous, regular, full-time or part-time employ of the city, shall receive longevity pay in addition to their regular base pay in accordance with the following schedule: All such employees who have been in the regular, part-time or full-time employ of the city for:

(1) Five years and not more than ten years; two percent of base pay;

(2) Ten years and not more than 15 years; three percent of base pay;

(3) Fifteen years and not more than 20 years; four percent of base pay;

(4) Twenty years and not more than 25 years; five percent of base pay;

(5) In excess of 25 years; six percent of base pay.

(b) Fulltime regular certified police officers and firefighters employed by the police and fire departments who are otherwise eligible to receive longevity pay and who elect to enter a DROP must, in order to enter and to continue to participate in the DROP, make an irrevocable election upon entry into the DROP as follows: The employee may (1) continue to receive longevity payments and merit increases (assuming merit increases are provided and applicable), but forego receipt of all future general (COLA) salary increases, or (2) continue to receive general (COLA) salary increases and merit increases (assuming merit increases are provided and applicable) but become ineligible for future receipt of longevity pay, or (3) in the case where the applicable pay plan does not provide separately for general and merit increases, the employee may forego either future receipt of longevity payments, or any and all future salary increases. In those cases where an otherwise eligible employee elects to forego receipt of future longevity payments, entry into the DROP shall be treated as separation from service for the purposes of section 2-484.

(Code 1960, § 2-10; Ord. No. 3594, § 1, 1-22-90; Ord. No. 950994, § 1, 12-11-95; Ord. No. 981266, § 21, 7-12-99; Ord. No. 000051, § 13, 9-11-00; Ord. No. 031300, § 1, 6-28-04)

Sec. 2-482. Base pay; when payable; basis of extra compensation.

(a) *"Base pay" defined.* The base pay of each eligible employee shall be the amount of regular base pay as indicated on the applicable salary schedule effective as of the first full pay period in January or July of each year which the employee is entitled to draw from immediately preceding the January or July in which longevity payment is actually made, exclusive of any overtime, longevity, incentive or other type pay.

(b) *Establishment of eligibility.* Regular, part-time and full-time employment of employees shall be determined as of the January first or July first immediately preceding the January or July in which longevity payment is to be made; provided, for employees receiving longevity for the first time, eligibility shall be determined as of the first full month after the employee reaches his or her five-year adjusted service date and payment shall be made only in accordance with subsection (d)(1); and provided further, except as may be provided for DROP participants, any person who is retired under a pension plan of the city shall not be eligible for such additional compensation under the provisions of this division. In order for the employee's time employed to be counted for purposes of calculating his/her years of service for longevity purposes, the employee must

have been in the continuous, regular (paid), full-time or part-time employ of the city for the entire period, as described hereafter. Employees incurring hours of leave without pay of one normal workday or less within any month shall be considered to be in a continuous regular (paid) permanent full-time or part-time employ of the city for that month. Except as may otherwise be required by law, employees incurring a leave without pay of greater than one normal workday within any month shall not be considered to be in continuous regular (paid) full-time or part-time employ of the city for that month. Further, in order to receive payment under this division the employee must still be in a regular (paid) status with the city the month in which the payment is actually made.

(c) *Calculation of payment—Normal payments in general.*

(1) Longevity pay shall be paid to each eligible employee in January and July of each year and shall normally cover the six months preceding the month in which payment is made.

(2) Longevity pay for each eligible employee shall be calculated by multiplying the base pay of the employee for the month of January or July next preceding the month in which longevity pay is to be paid by the number of months in which the employee was considered to be in continuous, regular (paid) full-time or part-time employ, intervening from the month preceding the month in which longevity pay was last made to and including the month preceding the month in which payment of longevity pay is to be made. The results thus obtained shall then be multiplied by the applicable percentage rate as shown in the schedule in section 2-481 and the result shall be the amount of longevity pay to be paid.

(d) *Same—Proration.* Notwithstanding the provisions of subsection (c), the provisions of this subsection (d) shall apply when applicable.

(1) *First eligibility.* For employees receiving longevity for the first time, the pay shall cover the period of between one and six full months in which the employee has been eligible immediately following the anniversary of the employee's five-year adjusted service date as an eligible employee. In order for a month to count for purposes of the calculations herein required, the employee must have reached the anniversary of his/her five-year adjusted service date and then have worked the entire month sought to be counted. (Example: If an employee hired out as a part-time or full-time employee with the city on July 1, 1973, the employee would receive the first longevity check in January, 1979, and the months for which the employee would receive credit would be July, August, September, October, November and December, 1978. However, if that employee had hired out on July 2, 1973, there would be no credit for July, 1978.) In the case of those employees hired February 1, 1990 and thereafter but prior to July 1, 1990, their first longevity payment in January, 1996 shall be calculated as would a normal payment, as described in section 2-482(c)(1) the "last made" payment being deemed to be July, 1995. In the case of those employees hired after July 1, 1990 but before January 1, 1991, their first longevity payment in January, 1996 shall be calculated and prorated as if they had been eligible immediately following the anniversary of his/her five-year adjusted service date.

(2) *In payment period.* If an employee's anniversary of his/her adjusted service date for longevity purposes falls within any six months' period for which the employee is being paid under the provisions of this division, then the number of full months' service in such period after the employee's adjusted service date shall be computed at the higher rate indicated above and the remainder of the months shall be calculated at the lower rate indicated above. (Example: If an employee hired out as a regular part-time or full-time employee with the city on January 13, 1958, the employee's twenty-year adjusted service date would be on January 13, 1978. For the payment in July, 1978, the employee would receive payment for January, 1978, calculated at the rate of four percent, and for February, March, April, May and June, 1978 the employee would receive pay calculated at the rate of five percent.)

(e) The provisions of this section and the payments authorized hereby shall apply prospectively only, and shall apply to all eligible employees except employees in a bargaining unit for collective bargaining purposes who shall be paid as provided in any applicable and effective collective bargaining agreement.

(Code 1960, § 2-11; Ord. No. 3594, § 2, 1-22-90; Ord. No. 950994, § 2, 12-11-95; Ord. No. 031300, § 2, 6-28-04)

Sec. 2-483. Same—Continuity of service; exceptions.

(a) Continuity of service in the city's employ shall not be interrupted because of absence due to compulsory military service or due to voluntary military service in the armed forces of the United States of America in accordance with appropriate contract provisions or applicable personnel policies, and all time spent in the armed forces of the United States of America shall apply toward accrued service for longevity pay.

(b) Continuity of service in the city's employ shall not be interrupted because of absence when the absence shall have been granted in accordance with the appropriate contract provisions or applicable personnel policies as approved by the city commission. Except as provided in section 2-482(b), none of such time on an approved leave without pay shall apply toward the employee's service credit for determining longevity pay unless the absence was for military leave as provided in subsection (a) above.

(Code 1960, § 2-12; Ord. No. 950994, § 3, 12-11-95)

Sec. 2-484. Separation from service.

If any eligible employee dies, retires or is separated from the service of the city for any reason, the employee shall be paid longevity pay from the date of the last payment of longevity pay to the employee for each month (except as provided in section 2-482(b) to the end of the month preceding the month in which the person dies, retires or is separated from the service of the city.

(Code 1960, § 2-13; Ord. No. 950994, § 4, 12-11-95)

Sec. 2-485. University cooperative education program trainees.

If a duly registered full-time trainee under a university cooperative education program is under such program as allowed by the city and later the person becomes a full-time permanent employee of the city then:

(1) When the employee becomes entitled to longevity pay as provided for in this division the full-time regular employee shall then be credited in ascertaining longevity pay benefits with the time of service as an employee of the city under the university cooperative education program.

(2) When the employee becomes entitled to pension benefits as provided for in this article the full-time regular employee shall then be credited in ascertaining pension benefits with the time of service as an employee of the city under the university cooperative education program.

(Code 1960, § 2-13.1; Ord. No. 031300, § 3, 6-28-04)

Secs. 2-486—2-500. Reserved.

DIVISION 4. OLD AGE AND SURVIVORS' INSURANCE[27]

Sec. 2-501. Participation by city officers and employees generally.

(a) It is hereby declared to be the policy and purpose of the city to extend effective as of October 1, 1956, to the employees and officials thereof not excluded by law nor excepted in this division the benefits of the system of old age and survivors' insurance as authorized by the Federal Social Security Act and amendments thereto, and by F.S. Ch. 650; and to cover by such plan all services which constitute employment as defined in F.S. § 650.02, performed in the employ of the city by employees and officials thereof, except service of an emergency nature, service in the judicial class of part-time positions, and service in the legal class of part-time positions.

(b) The city does hereby adopt the terms, conditions, requirements, reservations, benefits, privileges and other conditions thereunto appertaining of Title II of the Social Security Act as amended on behalf of all officers and employees of its departments and agencies to be covered under the agreement.

(Code 1960, § 20-1)

Sec. 2-502. Firfighter and police officer included.

There shall be included in any agreement entered into under section 2-503 only services in positions of:

(1) Firefighters and police officers who are members of or eligible to be members of the city's employee's pension plan and who have, prior to date of federal approval of old age and survivors' insurance coverage, filed written election to receive old age and survivors' insurance coverage.

(2) Firefighters and police officers who, on or after the date of federal approval, become eligible for membership in the above-named retirement system.

(Code 1960, § 20-2)

Sec. 2-503. Agreement with state authorized.

The mayor is hereby authorized and directed to execute all necessary agreements and amendments thereto with the division of retirement of the department of administration as state agency, and to request the governor to authorize an employee referendum, for the purpose of extending the benefits provided by the system of old age and survivors' insurance to the employees and officials of this city as provided in sections 2-501 and 2-502, which agreement shall provide for such methods of administration of the plan by the city as are found by the state agency to be necessary and proper and, subject to employee referendum, shall be effective with respect to services in employment covered by the agreement performed on and after the first day of October, 1965.

(Code 1960, § 20-6; Ord. No. 980128, § 2, 7-27-98)

[27]State law reference(s)—Social security for public employees, F.S. Ch. 650; authority of political subdivisions of state to submit plans for inclusion under the social security act, F.S. § 650.05.

Sec. 2-504. Employees' contributions; withholding authorized.

Withholdings from salaries, wages or other compensation of employees and officials for the purpose provided in section 2-501 are hereby authorized to be made, and shall be made, in the amounts and at such times as may be required by applicable state or federal laws or regulations, and shall be paid over to the state agency designated by such laws or regulations to receive such amounts.

(Code 1960, § 20-3)

Sec. 2-505. City contributions; appropriations.

There shall be appropriated from available funds, derived from general revenue and utility funds, such amounts, at such times as may be required to pay promptly the contributions, assessments, and referendum costs of the city as applicant or employer by state or federal laws or regulations, which shall be paid over to the lawfully designated state agency at the times and in the manner provided by law and regulation.

(Code 1960, § 20-4)

Sec. 2-506. Custodian of funds; records.

(a) The director of the department of management and financial services is hereby designated the custodian of all sums withheld from the compensation of officers and employees and of the appropriated funds for the contribution of the city, and the director of the department of management and financial services is hereby made the withholding and reporting agent and charged with the duty of maintaining personnel records for the purpose of this division.

(b) The city shall keep such further records and make such reports as may be required by applicable state or federal laws or regulations, and shall adhere to the regulations of the state agency.

(Code 1960, § 20-5)

Secs. 2-507—2-520. Reserved.

DIVISION 5. EMPLOYEES PENSION PLAN[28]

Sec. 2-521. Definitions.

The following words and phrases as used in this division shall have the following meanings unless a different meaning is clearly required by the context:

Accumulated contributions shall mean the sum of all amounts deducted from the compensation of a member and credited to his/her individual account in the pension fund.

Actuarial deficiency shall mean the present value as of the date of actuarial valuation, or pension credit granted for service prior to the date of actuarial valuation of the pension plan, as the term is used in F.S. Ch. 175 and Ch. 185.

[28]State law reference(s)—Actuarial soundness of retirement systems, F. S. § 112.60 et seq.

Actuarial equivalent shall mean a benefit of equal value or equal cost when computed based on the 1994 Group Annuity Mortality Basic Table Unisex 50/50 and an interest rate of 9.5 percent except as otherwise specified in section 2-526, below. This table and interest rate are used exclusively for calculation of actuarial equivalencies for optional forms of benefit.

Actuary shall mean one who is skilled in calculations involving compound interest and life contingencies who shall be a member of an actuarial society, association, or conference.

Advisory committee shall mean a committee established to advise the board of trustees on matters related to the pension plan as established in accordance with section 2-527.

Annuity shall mean annual payments for life to be paid in equal monthly installments on the last day of the month in which the same accrue. Such payments shall be made on a calendar month basis and the payments for any month may lie prorated if appropriate.

Base pay shall mean an employee's established rate of annual or monthly compensation, not including pay for overtime or bonuses.

Beneficiary shall mean any person, except a pensioner, who is in receipt of a pension or other benefits, payable from funds of the plan; or any person designated by a member of the plan to receive benefits from the plan upon the member's death.

Board shall mean the board of trustees created to administer this plan.

Credited service shall mean the total number of months of service with the city, expressed in terms of full and fractional years. Additional months of service shall be credited for unused sick leave and personal critical leave bank (PCLB) credits, assigning one day of service for each day of unused sick leave and unused personal critical leave, unless otherwise expressly provided for herein, in applicable personnel policies, collective bargaining agreements, or DROP provisions. For service earned on or after October 1, 2012, no additional months of service shall be credited for unused sick leave or PCLB credits earned on or after October 1, 2012. In calculating credited service on or after October 1, 2012, the lesser number of months between the additional months of service credited for unused sick leave or PCLB credits earned on or before September 30, 2012 and months of unused sick leave or PCLB credits available to a member at the time of his or her retirement shall be used. Employees of the Gainesville Police Department Communications Center at the time the combined communications center is activated who are hired by the Alachua County Sheriff on or about said date and who elect to remain members of this plan and the City of Gainesville Employees Disability Plan (GPD employees) shall designate some, none, or all of their city sick leave or PCLB balances at time of hire by the sheriff to be applied as credited service under the plan. Such sheriff department employee's sick leave (or equivalent benefit) balances at the time of termination from the sheriffs department shall not be applied towards credited service nor shall any cash out of such benefit be included in such member's final average earnings. GPD employees' employment with the city shall not be deemed to be terminated, for the purposes of this section, when hired by the Sheriff on or about the activation date. If the employment of a member is terminated, by reason of layoff, and the member is subsequently reemployed by the city, the credited service to which he/she was entitled as of his/her termination date shall be included in any further computation of credited service if the member refunds withdrawn contributions, if any, as described in section 2-626(i). Further provided, that if the employment of a member is terminated, other than layoff, and the member is subsequently reemployed by the city, the credited service to which he/she was entitled as of his/her termination date shall be included in any further computation of credited service.

(1) If the member was entitled to a termination benefit; or

(2) If the member was not entitled to a termination benefit and his/her number of calendar months that he/she was not employed is less than his/her aggregate months of service credited under the plan as of his/her termination date and he/she has repaid withdrawn contributions as provided in section 2-526(i).

(3) If the member was not entitled to a termination benefit, and he/she remains in the continuous employ of the city for at least five years subsequent to his/her re-employment, and he/she has repaid withdrawn contributions as provided in section 2-526(i). Continuous employ shall not be deemed interrupted because of absence, when the absence shall have been granted in accordance with appropriate contract provisions or applicable personnel policies as approved by the city commission. Approved absences shall count as credited service under the plan, in accordance with the terms of the plan.

Deferred retirement option program shall mean an optional program of the city's retirement systems or plans for deferring retirement income while remaining in the active employ of the city. This shall also be known as a DROP.

Early retirement shall mean retirement, in accordance with the terms of the plan, at an age earlier than normal retirement age.

Earnings shall mean only base pay (which shall include all paid leaves), all overtime pay (which shall include time paid at time-and-a-half, double-time, and double-time-and-a-half), stand-by pay, call-back pay, working out of classification pay, acting out of classification pay, longevity pay, special assignment pay, and termination vacation pay, or for members entering a DROP any lump sum payment of some or all of such member's vacation balance upon entering the DROP, except as may be otherwise expressly provided for herein or in collective bargaining agreements. To calculate earnings for service earned on or after October 1, 2012 by members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2012, no more than 300 hours of overtime pay per year earned on or after October 1, 2012 shall be included, nor shall termination vacation pay earned on or after October 1, 2012 be included. To calculate earnings for service earned on or after October 2, 2012 by members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012, no more than 150 hours of overtime pay per year earned on or after October 2, 2012 shall be included, nor shall termination vacation pay earned on or after October 2, 2012 be included. Effective October 1, 1996, earnings in excess of $150,000.00 annually shall be disregarded for all purposes of this plan. As of January 1 of each calendar year, the dollar limitation in Internal Revenue Code Section 401(a)(17) for that calendar year will become effective for the plan year commencing thereafter in lieu of the dollar limitation provided in the preceding sentence. For an employee who became a member of the plan prior to October 1, 1996, this limitation shall not be applicable.

Effective date of the plan shall mean the date on which the operation of the plan is to commence for the purpose of determining eligibility, benefits, and related matters, which is hereby fixed as the first day of August, 1965.

Employee shall mean a person employed by the city and so classified in the personnel records of the city, including probationary and permanent employees, but excluding employees defined in section 2-596. Any appointed officer shall be qualified under this plan under only one office, that office being the one from which he/she received the largest annual salary, compensation, or remuneration. Independent employees are excluded from participation in this plan.

Final average earnings shall mean:

(1) For members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2007, the average of the annual (12 consecutive months) earnings received by an employee during any 36 consecutive months of employment by the city during which the employee received the highest earnings paid him/her by the city; provided, however, for employees who are demoted for disciplinary reasons by the city, the terms shall refer to the greater of:

a. The average of the annual (12 consecutive months) earnings received by an employee his/her final 36 consecutive months of employment with the city; or

b. The average of the annual (12 consecutive months) earnings received by an employee during any 36 consecutive months of employment by the city subsequent to the demotion during which the employee received the highest earnings paid him/her by the city.

(2) For members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2007 but on or before October 1, 2012, the average of the annual (12 consecutive months) earnings received by an employee during any 48 consecutive months of employment by the city during which the employee received the highest earnings paid him/her by the city; provided, however, for employees who are demoted for disciplinary reasons by the city, the terms shall refer to the greater of:

a. The average of the annual (12 consecutive months) earnings received by an employee his/her final 48 consecutive months of employment with the city; or

b. The average of the annual (12 consecutive months) earnings received by an employee during any 48 consecutive months of employment by the city subsequent to the demotion during which the employee received the highest earnings paid him/her by the city.

(3) For members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012, the average of the annual (12 consecutive months) earnings received by an employee during any 60 consecutive months of employment by the city during which the employee received the highest earnings paid him/her by the city; provided, however, for employees who are demoted for disciplinary reasons by the city, the terms shall refer to the greater of:

a. The average of the annual (12 consecutive months) earnings received by an employee his/her final 60 consecutive months of employment with the city; or

b. The average of the annual (12 consecutive months) earnings received by an employee during any 60 consecutive months of employment by the city subsequent to the demotion during which the employee received the highest earnings paid him/her by the city.

(4) If a member has been absent from work (performs no duties) due to an injury claimed to be compensable under F.S. Ch. 440 during the period of time which would be utilized to determine his/her final average earnings, then such period of absence shall not be considered months of employment for the purposes of this section. The months of employment immediately preceding the absence shall be deemed to be consecutive with the months of employment, if any, earned after his/her return to work.

(5) If the employment of a member is terminated and such former member, who is not a retiree or receiving a termination benefit (or whose termination benefit was cashed out under section 2-526(a)(3)), is subsequently re-employed by the city as an eligible member, such member's final average earnings shall be calculated as follows, except as otherwise required by subsections (1), (2), and (3) of this definition: The months of employment immediately preceding the termination shall be deemed to be consecutive with the months of employment earned after the member's re-employment.

(6) If a continuously employed member ceases to earn eligible service for more than one month during the period of such employment and subsequently begins to again earn eligible service, such member's final average earnings shall be calculated as follows, except as otherwise required by subsections (1), (2), and (3) of this definition: The months of employment during which eligible service were earned shall be deemed consecutive.

Fund or *pension fund* shall mean all sums of money paid into the plan by the city, and all gifts and contributions received by the fund, accepted from other sources, together with earnings and appreciation of the same, less disbursements made from such money, in accordance with the plan, and less any losses or depreciation of asset value.

Gross pay shall mean those types of compensation which presently (as of July 2000) have member contributions deducted therefrom. Types of compensation created, or first applied to members after July 2000, may, at the discretion of the city, have member contributions deducted therefrom provided that, unless otherwise agreed to, such types of compensation shall also thereafter be included in earnings effective upon the date contributions are deducted therefrom.

Interest shall mean the rate of interest adopted by the board for computation of pension plan costs and values, unless another meaning is clearly evident from the context in which the term is used.

Member shall mean any person who is included in the membership of the plan.

Normal annuity form shall mean a monthly annuity payable from date of retirement to death.

Normal cost shall mean the annually accruing cost of pension benefits granted under this article, as the term is used in F.S. Ch. 175 and Ch. 185.

Normal retirement age shall mean the age at which an employee first becomes eligible for normal retirement under the plan.

Past service cost shall mean the same as "actuarial deficiency" as the term is used in this division.

Pension shall mean an annual amount, payable in equal monthly installments throughout the life of a retired employee, payable from the funds of the plan.

Pensioner shall mean a member who has retired with a pension payable from the funds of the plan.

Permanent or regular employee shall mean an employee appointed to an authorized and budgeted position on a regular and continuous basis.

Plan, pension plan or *employees' pension plan* shall mean the system of retirement benefits provided under this division.

Plan year shall mean a twelve-month period beginning on Oct. 1 and ending on Sept. 30.

Predecessor retirement plan shall mean the employee's pension plan on July 31, 1965.

Retiree shall mean a former employee who is receiving, or a current employee who has deferred receipt (into a deferred retirement option plan account) of, a monthly retirement benefit from a defined benefit pension plan of the city.

Retirement shall mean withdrawal from the service of the city with a pension granted in accordance with the provisions of this plan.

Retirement annuity option shall mean an optional form of retirement income, other than the normal annuity form, which an employee may elect in accordance with the terms of this plan. Optional annuity forms are the joint and survivorship annuity and the social security option.

Service credit rules:

(1) *Day of service* shall mean each day for which a member is:

a. Paid or entitled to payment by the city for performance of duties;

b. Paid or entitled to payment by the city on account of a period of time during which no duties are performed (e.g., vacation, holiday, illness, incapacity, layoff, jury duty, military duty or approved leave of absence);

c. Each day for which back pay, irrespective of mitigation or damages, has been either awarded to or agreed to by the city; provided, however, that the same day shall not be credited as a day of service more than once.

(2) *Month of service* shall mean a one-month period beginning on the day of the month corresponding to a member's date of employment, during which the member has earned at least ten days of service; provided, however, that ten days of service will be deemed to have been earned in each month of service in which occurs:

a. An approved leave of absence, not to exceed 90 days, authorized by the city, in accordance with a uniform policy applied on a nondiscriminatory basis to all members similarly situated; or

b. Voluntary or involuntary service in the armed forces of the United States for a period not greater than one enlistment, provided that the member is legally entitled to reemployment pursuant to the provisions of any federal law applicable to veterans' reemployment rights, and any amendments thereto, and is reemployed by the city within the manner provided by law and under the conditions prescribed by law; or such member dies while performing qualified military service as defined in Section 414(u) of the Internal Revenue Code, in which case the member shall be treated as if he or she had returned to employment and then terminated employment on account of death.

(3) A member shall not earn any days or months of service for any purpose under the plan after entering in a DROP, except as a re-employed retiree, if applicable.

(4) If the employment of a member is terminated, and the former member is subsequently reemployed by the city, the member's date of employment for purpose of determining additional months of service, shall be reestablished as his/her date of reemployment.

Service retirement shall mean retirement from employment of the city with a pension based upon service in the employ of the city, as distinct from retirement with a pension based on disability.

Service retirement age shall mean the age at which an employee first becomes eligible for service retirement.

Social security option shall mean an optional form of retirement annuity as described in this division.

Trustees shall mean the trustees of the pension plan established under this article.

(Code 1960, § 20-40.1; Ord. No. 3140, § 1, 6-24-85; Ord. No. 3867, § 1, 6-7-93; Ord. No. 951232, § 1, 4-8-96; Ord. No. 970592, §§ 1—4, 11-24-97; Ord. No. 981266, § 22, 7-12-99; Ord. No. 991457, § 1, 6-26-00; Ord. No. 000051, §§ 1—5, 9-11-00; Ord. No. 001385, § 1, 7-23-01; Ord. No. 120218, § 1, 9-10-12; Ord. No. 130122, § 1, 9-19-13)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 2-522. Establishment of system.

(a) *Establishment of employees pension plan; fund.* There is hereby created for the employees of the city, a pension plan to be known as the "City of Gainesville Employees Pension Plan;" that plan to be administered and payment made therefrom as provided in this article. There is hereby established a system of retirement and death benefit for employees of the city. There is also established a fund to be known as the "City of Gainesville Employees Pension Plan Fund."

(b) *Predecessor retirement plan revoked.* The predecessor retirement plan known as the "City of Gainesville Employees Pension Plan" is hereby revoked, except that all retired employees and beneficiaries under the revoked plan on August 1, 1965, shall continue to receive such retirement benefits as provided for in the revoked plan in such amounts and for the length of time as stated therein, also provided as stated in section 2-525(b).

(c) *Purpose.* The purpose of the establishment of the fund and the system is to provide for payment of benefits set forth under a predecessor retirement plan for employees of the city and to establish a system of pension benefits for people who are and shall become employees of the city. Neither the city nor the board of

trustees shall authorize or permit any part of the trust fund to be diverted for purposes other than for the exclusive benefit of members and their beneficiaries.

(Code 1960, § 20-40.2; Ord. No. 3140, § 2, 6-24-85; Ord. No. 130122, § 2, 9-19-13)

Sec. 2-523. Membership and service.

(a) *Eligible members.* Members of the pension plan established under this division shall be:

(1) All employees of the city as of August 1, 1965, who participated in, and contributed to, the predecessor retirement plan for employees of the city;

(2) All permanent employees of the city as of August 1, 1965, who did not participate in and contribute to the predecessor retirement plan for employees of the city;

(3) All subsequently hired regular employees become members of the plan established under this division on the first day of the month following (or coinciding with) the date of their employment as permanent employees.

(b) *Service before the effective date of the plan.*

(1) A member of the plan described in subsection (a)(1) will be given full credit for service prior to August 1, 1965, in this plan for all service to the city as a full-time permanent employee before August 1, 1965.

(2) A member of the plan described in subsections (a)(2) and (a)(3) will be given full credit for service to the city from date of employment or from January 1, 1964, whichever date is later.

(c) *Members of the plan.*

(1) All regular employees of the city as described in subsection (a) will be members of the plan except as provided in subsection (c)(2) below.

(2) Regular employees who elected/requested, in accordance with section 2-579 of this Code or the provisions of the city's § 401(a) Plan, to have future employer contributions made to the Deferred Compensation Plan (§ 457) or the § 401(a) Defined Contribution Plan in lieu of this plan are eligible for the disability benefit under section 5-526(d) of this plan but they are ineligible for any other benefits under this plan, unless such persons make an election(s) described in subsection (i), or are otherwise limited participants. Regular employees who are eligible employees as defined in section 2-596 of this Code are ineligible members of this plan.

(3) Limited participation.

a. Definitions:

1. *Ineligible member* means an employee of the city who is not an eligible member.

2. *Limited participant* means a member of the plan who, during part or parts of his/her employment with the city, is an eligible member and, during other parts of his/her employment with the city is an ineligible member.

3. *Limited participant service* means, in the case of a limited participant, credited service as defined in the plan, but including service during all times of his/her employment with the city, whether an eligible member or an ineligible member, except while a retiree or a recipient of a termination benefit from any defined benefit pension plan of the city.

4. *Eligible service* means, in the case of a limited participant, credited service as defined in the plan, during the part or parts of his/her employment during which he/she is an eligible

member, except while a retiree or a recipient of a termination benefit from any defined benefit pension plan of the City of Gainesville.

b. For the purpose of determining a limited participant's credited service for any purpose of this plan, except for the purpose of determining his/her accrued benefit, his/her credited service shall mean his/her limited participant service.

c. For the purpose of determining a limited participant's accrued benefit, his/her credited service shall mean only his/her eligible service and calculation of final average earnings shall be based upon his/her eligible service earnings.

(d) *Temporary, part-time and seasonal employees.* This plan shall not be construed to include any temporary, part-time or seasonal employees (e.g., summer recreation program) of the city. If a temporary employee, part-time employee or seasonal employee subsequently becomes a permanent employee of the city as defined in this division, he/she shall not receive credited service for the period of employment as a temporary, part-time or seasonal employee, except that a member's period of employment while a CETA employee, as determined by the city, shall be considered as service as a permanent employee. Part-time employees as used in this section shall include only those persons not defined as "permanent employees" in this division.

(e) *Questions and membership.* The board shall decide any question as to who is a member of the plan and its decision shall be final and binding on all interested parties.

(f) *War service credit.* If a member who, while employed by the city, entered or enters the armed forces of the United States in time of war or other national emergency recognized by the city commission, and reenters the employ of the city in accordance with the definition of "service credit rules" in section 2-521, such service in the armed forces shall be credited him/her as credited service provided that he/she refunds withdrawn contributions, if any, in accordance with section 2-526. In any case of doubt as to the period to be so credited any member, the board shall have final power to determine such period. During the period of such armed service and until the employee's return to employment by the city the individual's contributions to the fund shall be suspended.

(g) *Deferred benefits.* A member of the plan who retires early in accordance with section 2-526 may elect to, in lieu of immediately receiving benefits, defer payment of benefits to a date subsequent to his/her early retirement date. In the event of such election, which shall be irrevocable, the employees' benefit shall be calculated in accordance with section 2-526, reduced for each month by which his/her benefit commencement date precedes his/her unreduced benefit commencement date.

(h) *Participants in Gainesville Gas Group Pension Plan.* The City of Gainesville shall purchase the Group Pension Plan for employees of Gainesville Gas and shall place all of the cash, investments, and other assets of said plan in the trust fund of the City of Gainesville Employees Pension Plan (the "plan"). Retired and former participants shall remain entitled to the applicable benefits as described in the group pension plan, but shall not become members of the "plan." Active participants of the group pension plan who become employed by the City of Gainesville upon the city's acquisition of the Gainesville Gas Company shall become members of the "plan" on the first day following the acquisition date and shall be entitled to the benefits described below.

(1) The accrued benefit for such members shall be:

a. The accrued benefit earned under the Gainesville Gas Group Plan as of the acquisition date; plus

b. Two percent of final average earnings times credited service earned after the acquisition date; plus

c. For each year of credited service earned after the acquisition date, an additional two percent of final average earnings will be credited, not to exceed the service years earned under the accrued benefit formula under the Gainesville Gas Group Plan; less

d. For each year of Gainesville Gas Group Plan service credited under subsection c. above, the portion of the accrued benefit determined under subsection a. above based on such year(s), payable as a monthly life annuity from normal retirement date, except as otherwise provided in this article.

(2) For purposes of determining normal retirement date, service accrued under the Gainesville Gas Group Plan prior to the acquisition date will be counted as vesting service.

(3) For the purpose of computing final average earnings, overtime and termination vacation pay shall not be included, except as provided below. For members retiring on or after October 1, 1996, overtime shall be included for the purpose of computing final average earnings, except as otherwise expressly provided for herein. To calculate earnings for service earned on or after October 1, 2012, no more than 300 hours of overtime pay per year earned on or after October 1, 2012 shall be included. For members retiring on or after May 1, 2016, termination vacation pay accrued and unused on or before October 1, 2012 shall be included in the calculation of final average earnings.

(i) *Re-entry; purchase of limited participant service.*

(1) Regular employees, actively employed on or after October 29, 2002, who previously elected/requested to have future employer contributions made to the Deferred Compensation Plan (§ 457) or the § 401(a) Defined Contribution Plan in lieu of this plan, may elect during the election periods described below to enter this plan as eligible members, and to have the employer cease employer contributions to the § 457 Deferred Compensation Plan or the § 401(a) Defined Contribution Plan. Elections may be made during the months of November, December, and January of each year.

(2) If elected by the employee under (1) above, participation in this plan and cessation of employer contributions to the § 457 Deferred Compensation Plan or the § 401(a) Defined Contribution Plan shall be effective commencing with the first administratively feasible pay period following execution and submission by the participant of an election form.

(3) An employee who has elected to enter this plan as an eligible member shall have the option during the periods of time described in subsection (i)(1) above to have some or all years of ineligible service count as eligible service by contributing to the plan the actuarial present value of benefits that are projected to be applicable for some or all the years of service as an ineligible member. If any particular "buy-back" involves less than all prior limited participant service, then in each case the period for which the employee receives credit must be for full years and must be the most recent unclaimed limited participant service. Such present value shall be determined by the Plan Actuary using the valuation applicable to the Budget Year in which the election is made. This option may be elected by the employee during any of the election periods described in subsection (1) above. Appropriate portions of those amounts contributed pursuant to this subsection (3) and (4) shall be considered employee contributions for the purpose of subsections 2-526(a)(3) and (e), (f), (g), and (h).

(4) A limited participant may also "buy-back" prior service as described in subsection (3) above, provided that the funds are received by the plan within 60 days of the effective date of the limited participant's termination of employment.

(5) Effective January 1, 2002, for purposes of contributing amounts to the plan, as described in subsection (i)(3) and (4) above, the plan will accept a cash or transfer of all or part of a member's account in the City of Gainesville's 457(b) Plan and will accept rollover contributions and/or direct rollovers of distributions (including after-tax contributions) made after December 31, 2001 that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the

Internal Revenue Code, from all of the following types of plans; (1) a qualified plan described in Section 401(a) or 403(a) of the Internal Revenue Code; (2) an annuity contract described in Section 403(b) of the Internal Revenue Code; (3) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Internal Revenue Code (including SEPs, and Simple IRAs after two years of participating in the Simple IRA). The amount distributed from such plan must be rolled over to this plan no later than the 60th day after distribution as made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Internal Revenue Code.

(j) *Re-employed retirees and recipients of termination benefits.* A retiree or a former employee of the city receiving termination benefits from the city consolidated police officers and firefighters retirement plan, or this plan may, upon becoming re-employed by the City of Gainesville, become a new member of this plan, earn credited service, and become entitled to receive an additional retirement benefit subject to the following conditions:

(1) Such member shall satisfy the eligibility requirements for participation in this plan.

(2) Such member shall not be entitled to disability benefits under the city employees disability plan, or become entitled to any other disability pension benefit payable from a retirement system or plan of the city.

(3) No service for which credit was received, or which remained unclaimed, at retirement or termination may be claimed or applied toward credited service earned following re-employment.

(4) Such re-employed member shall not be entitled to purchase additional credit for service performed prior to re-employment.

(k) *Military service prior to employment.* Members who are regular employees, actively employed after February 12, 2007, and not participating in the DROP, may have the year(s) that the member served on active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily and honorably or under honorable conditions, prior to initial employment with the city, added to his/her years of credited service provided that:

1. The member contributes to the fund an actuarially determined amount so that service purchased pursuant to the changes described in this plan amendment do not result in increase to the city's contribution to the plan. For purposes of purchasing service, the plan will accept cash or a transfer of all or part of a member's account in the city's 457 Deferred Compensation Plan or 401(a) defined contribution plans, and will accept rollover contributions and/or direct rollovers of distributions (including after tax contributions) made after December 31, 2001, that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Code, from of the following types of plans: (1) a qualified plan described in Section 401(a) or 403(a) of the Code; (2) an annuity contract described in Section 403(b) of the Code; (3) an eligible plan under Section 457(b) of the Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEP's and Simple IRA's after two years of participation in the Simple IRA). The amount distributed from such plan must be rolled over to this plan no later than the 60th day after distribution was made from the plan, unless otherwise waived by the IRS pursuant to Section 402(c)(3) of the Code. The plan shall absorb the cost of professional services for obtaining one actuarial estimate for a member. Any subsequent estimates shall be paid for in advance by the requesting member.

2. Purchase of credited service for military service prior to employment shall be in increments of one or more whole years, except where the remaining service available to be purchased is less than one year. Purchases may not be made more frequently than once every 12 months. Purchase of service may be

made from February 12, 2007 to March 30, 2007, and during the months of November, December and January of each year.

3. Payment by the member of the required amount shall be made in one lump sum payment, upon receipt of which credited service shall be given, except as provided in subsection 4 below.

4. Except as provided in subsection 5 below, service for which payment has been made pursuant to subsection 3 above shall not be deemed credited service under the plan until such date that the member is otherwise eligible for normal retirement under subsection 2-526(a)(1) or have reached age 55. In the event a member (or his or her beneficiary) begins receiving an amount under subsection 2-526(a)(3), the payments made pursuant to subsection 3 above shall be returned to member or beneficiary without interest at such time and no credited service given.

5. Service may be purchased, and credited, or previously purchased service credited, in advance of retirement eligibility as described in subsection 4 above under the following circumstances: When a member who is a regular employee at time of death has at least 80 percent of the credited service, including sick leave or PCLB, necessary for normal or early retirement, and meets the applicable age requirements for such, if any. In this circumstance previously purchased military service shall be credited if such service, including any additional service purchased as described in the following sentence, would result in the member's beneficiary becoming entitled to receive an annuity benefit. If service so eligible for purchase existed, but was not purchased prior to death, the member's beneficiary shall have 90 days following the date of death of the member to purchase the service necessary to receive an annuity.

6. The maximum credit purchased under this subsection (k) shall be four years.

7. Credited service purchased pursuant to this subsection (k) shall count for all purposes under the plan.

8. Purchase of credited service may not be requested unless the member has already earned at least five years of credited service at the time of the request.

9. A member may not obtain a benefit, nor base the amount of benefit received, upon service purchased under this subsection if such service is claimed for retirement purposes under any other federal, state, or local retirement or pension system where "length of service" is a factor in determining the eligibility for, or the amount of compensation received, except where credit for such service has been granted in a pension system providing retired pay for non-regular service in the Armed Forces of the United States as provided in 10 U.S.C. Chapter 1223. Any member claiming credit under this subsection must certify on a form prescribed by the plan that credit for such service has not and will not be claimed for retirement purposes under any other federal, state, or local retirement or pension system where "length of service" is a factor in determining the eligibility for, or the amount of compensation received, except where credit for such service has been granted in a pension system providing retired pay for nonregular service in the Armed Forces of the United States as provided in 10 U.S.C. Chapter 1223. Such certification shall also include written authorization for the plan to have access to information from any above-described pension systems to confirm that the requirements of this subsection are being complied with. If the member dies prior to retirement, the member's beneficiary must make the required certification before credit may be claimed. If such certification is not made by the member or the member's beneficiary, credit for prior military service shall not be allowed. If it is determined that a benefit based upon such service leave has been claimed in violation of this section, no credit for such service will be allowed under this plan, which may effect the eligibility for, or amount of, any benefit provided under this plan, and amounts contributed for purchase of such service shall be forfeited.

(l) *Early separation program.* Notwithstanding subsection (3) of service credit rules and subsection 2-534(c), certain members employed on October 1, 2009, having at that date 17 or more years of credited service, not including unused PCLB and sick leave, but including previously purchased prior military service eligible for

use as credited service at that date, will be awarded an additional three years of credited service towards eligibility for service retirement, and towards the amount of his/her service retirement pension, effective beginning pension payments made at the end of the first month following separation, upon the following conditions: Said members must irrevocably agree to resign from employment with the city effective prior to January 1, 2010 and subsequently terminate employment pursuant to said agreement. Participation by members shall be restricted to those eligible members (as described above and below) whose offer to participate and resign is submitted between August 31, 2009 and September 30, 2009. Members who are general government employees below the level of department director, except as excluded below, are eligible to participate:

(1) Traffic signal technician classifications;

(2) A maximum of 4.5 positions in the planning division are eligible to participate, subject to:

a. If more than the above number of eligible planning division employees apply by the end of the election period, the initially accepted group of individuals will be determined by lottery. At this point, the city manager may accept additional eligible employees from the original planning division applicant pool if, after a review of the division workforce as it would be constituted following the separation of the initially accepted employees, the division would, even with the loss of one or more additional personnel, suffer only a minimal loss of productivity based upon the ability to train other existing employees, or readily hire new employees (at or near the minimum of any applicable pay range) to provide any necessary skill sets.

b. The number of additional eligible employees, if any, who may be accepted in the program will be determined as described above. If there are more eligible employees from the original applicant pool than additional openings in the program as described in (a) above, the criteria for selection will be as follows with the lowest scoring employee being eligible for the additional opening(s):

1. Demonstrates broad knowledge of division operations;

2. Achieves accurate results through speed and decisiveness; and

3. Communicates openly and effectively within and without the division.

(m) *Early separation program.*

(1) Notwithstanding subsection (3) of service credit rules and subsection 2-534(c), members employed on June 1, 2010, having at that date 17 or more years of credited service, not including unused PCLB and sick leave, but including previously purchased prior military service eligible for use as credited service at that date, will be awarded an additional three years of credited service towards eligibility for service retirement, and towards the amount of such retirement pension, effective beginning pension payments made at the end of the first month following separation, upon meeting the conditions set forth herein.

(2) Members employed on June 1, 2010, and on that date having attained age 55 and having at least 15 years of credited service, but less than 17 years of credited service, not including unused PCLB and sick leave, will be eligible for an early retirement benefit provided that the service retirement annuity would not be reduced by five-twelfths of one percent for each month by which his/her early retirement date is less than the date he/she would have reached age 65, upon meeting the conditions set forth herein.

(3) Said members must irrevocably agree to resign from employment with the city effective prior to September 1, 2010, and subsequently terminate employment pursuant to said agreement.

(4) Participation by members shall be restricted to those eligible members (as described above and below) whose offer to participate and resign is submitted between May 10, 2010, and June 10, 2010.

(5) Members who are general government employees not assigned to the regional transit system and below the level of department director, except as excluded below, are eligible to participate:

a. A maximum of one position in the traffic signal technician (TST) classifications.

b. A maximum of four positions in the planning division.

c. If more than one eligible employee in a TST classification, or more than four eligible planning division employees apply by the end of the election period, the initially accepted TST or planning division employees will be determined on the basis of the earliest proposed termination date, then if necessary, the earliest submitted application among equal early termination dates. At this point, the city manager may accept additional eligible employees from the original TST or planning division applicant pools if, after a review of the TST or division workforce as it would be constituted following the separation of the initially accepted employees, the city would, even with the loss of one or more additional personnel, suffer only a minimal loss of productivity based upon the ability to train other existing employees, or readily hire new employees (at or near the minimum of any applicable pay range) to provide any necessary skill sets. The number of additional eligible employees, if any, who may be accepted in the program will be determined as described above. If there are more eligible employees from the original applicant pool(s) than additional openings in the program as described in subsection a. or b. above, the criteria for selection will be as follows with the lowest scoring employee being eligible for the additional opening(s):

1. Demonstrates broad knowledge of TST or division operations;

2. Achieves accurate results through speed and decisiveness; and

3. Communicates openly and effectively.

(n) *Temporary service prior to regular employment.* A member who was actively employed on December 11, 2009, or thereafter as a regular employee, and is not receiving, as of September 15, 2010, a termination or retirement benefit, or then participating in the DROP, may have the months(s') that the member was employed as a full-time temporary employee with the city, added to his/her years of credited service, notwithstanding subsection 2-523(d), provided that:

(1) The incident(s) of temporary employment sought to be added is/are each a minimum of six continuous months, ending no more than 30 days preceding a period of regular employment with the city for which credited service has been granted, or in the case of consecutive incidents of temporary employment (no break in service of more than 30 days), the last of which ended no more than 30 days preceding a period of regular employment with the city for which credited service has been granted.

(2) The member contributes to the fund an actuarially determined amount so that service purchased pursuant this subsection (n) does not result in increase to the city's contribution to the plan. For purposes of purchasing service, the plan will accept cash or a transfer of all or part of a member's account in the City of Gainesville's 457 Deferred Compensation Plan or 401(a) defined contribution plans, and will accept rollover contributions and/or direct rollovers of distributions (including after tax contributions) made after December 31, 2001, that are eligible for rollover in accordance with Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Internal Revenue Code, from of the following types of plans: (1) a qualified plan described in Section 401(a) or 403(a) of the Code; (2) an annuity contract described in Section 403(b) of the Code; (3) an eligible plan under Section 457(b) of the Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; and (4) an individual retirement account or annuity described in Section 408(a) or 408(b) of the Code (including SEP's and Simple IRA's after two years of participation in the Simple IRA). The amount distributed from such plan must be rolled over to this plan no later than the 60th day after distribution was made from the plan, unless otherwise waived

by the IRS pursuant to Section 402(c)(3) of the Code. The plan shall absorb the cost of professional services for obtaining one actuarial estimate for a member. Any subsequent estimates shall be paid for in advance by the requesting member.

(3) Purchase of credited service attributable full-time temporary employment prior to regular employment shall be for each entire incident of temporary employment sought to be purchased. In the case of a member not actively employed as a regular employee on October 7, 2010, and a member/regular employee actively employed on October 7, 2010, who has satisfactorily completed his/her initial probation period prior to October 7, 2010. such member(s) shall have 60 days from November 1, 2010, to purchase any and all eligible incidents of temporary employment ending prior October 7, 2010. In the case of eligible incidents of temporary employment ending after October 7, 2010, or in the case of a member who has not completed his/her initial probation period by October 7, 2010, such must be purchased within 60 days of the member vesting in the plan.

(4) Payment by the member of the required amount shall be made in one lump sum payment, upon receipt of which credited service shall be given, except as provided in subsection (5) below.

(5) Except as provided in subsection (6) below, service for which payment has been made pursuant to subsection (4) above shall not be deemed credited service under the plan until such date that the member is otherwise eligible for normal retirement under section 2-526(a)(l) or has reached age 55. In the event a member (or his or her beneficiary) begins receiving an amount under section 2-526(a)(3) or a benefit under Division 6 of Article VII of Chapter 2 (Disability Pension Plan Benefit), the payments made pursuant to subsection (4) above shall be returned to member or beneficiary without interest at such time and no credited service given for the temporary employment.

(6) Service may be purchased, and credited, or previously purchased service credited, in advance of retirement eligibility as described in subsection (5) above under the following circumstances: When a member who is a regular employee at time of death has at least 80 percent of the credited service, including sick leave or PCLB, necessary for normal or early retirement, and meets the applicable age requirements for such, if any. In this circumstance, purchased temporary service shall be credited if such service, including any additional service purchased as described in the following sentence, would result in the member's beneficiary becoming entitled to receive an annuity benefit. If service so eligible for purchase existed, but was not purchased prior to death, the member's beneficiary shall have 90 days following the date of death of the member to purchase the service necessary to receive an annuity.

(7) The maximum credit purchased under this subsection (n) shall be four years.

(8) Credited service purchased pursuant to this subsection (n) shall count for all purposes under the plan.

(9) Purchase of credited service for temporary service prior to regular employment may not be requested unless the member has already earned at least five years of credited service at the time of the request.

(Code 1960, § 20-40.3; Ord. No. 3140, § 3, 6-24-85; Ord. No. 3587, § 1, 1-8-90; Ord. No. 950189, § 1, 6-26-95; Ord. No. 951232, §§ 2, 3, 4-8-96; Ord. No. 951521, § 1, 6-10-96; Ord. No. 980761, §§ 1, 2, 3-8-99; Ord. No. 981266, § 23, 7-12-99; Ord. No. 990595, § 1, 12-13-99; Ord. No. 991457, §§ 2, 3, 6-26-00; Ord. No. 002141, §§ 1, 2, 2-25-02; Ord. No. 020464, § 1, 10-28-02; Ord. No. 060829, § 1, 2-12-07; Ord. No. 090114, § 1, 8-20-09; Ord. No. 090829, § 1, 5-6-10; Ord. No. 090969, § 1, 10-7-10; Ord. No. 120218, § 2, 9-10-12; Ord. No. 130122, § 3, 9-19-13; Ord. No. 140657 , § 1, 2-19-15; Ord. No. 150213 , § 1, 4-21-16)

Sec. 2-523.1. Reserved.

Editor's note(s)—Ord. No. 951232, § 4, adopted Apr., 8, 1996, deleted the provisions of former § 2-523.1, which pertained to limited participant service for certain members, as derived from Ord. No. 3698, § 1, adopted Feb. 18, 1991.

Sec. 2-524. Contributions and funding.

(a) *Pension fund.* The city employee pension fund shall be the fund in which shall be accumulated all contributions made to the fund and from which shall be paid benefits and other payments in accordance with this division.

(b) *Member contributions.*

(1) Effective the first full pay period following October 1, 2000, members, except members who have entered a DROP, will have a fixed employee contribution rate of five percent of earnings. There shall be no member contributions deducted from a member's compensation while participating in the DROP. Effective January 1, 1998, the contributions made by each member to the plan shall be designated as employer contributions pursuant to the Internal Revenue Code (I.R.C.), Section 414(h), of 1986. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions. No member shall have the option of choosing to receive the contributed amounts directly instead of having them paid by the city to the fund.

(2) The city manager shall cause contributions provided for in subsection (b)(1) to be deducted from the compensation of each member on each and every payroll, for each and every payroll, so long as each member is performing eligible service. A member's contribution provided for in this section shall be made notwithstanding that the minimum compensation provided by law for any members shall be changed thereby. Each member shall be deemed to consent and agree to the deduction made and provided for in this section and payment of his/her compensation less such deduction shall be full and complete discharge of all claims and demands whatsoever for the service rendered by the member during the period covered by such payment, except as to the benefits provided by this plan. The city manager shall cause the amount to be deducted from the compensation of each member for each and every payroll as authorized by this division and when deducted shall be paid into the fund of the plan and shall be credited to the individual member from whose compensation the deduction was made.

(c) *City contributions.* In addition to the contributions provided for herein to be paid by members of the plan, and any gifts, devises and bequests to the plan accepted by the city, the city commission is hereby authorized to deposit in the fund annually a sum which, together with the contributions from members and other sources of income to the fund, shall be sufficient to fund the normal cost of the plan and to amortize the unfunded liability, if any, of the plan over a period not longer than 40 years; provided, however, disability benefits under this division shall be funded by the city (not member contributions) through annual appropriations made to the fund, the amount of which shall be sufficient to fund the disability benefit on a sound basis. If the amortization schedule for the unfunded liability is to be based on a contribution derived in whole or in part from a percentage of the payroll of the plan membership, the assumption as to payroll growth shall not exceed the average payroll growth for the three years prior to the development of the amortization schedule, unless a different assumption is warranted by other circumstances. No city contributions shall be required or attributable to members during their participation in the DROP, or during any period subsequent to the conclusion of the DROP period when the member is not earning credited service. For the purpose of securing necessary funds, the city commission is hereby authorized to levy such taxes as may be necessary to fulfill these requirements.

(Code 1960, § 20-40.4; Ord. No. 3140, § 4, 6-24-85; Ord. No. 970592, § 5, 11-24-97; Ord. No. 000051, §§ 6—8, 9-11-00; Ord. No. 120218, § 3, 9-10-12; Ord. No. 130122, § 4, 9-19-13; Ord. No. 140657 , § 2, 2-19-15)

Sec. 2-525. Reserved.

Sec. 2-526. Benefits.

(a) *Eligibility for service retirement.*

(1) *Normal retirement.*

a. A member of the plan whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2007 shall be eligible to retire under the terms of the plan upon the earlier of the date the member completes 20 years of credited service or more at any age, or upon the date the member completes ten years of credited service and attains age 65. In such event the member shall be entitled to and shall be paid an annuity calculated in accordance with subsection (b).

b. A member of the plan whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2007 and on or before October 1, 2012 shall be eligible to retire under the terms of the plan upon the earlier of the date the member completes 25 years of credited service or more at any age, or upon the date the member completes ten years of credited service and attains age 65. In such event the member shall be entitled to and shall be paid an annuity calculated in accordance with subsection (b).

c. A member of the plan whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012 shall be eligible to retire under the terms of the plan upon the earlier of the date the member completes 30 years of credited service or more at any age, or upon the date the member completes ten years of credited service and attains age 65. In such event the member shall be entitled to and shall be paid an annuity calculated in accordance with subsection (b).

(2) *Early retirement.* An employee who is a member whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2012 and has 15 years of credited service and has attained age 55, or an employee who is a member whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012 and has 20 years of credited service and has attained age 60, may make written application to the risk management department which shall promptly transmit the application to the appropriate administrative department head for early retirement. On the recommendation of the administrative department head and approval of the plan administrator, the employee may retire on the first day of any month following becoming eligible therefor as provided in this section. In such event he/she shall be entitled to and shall be paid an annuity calculated in accordance with subsection (b) except that the amount so computed shall be reduced by five-twelfths of one percent of such amount for each month by which his/her early retirement date is less than the date he/she would have reached age 65.

(3) *Termination of employment.* A member whose employment with the city terminates prior to the completion of at least five years of credited service, for any reason, shall not be entitled to any benefits under the plan; except as provided in paragraph e. below; provided, however, that in any event upon the written election of the member (in a form and manner determined by the board) amounts contributed by members shall be paid without interest to the member or, as applicable, the member's beneficiary. A member whose employment with the city terminates after the completion of at least

five years of credited service, but prior to retirement, shall be entitled to a termination benefit, or, if applicable, return of contributions in accordance with subsections (e) and (f). Payment of the termination benefit shall be governed by the following provisions of this section.

a. Benefit amount. A member who is entitled to a termination benefit shall receive a monthly annuity equal to his/her accrued benefit, except as provided in subsection (j), determined as of his/her date of termination.

b. Benefit commencement date. The benefit commencement date of a member with at least five years' credited service but less than 20 years' credited service shall be the first day of the month after the member has attained age 65.

c. Benefit payments. The termination benefits shall be payable on the last day of each month. The first payment shall be made on the benefit commencement date, and benefits shall be payable thereafter according to the terms of the accrued benefit for the member's lifetime. A member may modify the amount and conditions of payment described in this section by electing an annuity option in accordance with the optional forms of benefit section.

d. Benefit forfeitures. That portion of a terminated member's benefit that is not vested shall be forfeited and used only to reduce future costs of the plan, provided, however, that amounts contributed by such a terminated member shall be paid without interest to the member or, as applicable, the member's beneficiary.

e. The beneficiary(ies) of a member who dies while performing qualified military service as described in the service credit rules shall receive the higher of the actuarial present value of his or her accrued benefit calculated as of time of death or return of employee contributions without any interest. In the alternative, said beneficiary may receive an annuity as described in subsections (e), (g), or (h), if such are applicable.

(4) *Delayed retirement.* A member of the plan may continue in employment to a date after eligibility for normal retirement. In such event, the member upon termination of employment shall be entitled to and shall be paid an annuity calculated in accordance with subsection (b), below.

(b) *Service retirement pension.* In the event of normal retirement, early retirement, or delayed retirement, the retiring employee shall be entitled to and shall be paid a monthly pension beginning with the month of retirement and continuing until death, except as provided in subsection (j), and subsection (g) of section 2-523. For members making application for retirement on or after May 1, 2016, such monthly pension payment will begin on the first day of the month after the member applies for retirement with the plan administrator, but not less than 30 days after making application. The amount of the monthly pension to which a retired employee whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2012 will be entitled will be equal to two percent of the employee's final average earnings multiplied by the number of years of credited service divided by 12, except as provided in subsection (j), and subsection (g) of section 2-523. The amount of the monthly pension to which a retired employee whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012 will be entitled will be equal to 1.80 percent of the employee's final average earnings multiplied by the number of years of credited service divided by 12, except as provided in subsection (j), and subsection (g) of section 2-523.

(c) *Pension payments.* Pension payments shall be made monthly beginning at the end of the first month of retirement and continuing until the end of the month in which he/she dies, unless a retirement annuity option has been elected, in which case payments will be made in accordance with the option.

(d) *Disability benefits.*

(1) *Definitions.* Except as otherwise stated in this subsection, where the purpose and intent of this subsection is consistent with the definitions contained in section 2-521, as amended, the definitions as contained in section 2-521, as amended, shall have the same meaning when used in this subsection.

ACE means "average current earnings," as utilized to determine benefit under 42 U.S.C. §§ 402 and 423.

AWW means "average weekly wages" as utilized under F.S. Ch. 440 to determine compensation for disability.

In-line-of-duty means an injury or illness arising out of and in the actual performance of duties required by a member's employment, during his or her regularly scheduled working hours or irregular working hours as required by the city. The administrator may require such proof as he or she deems necessary as to the time, date, and cause of any such injury or illness, including evidence from any available witnesses. Workers' compensation records under the provisions of F.S. Ch. 440 may also be used. Disability resulting from drug or alcohol abuse or use of tobacco products shall not be considered "in-line-of-duty."

(2) *False, misleading, or fraudulent statements made to obtain disability benefits.*

a. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain a disability benefit under this subsection.

b. A person who violates section 2-526(d)(2)a. shall be punished as provided in section 1-9 of this Code.

c. In addition to any applicable penalty under section 1-9, upon conviction for a violation described in section 2-526(d)(2)a., a participant or beneficiary of the plan may, in the discretion of the plan administrator, be required to forfeit the right to receive any or all disability benefits to which the person would otherwise be entitled under this subsection. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(3) *Administration.* The plan administrator or designee may condition processing the claim and the initial and continued payment of disability benefits upon receipt of any information reasonably related to eligibility for, or the amount of, disability benefits to be received by members or beneficiaries under this subsection, including, but not limited to, information related to the member's earnings, workers' compensation, and Social Security.

(4) *Eligibility.* Except as otherwise provided herein, all regular employees of the city will be eligible for disability benefits under the plan for:

a. "In-line-of-duty" disability.

b. Any other disability which occurs after the employee has been employed for at least five consecutive years as a regular employee, provided further that employment while on leave of absence without pay (not in pay status) for at least a full pay period shall not constitute a break in service, nor count towards the required years of employment. However, leave of absence due to service in the uniformed service shall not constitute a break in service and shall count towards the required years of employment.

(5) *Credited service.* Credited service for the purpose of determining benefits for disabled employees shall consist of service to the city rendered while a regular employee. Leaves without pay (the employee is not in pay status) do not count as credited service except as otherwise provided in this subsection.

(6) *Military service.* If an employee was absent due to service in the uniformed services and is eligible for, and in fact re-employed in accordance with the terms of USERRA, the employee shall be granted credited service for the period(s) of service, not including periods after discharge but before actual re-employment. Uniformed services means the Armed Forces; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the public health service; and any other category of persons designated by the President in time of war or national emergency. It covers all categories of military training and service, including duty performed on a voluntary or involuntary basis, in time of peace or war.

(7) *Leaves of absence.* Any employee who has been granted a leave of absence of at least a full pay period without pay shall be accredited service prior to the leave of absence, and service credit shall resume upon return to active employment; except that an employee shall be given service credit for periods of leave of absence for military service.

(8) *Application.* Application for disability benefits must be made while a regular employee with the city and on or after February 20, 2015.

(9) *Eligibility for both solely years of service-based disability retirement and for disability benefits.* In no event shall an employee be eligible to receive disability benefits, if, at the date such benefits would commence, as provided in section 2-526(d)(14), the employee would then be eligible for a normal retirement under the plan, based upon the completion of 20 or more years of credited service, as defined under the plan, at any age.

(10) *Disabled employees.* A regular employee of the city who becomes, in the opinion of the board, totally and permanently unable to perform substantial work for pay within a 50-mile radius of his/her residence, or the distance between his/her residence and city hall; whichever is greater, and is wholly and continuously unable to perform any and every essential duty of his/her employment, with or without a reasonable accommodation, or of a position to which he/she may be assigned on the recommendation of the disability review committee as approved by the administrative department head, by reason of a medically determinable physical or mental impairment, shall be entitled to disability benefits in accordance with this subsection. It is the intent of this paragraph to provide whenever practical and feasible for placement within the city of employees who may become unable to perform the duties of a particular job. If placement on another position is not practical or possible, this fact does not in itself determine disability.

(11) *Proof of disability.* Before payment of any disability benefit, the administrator shall require proof that the member is totally and permanently disabled as provided herein:

a. Such proof shall include the certification of the member's total and permanent disability by a physician or other qualified medical practitioner(s), and such other evidence of disability as the administrator may require, including reports from vocational rehabilitation, evaluation, or testing specialists who have evaluated the member for employment.

b. It must be documented that the member's medical condition occurred or became symptomatic during the time the member was employed as a regular employee of the city; the member was totally and permanently disabled at the time he or she terminated covered employment; and the member has not engaged in any activity or employment or self-employment inconsistent with the request for disability, after such termination.

c. If the application is for "in-line-of-duty" disability, in addition to the requirements of herein, it must be documented by competent medical evidence that the disability was caused as defined in section 2-526(d)(1).

d. If the application is for other than "in-line-of-duty" disability, the employee must have met the disability benefits eligibility requirements described herein on or before the workday immediately preceding the occurrence or manifestation of the injury or illness which caused the disability.

e. The unavailability of an employment position with the city that the member is physically and mentally capable of performing will not be considered as proof of disability, nor shall a finding of permanent total disability under the workers' compensation system be proof of permanent and total disability under the plan or that the injury or illness was incurred "in-line-of-duty."

(12) *Disability review committee.* A disability review committee is hereby created consisting of the risk management director, the human resources director, the plan administrator (who will serve as chair), the appropriate charter officer, and the appropriate administrative department head. This committee shall review all requests for disability payments, review and reexamine the entitlement of those members receiving disability benefits to the continuance of such benefits, and shall act as an advisory committee to the board as to all matters provided for or related to this subsection. The committee shall investigate each case, thoroughly considering all pertinent medical evidence which is available or may be requested. The committee shall establish the policies and procedures necessary to carry out the provisions of this subsection, including, but not limited to, the utilization of outside consultants and medical experts. After the investigation is complete in each instance, a written recommendation will be prepared and submitted to the board.

(13) *Determination of eligibility.* The board shall then consider the written recommendation of the disability review committee and may secure such other information as the board desires and determines appropriate. Following thorough consideration, the board will then determine the eligibility of the employee for benefits as provided in this subsection. The board may attach such conditions and safeguards to its findings and determinations as may be deemed appropriate in order to carry out the intent and purpose of this subsection. The determination of the board on any matters related to this subsection, its interpretation or the entitlement of one to disability benefits shall rest solely with the board, and its determination shall be final.

(14) *Time disability payments begin.* A disabled employee shall receive a monthly disability benefit beginning the later of the month following the occurrence of the disability or the month following the termination of any and all accumulated paid leave. Employees with accumulated paid leave to their credit at the time of disability must exhaust leave credit prior to receiving disability benefits.

(15) *Calculation of disability benefit amount.* The amount of monthly disability benefit to which a disabled employee will be entitled will be calculated as follows:

a. An employee's basic disability benefit percent will be equal to the greater of his/her years of creditable service times two percent with a minimum 42 percent for "in-line-of-duty" disability and a minimum 25 percent for other than "in-line-of duty" disability.

b. An employee's basic disability benefit will be equal to his/her disability benefit percent multiplied by his/her final average earnings as would be otherwise calculated under this plan and using his/her total period of creditable service if such is less than the applicable averaging period.

c. The employee's basic disability benefit will be reduced by the portion of any early or normal retirement benefits he/she may receive, which are attributable to employer contributions.

d. The employee's basic disability benefit will be reduced by his/her disability benefit percent up to a maximum of 50 percent multiplied by the monthly Social Security primary insurance amount (PIA) which he/she is initially receiving as a disabled worker, or the amount to which he or she would initially be entitled as a disabled worker if the employee has willfully failed or refused to apply for, and in good faith pursue, obtaining such benefit, unless this latter requirement is

waived by the plan administrator for good cause. This reduction, once determined, shall not be further adjusted by subsequent increases in Social Security PIA amounts.

e. In no event shall the disability benefit payable by the city to a disabled employee exceed the lesser of $3,750.00 per month or an amount equal to his/her maximum benefit percent, less any reductions under c. and d. above and the initially determined wage replacement benefit made to the employee under workers' compensation laws. The deductions for workers' compensation payments shall not be made if the board determines that the disability for which benefits are payable is not, directly or indirectly, related to the injury for which workers' compensation payments were made. Unless otherwise provided by law, the reduction attributable to workers' compensation payments shall not reduce the disability benefit below the amount which, when such is combined with Social Security disability and workers' compensation benefits received by the employee, equals 80 percent of the employee's AWW or 80 percent of the employee's ACE (on a weekly basis), whichever is greater. A disabled employee's maximum benefit percent will be 80 percent if the employee's disability is due to a job related injury in the course of employment with the city resulting in payment of workers' compensation, and otherwise shall be 70 percent.

(16) *Duration of disability payment.* Disability payments shall continue until death of the employee or until termination of disability benefits as provided in section 2-526(d)(18).

(17) *Limitations on payment of disability payments.* Benefits are not payable for disability due to:

a. Self-inflicted injuries if intentional;

b. Participation in or in consequence of having participated in the commission of a crime, or while willfully participating in a riot, and insurrection, or other act of violence;

c. Service in uniformed services.

d. In the case of other than "in-line-of-duty" disabilities, a condition existing prior to employment or re-employment by the city (a) which condition, as it existed at that time, is the major contributory cause of the claimed disability, or (b) for which medical advice, diagnosis, care, or treatment was recommended, or received during the one year period immediately preceding employment or re-employment, or (c) when during any medical examination authorized under this subsection or otherwise, including pre-employment and post-employment medical examinations described in section 2-526(d)(20), the applicant, member or former employee, makes false representations regarding previous injuries, impairments, anomalies or disease, upon which the city has relied in making employment or benefit decisions.

(18) *Termination or reduction of disability benefits.*

a. In the event that a former employee is determined by the administrator to be no longer disabled as provided for in the plan, his/her disability benefits shall be discontinued as follows. In the event that he/she has been offered regular employment with the city, the disability benefits shall cease within 30 days of the date of the offer, unless extended by the administrator for good cause shown, or the date of beginning such employment, whichever sooner occurs. In any other case the disability benefits shall be discontinued six months after the date of such determination.

b. A disabled employee shall be considered as no longer disabled nor entitled to the benefits of this subsection when the employee becomes able to satisfactorily perform duties similar to those required by the position he/she held at the time of disability, or duties of a position which shall become and is available to the person and deemed suitable by the board. Such determination shall be made by the board upon the recommendation of the disability review committee concurred in by the appropriate administrative department head. If the disabled employee refuses to accept an offer of reemployment or reinstatement made in accordance with this subsection, his/her disability benefits shall cease immediately. The board shall make such

termination of recovery based upon information provided by the disability review committee and other appropriate sources, and the determination shall be final and conclusive.

c. In the event that a disabled employee is able to engage in full or part-time employment for other employers, and/or substantial self-employment, resulting in current employment earnings, disability payments made to such employee shall be reduced as follows. The employee's monthly reported (city employment and approved outside employment) employment earnings at the date the disability occurred will be adjusted for seasonal or other reasonable variations, and then adjusted by cost of living increases to date of reduction. This amount (adjusted earnings) shall be compared with the employee's current employment earnings. If the employee's current employment earnings exceed 25 percent of his/her adjusted earnings, then for each three percent in excess of that level, the disability benefits shall be reduced by one percent. For example, if his/her current earnings become 55 percent of his/her adjusted earnings, then the disability payments shall be reduced by ten percent. Such recovery of earning capacity shall not affect the determination of disability unless the city specifically determines to discontinue disability payments upon the basis that the employee is no longer disabled as provided for herein. Any reduction authorized herein shall be imposed in addition, and subsequent to, any offsets authorized by section 2-526(d)(15).

(19) *Payment in case of legal or other disability.* Whenever a person entitled to disability payments under this subsection is under legal disability, the disability benefits shall be payable to his/her legal guardian.

(20) *Medical examinations.*

a. All regular employees shall be required to complete a medical history record at the time of their employment or reemployment. Any false or misleading statements or omissions made by the employee on his/her medical history record may cause the employee to be ineligible for receiving future disability benefits.

b. All preexisting physical or mental disabilities, impairments or limitations shall be stated on the medical history record. The employees shall, by signing a statement, waive any and all future rights to a disability benefit (except one rising out of and in the course of employment with the city) from the city if the future disability results from or is caused by a condition existing prior to employment or reemployment by the city.

c. Once each year following the receipt of disability benefits by reason of physical or mental incapacity and/or any other time for good cause, the plan administrator may require any such disability employee to undergo a medical examination by a duly qualified and licensed physician designated by the plan administrator. The plan administrator may cause an employee's disability benefit to be discontinued if he/she refuses to submit to the medical examinations.

d. The board shall have the right to review the eligibility and entitlement of an eligible employee to a disability benefit at any time, and such determination as may be made by the board shall be final.

(21) *Transfer of employees' disability plan obligations and assets to the employees pension plan.* To complete the transition of disability benefits from the City of Gainesville Employees' Disability Plan to the City of Gainesville Employees Pension Plan, the finance director shall transfer the remaining obligations for disability benefits currently being paid to disabled retirees and requisite level of assets to satisfy these obligations, as determined by the disability plan actuary, from the City of Gainesville Employees' Disability Plan to the City of Gainesville Employees Pension Plan as soon as administratively feasible. Thereafter, these obligations shall be assumed by the City of Gainesville Employees Pension Plan and eligible employees who received disability benefits or submitted claims for disability benefits under the City of Gainesville Employees' Disability Plan before February 20, 2015, shall receive their disability benefits through the City of Gainesville Employees Pension Plan.

(e) *Death of an active member.* If a member actively employed by the city dies prior to his/her eligibility for normal or early retirement, no death benefits shall be payable from the plan; provided however, that amounts contributed by members shall be paid without interest to the member's beneficiary. If a member actively employed by the city dies subsequent to his/her eligibility for normal or early retirement, and had selected an optional form of benefit, as provided in subsection (j), benefit payments will be made to the beneficiary in accordance with such option as though the member had retired on the day before he/she died and if he/she has elected the normal form amounts contributed by the member shall be paid without interest to the member's beneficiary.

(f) *Death subsequent to termination of employment but prior to retirement eligibility.* If a member dies subsequent to termination of employment but prior to eligibility for retirement, no death benefits shall be payable; provided however, that amounts contributed by members shall be paid without interest to the member's beneficiary.

(g) *Death subsequent to retirement but prior to benefit commencement.* If a member dies subsequent to retirement but prior to benefit commencement and had elected an optional form of benefit, as provided in subsection (j), benefit payments will be made to the beneficiary in accordance with the terms of such option as though the employee had commenced benefits on the day before he/she died; provided, however, that amounts contributed by members who elected the normal form shall be paid without interest to the member's beneficiary.

(h) *Death after benefit commencement.* If a member dies subsequent to his/her benefit commencement date, no death benefit shall be payable unless the member had elected an optional form of benefit, as provided in subsection (j), in which case the terms of the optional form selected shall apply; provided however, that amounts contributed by members in excess of retirement benefits paid to the member under the normal form shall be paid without interest to the member's beneficiary.

(i) *Reemployed members.*

(1) If employment of a member entitled to a termination benefit is terminated, and he/she is subsequently reemployed by the city prior to his/her benefit commencement date, he/she shall continue to be entitled to the credited service he/she had previously earned, and shall again participate in the plan and accrue benefits after such date of reemployment, in accordance with the terms of the plan. A member whose employment with the city terminated prior to the member's entitlement to any termination benefits and who has had the amount, if any, he/she contributed to this plan repaid without interest, shall no longer be a member of the plan and shall not be entitled to receive any benefits under the plan. If a member described in section 2-521 "Credited Service," subsection (2) or (3) is subsequently reemployed by the city, he/she may recoup his/her previous credited service to which he/she was previously entitled, if he/she, within 30 days from the date of his/her successful completion of his/her probationary period after reemployment, refunds the amount of contributions paid out, plus interest at the plan's assumed rate as stated in the most recent actuarial valuation report filed with the state pursuant to F.S. Ch. 112.63(2), for each year and portion thereof of his/her absence and the period of time after reemployment until the date of refund.

(2) Notwithstanding the requirements of this section and section 2-521 requiring that reemployed members repay withdrawn contributions, fleet management and janitorial services employees laid off on September 30, 1978, shall, upon reemployment, not be required to refund payments received pursuant to Ordinance No. 2350, in order to receive past service credits for the period of previous employment.

(j) *Annuity options.* Upon a member becoming eligible to receive an annuity either through regular retirement or through a DROP, he/she may elect to receive annuity benefits, payable under the plan in the form of a joint survivor annuity instead of a normal annuity form, which shall be the actuarial equivalent of the annuity he/she would receive under the normal form. If any member who has a spouse or registered domestic

partner at his/her benefit commencement date fails to make such an election it will be assumed that he/she elected option A below with his/her spouse or registered domestic partner as the beneficiary and if the member does not have a spouse or registered domestic partner at his/her benefit commencement date, that the member elected the normal form.

(1) *Option A—Joint annuity option.* A reduced monthly annuity benefit which shall be payable during the joint lifetime of the member and his/her beneficiary, with two-thirds of such reduced annuity amount continuing after the death of the member during the lifetime of the beneficiary. If the beneficiary predeceases the member, 100 percent of the reduced benefit will continue to be received by the member.

(2) *Option B—Joint and last survivor annuity option.* A reduced monthly annuity benefit which shall be payable during the joint lifetime of the member and his/her beneficiary, with two-thirds of such reduced benefit amount continuing automatically after the death of either the member or his/her beneficiary, payable for the lifetime of the survivor.

The election of either joint survivor option (for an unmarried member), or the election of option A or B (by a married member) must be requested by the member at least 30 days prior to the date of benefit commencement. Such election, if made, may not be changed by the member within three months prior to the date of benefit commencement. The election of the normal form by a married member must be requested by the member at least three months prior to the date of benefit commencement, or a notarized spousal waiver must be submitted 30 days prior to the date of benefit commencement, and may not be changed by the member within 30 days prior to the date of benefit commencement. The election of a joint survivor option shall be deemed automatically canceled at the death of the proposed beneficiary prior to the member's benefit commencement date. Provided, however, anything otherwise contained in this section or any other section of this division to the contrary notwithstanding, a member receiving an annuity, either through regular retirement or through a DROP, may change his/her option after benefit commencement either from an annuity option or to an annuity option in the event of (1) a divorce or legal separation, when the same has been considered and approved by the court granting same as a part of the settlement; or (2) the marriage of an unmarried employee who becomes married after the date of benefit commencement. Such change shall be effective no sooner than three months after the filing of a written election to effect such change with the personnel department. The benefits paid under such changed annuity shall be the actuarial equivalent to the remaining value of the former annuity determined as of the date of the benefit change.

(k) *Social security option.* An employee who begins receiving an annuity, either through regular retirement or through a DROP, before he/she is entitled to receive monthly benefits under the federal social security system may elect to have his/her annuity benefits increased before his/her social security benefits begin, and decreased thereafter to obtain, insofar as practical, a level total yearly retirement income from the two sources. The amount he/she will receive both before and after he/she becomes eligible for social security payments shall be the actuarial equivalent of the benefits to which he/she would have been entitled had he/she not selected this option. The social security option must be requested at least 90 days prior to date of benefit commencement. Such election, if made, may not be changed by the member within 90 days prior to date of benefit commencement.

(l) *Maximum benefit limitation.*

(1) The maximum annual benefit payable under the plan shall be limited to $205,000.00, subject to adjustment for increases in the cost of living in accordance with the following sentence. As of the first day of January of each calendar year, the maximum dollar limitation shall be adjusted automatically to an amount determined by the Commissioner of the Internal Revenue Service in accordance with Section 415 of the Internal Revenue Code effective for that calendar year and shall apply only to that calendar year.

Retirees in payment status whose benefits were limited in any year by the application of this limitation shall have their benefits adjusted automatically in subsequent years to take into account the then current dollar limit.

(2) In the event a member has earned a benefit which during a previous limitation year has met all the requirements of I.R.C. section 415, and if the member's accrued benefit exceeds the limitation of I.R.C. section 415 for the current limitation year, the member's maximum annual benefit, as described in subsection (1) of this section, shall not be less than the accrued benefit allowable under such previous limitation year.

(3) If the retirement benefit is payable in a form other than a straight-life annuity or a joint-and-survivor annuity with the spouse as joint annuitant, the annual benefit limitation in any year shall be the actuarial equivalent (as defined in subsection (5) of this section) of the maximum annual benefit for that year (payable in the form of a straight-life annuity), as described above.

(4) In the event payment of a retirement benefit under the plan to a member commences after the date the member attains age 65, the maximum benefit limitation shall be adjusted to be not more than the actuarial equivalent (as defined in subsection (5) of this section) of the then current dollar limit commencing at age 65 for the purpose of applying the benefit limit described in subsection (1) of this section.

For years subsequent to the payment commencement year, benefits payable shall be limited to the actuarial equivalent determined as of the benefit commencement date, of the subsequent year's dollar limit assumed to commence at age 65.

(5) For the purpose of adjusting benefits in accordance with this section, actuarial equivalent shall be determined using the 1994 Group Annuity Mortality Table (50/50 Unisex) and the plan's interest rate for adjustments under subsections (3) and (4) of this section. For adjustment under subsections (3) and (4), no cost-of-living adjustment shall be taken onto account before the year for which such adjustment first takes effect.

(6) If a retirement benefit is payable to a member who has less than ten years of plan participation, the limitation described in subsection (1) of this section shall be multiplied by a fraction, the numerator of which is the member's years of plan participation and the denominator of which is ten.

(m) *Distribution rules.* Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after November 24, 1997, shall satisfy the following conditions:

(1) If any retirement income is payable before the member's death:

a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ years or the calendar year in which he retires.

b. The distribution shall commence not later than the calendar year defined in paragraph a. above and (1) shall be paid over the life of the member or over the lifetimes of the member and his spouse, issue or dependent, or (2) shall be paid over the period extending not beyond the life expectancy of the member and his spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(2) If the member's death occurs before the distribution of his or her interest in the plan has commenced, his or her entire interest in the plan shall be distributed within five years of his or her death, unless it is to be distributed in accordance with the following rules:

a. The member's remaining interest in the plan is payable to his or her spouse, issue or dependent.

b. The remaining interest is to be distributed over the life of the spouse, issue, or dependent or over a period not extending beyond the life expectancy of the spouse, issue or dependent; and

c. Such distribution begins within one year of the member's death unless the member's spouse is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age 70½, and if the member's spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.

(n) *Direct transfers of eligible rollover distributions.*

(1) General. Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions.

a. *Eligible rollover distribution.* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee, or the joint lives (or joint life expectancies of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under I.R.C. section 401(a)(9); and the portion of any distribution that is not includable in gross income, i.e., member contributions made prior to 1998.

b. *Eligible retirement plan.* An eligible retirement plan as defined in I.R.C. Section 402(c)(8)(B), including an individual eligible retirement account described in I.R.C. Section 408(a), an individual retirement annuity described in I.R.C. Section 408(b), an annuity plan described in I.R.C. Section 403(a), an annuity contract described in I.R.C. Section 403(b) or a qualified trust described in I.R.C. Section 401(a) that accepts the distributee's eligible rollover distribution, or an eligible deferred compensation plan described in I.R.C. Section 457(b) maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

c. *Distributee.* A distributee includes an employee, or a former employee, a surviving spouse as described in I.R.C. Section 402(c)(9), or designated beneficiary. Effective as of January 1, 2008, an employee's or former employee's non-spouse beneficiary is a distributee with regard to the interest of the employee or former employee.

d. *Direct rollover.* A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code.

(o) *Rollovers to IRA's.* A return of accumulated contributions in excess of $1,000.00 shall be paid in a direct rollover to an IRA designated by the plan administrator if, after notice, the member does not elect to either receive the distribution directly or have it paid in a direct rollover to an eligible retirement plan.

(Code 1960, § 20-40.6; Ord. No. 3140, § 6, 6-24-85; Ord. No. 950189, § 2, 6-26-95; Ord. No. 951232, § 5, 4-8-96; Ord. No. 970592, §§ 6—10, 11-24-97; Ord. No. 980761, § 3, 3-8-99; Ord. No. 990595, § 2, 12-13-99; Ord. No. 00051, §§ 9, 10, 9-11-00; Ord. No. 002185, § 1, 1-14-02; Ord. No. 050595, § 1, 12-12-05; Ord. No. 070027, §§ 1, 2, 7-9-07; Ord. No. 080439, § 1, 11-20-08; Ord. No. 120218, § 4, 9-10-12; Ord. No. 130122, § 5, 9-19-13; Ord. No. 140657 , § 3, 2-19-15; Ord. No. 140860 , § 1, 5-7-15; Ord. No. 150213 , § 2, 4-21-16)

Sec. 2-527. Administration of the plan.

(a) *General supervision.* The general supervision of the employees pension plan shall be the responsibility of a board of trustees established in accordance with this section.

(b) *Board of trustees.* There is hereby created a board of trustees whose duty shall be to administer, manage and operate the plan carrying into effect its provisions. The members of the board of trustees shall be the members of the city commission.

(c) *Trustees' term.* Members of the city commission shall serve as trustees of the pension plan during their term of office as members of the city commission.

(d) *Compensation of trustees.* Trustees of the pension plan shall serve without compensation for their services as trustees.

(e) *Meetings of the board; form.*

(1) The board shall hold regular meetings at least quarterly, and shall designate the time and place thereof. It shall adopt its own rules and procedures and shall keep a record of its procedure. All regular meetings of the board shall be public.

(2) The majority of the board shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote at the meeting of the board and at least four concurring votes shall be necessary for decisions of the trustees.

(f) *Retirement plan officers:*

(1) The chairperson of the city commission shall be the chairperson of the board and the chairperson pro-tem of the commission shall be the pro-tem of the board.

(2) The city clerk shall act as secretary of the board.

(3) The director of finance shall be treasurer of the plan and shall be custodian of the funds. The city manager shall be the plan administrator and shall have the power to finally approve members' or beneficiaries' claims for benefits. The plan administrator's denial of a member or beneficiary's claim for benefits shall be reviewable in accordance with section 2-527(i).

(4) The city attorney shall be legal advisor to the board.

(5) The board shall employ such professional and clerical services as required for the proper operation of the plan and provide for their compensation.

(g) *Records; annual report.* The treasurer of the plan shall keep or cause to be kept such data as shall be necessary for an actuarial valuation of the assets and liabilities of the plan. The board shall cause to be made an annual audit showing the fiscal transactions of the plan for the preceding fiscal year. The most recent report showing the financial condition of the plan by means of an actuarial valuation of its assets and liabilities shall be attached to the report. The report shall be filed within 90 days following the end of the fiscal budgetary year.

(h) *Administrative regulations and plan description.* The board, after consulting with the advisory committee, may promulgate by resolution written rules and regulations not in conflict with the terms of this division or the Charter to cover the operation of any phase or part of the plan that is defined in this division. Copies of the roles and regulations shall be furnished to any member of the plan upon request and at least one copy thereof shall be kept available in the office of the city clerk for examination by any interested person at any time during ordinary business hours, otherwise a copy of this division shall fully meet the provisions herein. The provisions of the plan shall be contained in a written plan description. A report of pertinent financial and actuarial information on the solvency and actuarial soundness of the plan shall be kept available in the office

of the city clerk for examination and shall be provided at no cost to the plan members upon their request. The plan description shall be furnished to a member of the plan upon initial employment or participation in the plan.

(i) *Interpretation of the plan, denial of benefits.* The board has the power to construe all rules, conditions and limitations of the plan, and its construction made in good faith shall be final and conclusive. There shall be timely, adequate written notice given to any member or beneficiary whose claim for benefits under the terms of this plan have been denied, setting forth the specific reasons for such denial. If requested by a member or beneficiary who has had his/her claim to benefits denied, the board shall provide for a full and fair review of the denial and its determination shall be final and conclusive.

(j) *Agents and employees.* The board shall have the power to select, employ and compensate, or cause to compensate from time to time such consultants, actuaries, accountants, attorneys, investment counsel, and other agents and employees as they may deem necessary and advisable in the proper and efficient administration of the plan.

(k) *Other powers and duties.* The powers and duties of the board or of any other person as set out herein are not intended to be complete and exclusive but each such body or person shall have powers and duties as they are reasonably implied under the terms of this division.

(l) *Duties of the secretary.* It shall be the duty of the secretary to keep minutes and records of the acts of the board under this plan separate and apart from minutes of the city commission meetings, and these shall be maintained in the office of the city clerk.

(m) *Membership records.* All notices, elections, designations and changes in beneficiary, and similar writings pertaining to the operation of the plan shall be made and preserved in writing on such forms as the board may direct. A service record for each member shall be maintained in the personnel department which shall show, at least:

(1) For each active and inactive member of the system, a number or other means of identification, date of birth, sex, date of employment, current address, period of credited service, split, if required, between prior service and current service, and occupational classification;

(2) For each active member, compensation for purposes of computing final average earnings, cumulative contributions together with accumulated interest, if credited, age at entry into system, and current rate of contribution;

(3) For each inactive member, average final compensation, or equivalent, and age at which deferred benefit is to begin;

(4) For each retired member and other beneficiary a number or other means of identification, date of birth, sex, beginning date of benefit, type of retirement and amount of monthly benefit, and type of survivor benefit.

In order to receive benefits under this plan a member, or beneficiary upon request, shall be required to submit, or authorize the board to secure, any information concerning his/her entitlement to benefits (such as matters pertaining to social security benefits) or other information reasonably related to the operation of the plan.

(n) *Treasurer.* Gifts, bequests, devises or appropriations to the fund shall be received by the treasurer. The treasurer shall be liable for safekeeping of the funds received and appropriated by the city commission under this bond. The treasurer shall promptly deposit funds in banks or savings and loan associations designated by the trustees of the fund or transfer to the trustees or the insurance company all funds received and appropriated by the city commission. The director of finance shall be responsible for making all payments and disbursements from pension funds.

(o) *Actuary and reports.* The board shall employ an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974, and who is a member of the Society of Actuaries or the

American Academy of Actuaries. The actuary shall prepare and certify regularly scheduled actuarial reports at least every three years. The actuarial report shall consist of, but shall not be limited to, the following information:

(1) Adequacy of employer and employee contribution rates in meeting levels of employee benefits provided in the system and changes, if any, needed in the rates to achieve or preserve a level of funding deemed adequate to enable payment of the benefit amounts prescribed by the system, which shall include a valuation of present assets and liabilities of the system, and the extent of unfunded accrued liabilities, if any;

(2) A plan to amortize any unfunded liability and a description of actions taken to reduce the unfunded liability;

(3) A description of actuarial assumptions;

(4) A schedule illustrating the amortization of unfunded liabilities, if any;

(5) A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the three-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;

(6) A statement by the enrolled actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of F.S. Ch. 112, Pt. VII.

The results of each actuarial report shall be filed with the board within 60 days of certification. Thereafter, the results of each actuarial report shall be made available for inspection upon request. Additionally, a statement of actuarial impact shall be required in conjunction with and prior to, final adoption of a change or amendment in the plan design or benefit structure which results in increased benefits for plan members or beneficiaries. The statement shall indicate whether the proposed changes are in compliance with Section 14, Article X, of the State Constitution and F.S. § 112.64. A copy of each actuarial report or statement to the division of retirement within 60 days of receipt from the actuary shall be furnished.

(p) *Adoption of tables.* In making any actuarial computations provided in this division, the tables, charts, and other statistical information shall be selected by the board from standard sources in common use by other annuity and pension plans, including but not limited to those operated by governmental bodies in the United States of America, or by the United States Internal Revenue Service.

(q) *Designation of beneficiary required.* In order to be entitled to earn any credit for benefits under this division and as a condition precedent to becoming an employee and continuing as an employee of the city such person shall first designate in writing on forms to be provided by the personnel department a beneficiary or beneficiaries. Such written designation shall contain such information as the personnel department may require and shall at all times remain on file in the personnel department. A member may change his/her beneficiary at any time and shall change same when his/her beneficiary dies.

(r) *Responsibilities of members and beneficiaries.* Each member or beneficiary or other interested member shall be responsible for advising the board of his/her current mailing address, and promptly advising the board pertaining to any error, in whosoever's favor, in connection with the payment of benefits or any other payment under or in connection with the plan.

(s) *Interest on delayed payments.* Pension payments, although not promptly paid for any reason, and any other payments to be paid out of the fund, although not paid promptly for any reason, shall not bear interest unless so ordered by the board which shall have the discretion to fix the rate and calculate any such interest, and in such event, the interest to be paid shall not exceed three percent simple interest.

(t) *Personal liability.* The board of trustees and plan officers shall, in the performance of plan duties, discharge their duties with respect to the plan solely in the interest of the participants and beneficiaries for the

exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. The plan may purchase insurance for its fiduciaries to cover liabilities or losses incurred by reason or acts or omissions of the fiduciaries.

(u) *Filing defined.* Where any notice, election, or other instrument is required or permitted by this division to be filed with the board, the same shall be filed with its secretary.

(v) *Short title designation.* For purposes of easy identification the plan provided for in section 2-526 may be known as "Plan A" and the plan provided for in section 2-525 may be known as "Plan B."

(w) *Investment of funds.* The board shall have full power to invest and reinvest all funds within its control and to make investment of all kinds except as otherwise provided by statute or ordinance. Such investments shall not be subject to the limitations and conditions set forth in F.S. § 215.47.

(x) *Method of making payments.* All payments from the fund shall be made according to Charter provisions governing the disbursement of moneys from the city's general fund provided that no payment shall be made from the funds of the plan unless the payment has been previously authorized by the board. All payments shall be made monthly except that payments which would amount to less than $10.00 may be made quarterly, semiannually or annually, as the case may be.

(y) *Errors.* Should any change or error in the records result in any member, retirant, or beneficiary receiving from the plan more or less than he/she would have been entitled had the records been correct, the plan administrator shall correct such error and as far as practical shall adjust the payment of the benefits in such manner that the actuarial equivalent of the benefit to which the member, retirant, or beneficiary was correctly entitled shall be paid.

(z) *Reports by trustee or insurance company.* Any corporate trustee or insurance company or companies with which a trust agreement or contract or contracts may be entered into for the administration of the pension plan funds shall be required to submit a statement of the conditions of the funds on deposit to the credit of the plan as prescribed by the board but at least once yearly, and may be required to supply copies of the statements to an actuarial consultant designated by the commission. The original shall be retained among the records of the secretary of the board.

(aa) *Annual audit.* The affairs of the pension plan shall be audited annually by an independent certified public accountant selected by the city commission. The report of the auditor shall be submitted to the city commission in writing and shall be made available to the public and to members of the pension plan.

(bb) *Advisory committee:*

(1) There shall be an advisory committee composed of three employees participating in the plan who shall be elected by a majority of all city employees participating in the pension plan. The election shall be regularly held on the third Monday in September of every year and the persons elected shall hold office for three years beginning on the third day after their election. The advisory committee is hereby authorized and directed to select and appoint not less than 30 days before the election, from those participating in the pension plan, a committee of five to conduct the election. Any vacancy on the advisory committee shall be filled by a majority vote of all officers and employees participating in the pension plan, cast at a special election called for that purpose; provided, however, that if such a vacancy occurs within three months before a regular election, it shall be within the discretion of the advisory committee as to whether or not a special election shall be called for the purpose of filling the vacancy.

(2) The advisory committee may recommend in writing to the board at any time on any matters relating to the plan. The recommendations, though not binding on the board, shall be given full and complete consideration.

(3) The terms shall be so arranged that one member will be elected each year to provide for continuity on the committee. The election each year will be to replace only those vacancies of the one member whose term expires or to replace any additional vacancy which may occur.

(Code 1960, § 20-40.7; Ord. No. 990595, § 3, 12-13-99; Ord. No. 991457, § 4, 6-26-00; Ord. No. 020901, § 1, 4-14-03; Ord. No. 130122, § 6, 9-19-13; Ord. No. 210562 , § 10, 6-16-22)

Sec. 2-528. Separability and construction.

If any section, subsection, sentence, clause, or phrase of this division shall be held to be invalid or unconstitutional, such adjudication shall not in any manner affect the remaining portions of this division, which shall be, and remain, in full force and effect, as fully as if the portion so adjudicated invalid or unconstitutional were not originally a part thereof. The section headings included in this division shall not be construed to limit the text included thereunder.

(Code 1960, § 20-40.8)

Sec. 2-529. Protection against fraud and deceit.

Whosoever with intent to deceive shall make or cause to be made any statement, report, certificate, election, notice, claim or other instrument, authorized or required under this division, whether of the enumerated classes or otherwise, which shall be untrue, or shall falsely or cause to be falsified any record comprising a part of the operation or administration of this plan contemplated by this division shall be punished as provided in section 1-9.

(Code 1960, § 20-40.9)

Sec. 2-530. Miscellaneous.

(a) *Limitations of assignment.* None of the benefit distributions under the employees pension plan shall be subject to the claim or to any legal process of any creditor of the member or beneficiary; and neither such member nor beneficiary shall have any right to alienate, commute or assign any of the benefit distributions under this plan. If any member shall attempt to dispose of his/her benefits or the right to receive the benefits, or if there should be an effort to seize the benefits or the right to receive the benefits by attachment, execution, or other legal or equitable process, the right may be transferred, at the discretion of the plan administrator, to one or more beneficiaries, if any, designated by the member, or to the spouse, registered domestic partner, children, or other dependents of the member, in such shares as the plan administrator may appoint. The plan administrator may revoke his/her appointment at any time and make further appointments, which may include the member.

(b) *Payments to legally incompetent.* If any member or beneficiary is a minor, or, in the judgment of the plan administrator is otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him/her, the plan administrator may, unless claim shall have been made by a duly appointed guardian, direct that payments be made to the person's spouse, registered domestic partner, child, parent, brother, or sister, or other person deemed by the plan administrator to have assumed responsibility for the expenses of the member or beneficiary.

(c) *Disappearance of member or beneficiary.* If any member or beneficiary, receiving or entitled to receive benefits under the plan, should disappear and fail to respond within 60 days to a written notice sent by the plan administrator by registered or certified mail informing the member or beneficiary of his/her settlement to receive benefits under the plan, the plan administrator may pay the benefits, or any portion thereof which

the plan administrator determines to be appropriate, to the dependents of the member or beneficiary, whichever is applicable, having regard to the needs of the dependents, until the member or beneficiary is located or until the benefits have been paid in full whichever event shall first occur.

(d) *USERRA.* Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provide in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended, USERRA, and F.S. chs. 175 and 185, as applicable.

(e) *Use of forfeitures.* Forfeitures arising from terminations of service of members shall serve only to reduce current or future contributions to the fund.

(f) *Compliance with federal tax laws.* Notwithstanding any other provisions, the benefit of a member shall be reduced to the extent that it exceeds amounts specified in Section 415 of the Internal Revenue Code, and all distributions from the plan (including the DROP) shall conform to the regulations issued under Section 401(a)(9) of the Internal Revenue Code, including the incidental death benefit provision of Section 401(a)(9)(G) of the Internal Revenue Code.

(Code 1960, § 20-40.10; Ord. No. 990595, § 4, 12-13-99; Ord. No. 080439, § 2, 11-20-08; Ord. No. 130122, § 7, 9-19-13)

Sec. 2-531. Interest in the fund.

No member, employee, pensioner, beneficiary, or other persons shall have any interest in, or right in or to, the employees pension plan fund or any part thereof, or any assets comprising the same, except only as to the extent expressly provided in this division.

(Code 1960, § 20-40.11)

Sec. 2-532. Payment in case of legal or other disability.

Whenever a person entitled to payments under this division shall be under legal disability the benefits shall be payable to his/her legal guardian.

(Code 1960, § 20-40.12)

Sec. 2-533. Amendment; termination of the plan.

(a) *Power to amend:*

(1) The city commission shall have the right, at any time, to amend any or all of the provisions of the employees pension plan; provided, however, that it is impossible for any part of the corpus or income of the trust fund to be used for, or diverted to, purposes other than the exclusive benefit of the plan participants and their beneficiaries.

(2) Any plan amendment which changes any benefit accrual rate or vesting schedule under the plan shall not reduce the nonforfeitable amount of any participant's accrued benefit determined as of the later of the date the amendment is adopted or becomes effective.

(b) *Termination of plan.*

(1) The board of trustees expects to continue this plan indefinitely, but reserves the right to terminate the plan and its city contributions thereunder at any time. In the event of the termination or partial termination of the plan, or complete discontinuance of contributions under the plan, the rights, if any,

of all members to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, shall be nonforfeitable.

(2) Upon receipt of written notice of termination of the plan, the board shall arrange for the trust fund to be apportioned and distributed after preparing a list of members, showing for each, as of the date of plan termination, the following:

a. For each member and beneficiary receiving payment of benefits, the amount and terms of the benefits.

b. For each terminated member entitled to a deferred benefit, the amount, commencement date, and terms of payment of the benefit.

c. For each active member, the amount of his/her accrued benefit.

(3) In the event of termination of the plan, the board shall allocate the assets of the trust fund (available to provide benefits) among the members and their beneficiaries under the plan in the following order:

a. *Priority Class (A):* The portion of members' accrued benefits which is derived from member contributions (if any).

b. *Priority Class (B):* In the case of benefits payable as an annuity, equally among members and beneficiaries whose benefits were in pay status.

c. *Priority Class (C):* Equally, among active members who are eligible for normal retirement, but who have not yet retired.

d. *Priority Class (D):* Equally, between all other vested accrued benefits of both active and terminated members.

e. *Priority Class (E):* All other nonvested accrued benefits under the plan.

(4) If the allocated assets are insufficient to provide in full benefits in each priority class the remaining portion of the trust fund shall be distributed to provide in full the benefits in each priority class. If the assets are insufficient to provide the benefits in full for any class, such assets are to be allocated in full to provide a uniform percentage of benefits to the members of that priority class. Any residual assets of the plan may be distributed to the city after all liabilities of the plan to members and their beneficiaries have been satisfied.

(Code 1960, § 20-40.13; Ord. No. 110370, § 1, 11-17-11)

Sec. 2-534. Deferred retirement option program.

(a) A deferred retirement option program is hereby created for eligible members whose most recent appointment to employment with the city as a permanent or regular employee occurred on or before October 1, 2012.

(b) A member who is performing eligible service is eligible for participation in the DROP on the first day of the month coincident with or next following the completion of 27 years credited service, including limited participant service, and, if applicable, vesting service for former Gainesville Gas employees, and continuing up to the point in time at which the member has 35 years of regular employment, except as provided in subsection (g) below. Except as otherwise expressly provided for herein, upon entering into the DROP, employees may elect to apply unused sick leave hours (see subsection (p) for special provisions related to "GPD employees") or personal critical leave bank (PCLB) hours to attain the requisite years of credited service for eligibility to enter and for determining their accrued benefit, or may retain some or all of their unused sick leave or personal critical leave, for use during their employment while participating in the DROP. For service earned on or after October 1, 2012, no additional months of service shall be credited for unused

sick leave or PCLB hours earned on or after October 1, 2012. In calculating service on or after October 1, 2012, the lesser number of months between the additional months of service credited for unused sick leave or PCLB hours earned on or before September 30, 2012 and months of unused sick leave or PCLB hours available to a member at the time of his or her entry into DROP shall be used. Sick leave and PCLB balances retained upon entry into the DROP and accrued while participating in the DROP shall not count as days or months of credited service when determining the maximum period of participation in the DROP in accordance with subsections (f) and (g) below. Any unused sick leave or PCLB remaining at the expiration of the DROP participation or period will be forfeited.

(c) On the date of a member's entry into the DROP, the member's credited service, accrued benefit, and final average earnings shall be calculated as if the member had actually separated from service on that date and retired. There shall be no further member contributions after entry into the DROP, except as a re-employed retiree, if applicable. No additional credited service shall be earned while participating in the DROP. Changes in the plan shall not apply to members in the DROP, except as expressly provided.

(d) Beginning with general (COLA) salary increases effective after October 2, 2000, a member must, in order to enter and continue to participate in the DROP, forego receipt of all general (COLA) salary increases effective after the member's entry into the DROP. Beginning with merit or progression through training increases effective after October 2, 2000, a member must, in order to enter and continue to participate in the DROP, forego receipt of all such increases effective after the member's entry into the DROP to the extent such increases would result in the members' base salary exceeding the top of the salary range of the classification the member was in, as it existed when the member entered the DROP, or after the October 2, 2000 general increase, whichever is higher.

In the case where the members' pay plan does not provide separately for (combines) general and merit increases, beginning with such salary increases effective after October 2, 2000, a member must, in order to enter and continue to participate in the DROP, forego receipt of all such salary increases effective after the member's entry into the DROP to the following extent: First, the amount of any general increase applied to the professional pay plan for the same fiscal year shall be deducted from such DROP participant's otherwise applicable increase. The remaining increase shall be provided, but only to the extent that such increase does not result in the member's base salary exceeding the top of the salary range of the classification the member was in, as it existed when the member entered the DROP, or after the October 2, 2000 increase, whichever is higher.

Members participating in the DROP remain eligible to receive a promotional increase but subsequent merit and progression through training or combined increases would be limited as described above.

(e) The member shall select the retirement options as provided for in subsections 2-526(j) and (k) and shall designate any beneficiary in accordance with plan provisions and practices applicable to normal and delayed retirements.

(f) The maximum period of participation in the DROP is 60 months from date of entry. Except as provided in subsection (g), participation in the DROP must cease and employment terminate at the conclusion of a total of 35 years of regular employment with the City of Gainesville and, if applicable, predecessor employers (RTS, Gainesville Gas), or a successor employer (sheriff) under F.S. § 112.0515 (1997).

(g) Members who have more than 32 years of credited service, including limited participant service and, if applicable, vesting service for former Gainesville Gas employees, as of October 1, 2000, may participate in the DROP for up to 36 months. In order to take advantage of this "grandfathering" provision, a member otherwise eligible to enter the DROP must enter the DROP between October 1, 2000 and December 29, 2000. Such members (with over 32 years on October 1, 2000) electing to enter the DROP on or after December 30, 2000, shall be governed by the normal eligibility and duration requirements described herein.

(h) A member may cease participating in the DROP prior to the expiration of the agreed upon (not to exceed the maximum allowed) DROP period only by terminating regular employment with the city. In the event that a member participating in the DROP fails to terminate regular employment on or before the conclusion of the

DROP period, then the member's monthly retirement benefit shall cease to be paid at the conclusion of the DROP period, and any such amount(s) shall be forfeited to the plan until such time as the member terminates regular employment.

(i) Effective with the date of DROP participation, the member's initial monthly benefit, including creditable service, final average earnings and the effective date of retirement shall be fixed. A DROP participant's deferred monthly benefit shall accrue in the plan pension fund on behalf of the participant, plus interest. Such interest for members whose DROP participation begins on or before October 1, 2012 shall accrue at an effective annual rate of six percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death. For members whose DROP participation begins on or after October 2, 2012, such interest shall accrue at an effective annual rate of 2.25 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death. For members whose DROP participation begins on or after May 1, 2016, members shall have a one-time, irrevocable option for such interest to accrue at either (1) an effective annual rate of 2.25 percent compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death, or (2) a variable annual rate of not less than 0 and not more than 4.5 percent based on the plan's actual return rate for the previous plan year compounded monthly, on the prior month's accumulated ending balance, up to the month of termination or death. Retirement benefits and interest thereon shall continue to accrue in the DROP until the established termination date of the DROP, or until the participant terminates employment or dies prior to such date. Although individual DROP accounts shall not be established, a separate accounting of each participant's accrued benefits under the DROP shall be calculated and provided to participants annually.

(j) The terminated DROP participant or, if deceased, such participant's named beneficiary, shall elect to receive payment of the DROP benefits in accordance with one of the options listed in subsection 2-526(n). For a participant or beneficiary who fails to elect a method of payment within 60 days of termination of the DROP, the plan will pay a lump sum, less any required withholding.

(k) The decision to participate in the DROP is irrevocable once DROP payments begin. Upon deciding to participate in the DROP, the member shall submit, on forms required by the plan administrator:

(1) A written election to participate in the DROP;

(2) Selection of the DROP participation and termination dates, which satisfy the limitations stated herein. Such termination date shall be in a binding letter of resignation with the city, establishing a deferred termination date. The member may change the termination date within the limitations stated in subsections (f) and (g) of this section, but only with the written approval of the city;

(3) A properly completed DROP application for service retirement as provided in this section; and

(4) Any other information required by the plan administrator.

Once the employee has completed participation in the DROP, his/her regular employment will end and he/she shall be separated from employment; this separation shall be processed as a voluntary resignation.

(l) Upon entry into the DROP, a member shall no longer be eligible for disability benefits under the city police officers and firefighters consolidated pension plan or the city employees' disability plan. In the event of death during the DROP period, the member shall be presumed to have retired on a normal or delayed retirement for the purposes of subsection 2-526(e), (g) or (h).

(m) Except as provided in subsection (p) below, upon the termination of a member's (who has entered a DROP) regular city employment (for any reason, whether by retirement, resignation, discharge or death), the retirement benefits payable to the member or to the member's beneficiary (if the member selected an optional form of retirement benefit which provides for payments to the beneficiary) shall be paid to the member or beneficiary. Following the termination of a member's regular employment, the balance in the member's DROP account shall be payable in accordance with an option selected by the member. Regardless of the option selected by the member, the board of trustees has the right to accelerate payments in order to

comply with Section 401(A)(9) of the Internal Revenue Code and the right to defer payments to comply with Section 415 of the Internal Revenue Code.

(n) Nothing herein shall be construed to remove members who have entered the DROP from the scope of Section 8(d), Art. II, of the State Constitution, and F.S. § 112.3173(5)(f) (1999). Members who commit a specified offense while employed will be subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

(o) During DROP participation, a member shall be considered a retiree with deferred receipt of benefits for all plan purposes. For other purposes, except as described in subsection (p) below, the employee shall be considered an active employee of the city entitled to all rights of employment, except as otherwise provided.

(p) Members who are employees of the Gainesville Police Department Communications Center at the time the combined communications center is activated, who are hired by the Alachua County Sheriff on or about said date (GPD employees) are eligible to enter and participate in the DROP, described herein, with the following provisos: Upon conclusion of the DROP period or termination of employment with the sheriff, whichever earlier occurs, subsection (j) and (m) of this section and subsection (b) of section 2-535 shall then apply. Only "city" sick leave designated at the time of hire by the sheriff (see Section 4.G of the Interlocal Agreement between the City of Gainesville, the Alachua County Sheriff, and Alachua County for a combined communications center, recorded in Official Record Book 2261, page 1682, of the Public Records of Alachua County) may be utilized for years of service under subsection (b) of this section. Only the equivalent of a maximum of 416 hours of any lump sum payment of vacation leave that the sheriff might allow to be made to the employee while employed by the sheriff and prior to entering the DROP may be included in earnings for purposes of calculating the accrued benefit.

(q) Administration of program. The plan administrator shall make such rules and forms as are necessary for the effective and efficient administration of this subsection. The plan administrator shall not be required to advise members of the federal tax consequences of an election related to the DROP but may advise members to seek independent advice.

(Ord. No. 000051, § 11, 9-11-00; Ord. No. 120218, § 5, 9-10-12; Ord. No. 150213 , § 3, 4-21-16)

Sec. 2-535. Cost of living adjustment of benefits; non-eligibility during DROP participation.

(a) *Cost of living adjustment of benefits.* Terminated members whose normal or delayed retirement has been approved shall be entitled to receive increases in the amount of monthly retirement benefits upon meeting the conditions described in one of subsections (1)—(6) below. Only one subsection below shall be applicable to any member.

(1) A retired member or beneficiary who was receiving on or before October 1, 2000, a monthly normal or delayed retirement benefit based upon at least 20 years of credited service, including limited participant service, and the member is or would have been at least age 62 on October 1, 2000, shall have his/her monthly retirement benefit increased by two percent beginning with the benefit for the month of October 2000 (which monthly benefit is payable November 1, 2000). Thereafter, the monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(2) A retired member or beneficiary who was receiving on or before October 1, 2000, a monthly normal or delayed, or retirement benefit based upon at least 20 years of credited service, including limited participant service, shall, upon the October 1 on or following the date the member would have attained age 62; have his/her monthly retirement benefit increased by two percent, beginning with the benefit for that month of October (which monthly benefit is payable in November). Thereafter, the

monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(3) A retired member or beneficiary who first receives a monthly normal or delayed retirement benefit for October 2000 or later (first payable November 1, 2000 or later), which benefit is based upon 25 or more years of credited service, including limited participant service, shall, upon the October 1 on or following the date the member attains or would have attained age 60, have his/her monthly retirement benefit increased by two percent, beginning with the benefit for that month of October, if the member has at least 20 years of credited service on or before October 1, 2012. Thereafter, the monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(4) A retired member or beneficiary who first receives a monthly normal or delayed retirement benefit for October 2000 or later (first payable November 1, 2000 or later), which benefit is based upon 20 or more years of credited service but less than 25, including limited participant service, shall, upon the October 1 on or following the date the member attains or would have attained age 62, have his/her monthly retirement benefit increased by two percent beginning with the benefit for that month of October, if the member has at least 20 years of credited service on or before October 1, 2012. Thereafter, the monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(5) A retired member or beneficiary who first receives a monthly normal or delayed retirement benefit for October 2012 or later (first payable November 1, 2012 or later), which benefit is based upon 25 or more years of credited service, including limited participant service, shall, upon the October 1 on or following the date the member attains or would have attained age 65, have his/her monthly retirement benefit increased by two percent beginning with the benefit for that month of October. Thereafter, the monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(6) A retired member whose most recent appointment to employment with the city as a permanent or regular employee occurred on or after October 2, 2012 or beneficiary who first receives a monthly normal or delayed retirement benefit for October 2012 or later (first payable November 1, 2012 or later), which benefit is based upon 30 or more years of credited service, including limited participant service, shall, upon the October 1 on or following the date the member attains or would have attained age 65, have his/her monthly retirement benefit increased by two percent beginning with the benefit for that month of October. Thereafter, the monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be increased by two percent each October thereafter for the duration of the annuity.

(b) *Non-eligibility during DROP participation.* While participating in the general employees pension plan DROP, a member shall not have his/her monthly retirement benefit from the general employees pension plan adjusted as described in subsection (a) of this section 2-535. Upon such a member's termination of regular employment during or after conclusion of the DROP period, his/her monthly retirement benefit shall then first be subject to an October adjustment, if and when the conditions described in subsection (a) of this section 2-535 are met.

(Ord. No. 000051, § 12, 9-11-00; Ord. No. 120218, § 6, 9-10-12)

Secs. 2-536—2-545. Reserved.

DIVISION 6. DISABILITY PENSION PLAN[29]

Sec. 2-546. Termination of the disability plan.

(a) The disability pension plan known as the "City of Gainesville Employees' Disability Plan" (or "disability plan") was closed at 12:00 midnight on February 19, 2015, and, effective at 12:01 a.m. on February 20, 2015, the benefits provided through the disability plan were added to the City of Gainesville Employees Pension Plan. Moreover, any existing obligations for disability benefits under the disability plan as of 12:00 midnight on February 19, 2015, as well as the requisite level of assets to satisfy these obligations, as determined by the disability plan actuary, were transferred to the City of Gainesville Employees Pension Plan. As such, the disability plan has no remaining members, no possibility of future members, and no current or future obligations to provide benefits. All benefit obligations of the disability plan have been satisfied. Therefore, the disability plan is terminated.

(b) There are no further assets to be allocated to satisfy remaining disability benefit obligations. Thus, any remaining assets in the disability plan trust will be returned to the city and the trust will be terminated.

(Code 1960, § 20-70; Ord. No. 140657 , § 4, 2-19-15; Ord. No. 140860 , § 2, 5-7-15; Ord. No. 150193 , § 1, 9-3-15)

Secs. 2-547—2-575. Reserved.

DIVISION 7. DEFERRED COMPENSATION PROGRAM[30]

Sec. 2-576. Establishment; eligibility.

Pursuant to applicable general and special law, the city hereby establishes a deferred compensation program as contemplated by F.S. § 112.215 under the International City Management Association Retirement Corporation or other qualified providers.

(Code 1960, § 20-101; Ord. No. 951232, § 6, 4-8-96)

[29]Editor's note(s)—Ord. No. 150193 , § 2, adopted Sept. 3, 2015, repealed §§ 2-547—2-560 of Div. 6 which pertained to the disability pension plan and derived from §§ 20-71—20-84 of the 1960 Code; Ord. No. 980128, § 3, adopted July 27, 1998; Ord. No. 020731, § 1, adopted June 23, 2003; Ord. No. 030094, §§ 1, 2, adopted July 28, 2003; Ord. No. 060863, §§ 1—11, adopted Feb 12, 2007; Ord. No. 110370, § 2, adopted Nov. 17, 2011; Ord. No. 140657 , §§ 5, 6, adopted Feb. 19, 2015; and Ord. No. 140860 , § 3, adopted May 7, 2015.

[30]State law reference(s)—Government employees' deferred compensation program, F.S. § 112.215.

Sec. 2-577. Administrative officials designated.

The mayor of the city, or his/her designee, is hereby designated as the appropriate city official to administer the deferred compensation plan authorized in this division. The city commission hereby finds that, under current law, it is satisfied that the compensation deferred and/or the investment products purchased pursuant to the plan authorized will not be included in the employee's taxable income under federal or state law until it is actually received by the employee under the terms of the plan, and that the compensation will nonetheless be deemed compensation for the purposes of Social Security coverage, and for the purposes of any other applicable retirement, pension or benefit program lawfully established.

(Code 1960, § 20-102; Ord. No. 980128, § 4, 7-27-98)

Sec. 2-578. Contents of plan; procedures for formal adoption.

(a) Except as provided in this division, the contents of the plan authorized by this division shall be those specified in the contractual agreement or agreements herein required when executed by the city.

(b) In order to formally activate the provisions of this division, the city commission must, by resolution, authorize the execution of the necessary contractual agreements between the city, the International City Management Association Retirement Corporation or other qualified provider and the individual employee involved.

(Code 1960, § 20-103; Ord. No. 951232, § 7, 4-8-96)

Sec. 2-579. Employee's and city's approval of employee's participation and plan required.

(a) In order to activate the provisions of this division the individual eligible employees must elect to proceed with the plan by stating such intention in writing to the city manager (or in the case of the city manager, to the mayor). Employees hired after April 23, 1996, shall not be eligible to have employer contributions made to a deferred compensation program established under this division. All employees (as defined in the plan document(s)) may request to have a portion of their salary contributed (salary reductions) to the plan.

(b) Notwithstanding any provision of this division to the contrary, the city commission shall not be bound to enter into any agreements herein authorized unless it determines, in its discretion, that the best interests of the city will be served by such agreement. Such determination by the city commission shall be final and not subject to review. The commission may condition its approval upon the happening of any event, or the waiver by the employee of any benefit, and the commission may give consideration to monies contributed by the city or by the employee into the city's pension plans. The commission shall consider each employee's request on an individual basis, and the commission's action on one individual shall not be binding precedent on any later action the commission may choose to take with regards to another employee. In addition, the financial liability of the city under the plan authorized by this division shall in all events be limited to the value of its contributions into such plans.

(Ord. No. 3075, § 1, 11-19-84; Ord. No. 951232, § 8, 4-8-96; Ord. No. 980128, § 5, 7-27-98)

Sec. 2-580. Investment limitations.

All provisions of the State Constitution and general or special acts of the legislature (including section 31.2.1 of the Charter [section no longer exists] limiting the investment of municipal pension and retirement funds shall be equally applicable to investments made by the International City Management Association Retirement Corporation under the provisions of this division or any other contractual agreements executed hereunder.

(Code 1960, § 20-105)

Secs. 2-581—2-595. Reserved.

DIVISION 8. CONSOLIDATED POLICE OFFICERS AND FIREFIGHTERS RETIREMENT PLAN[31]

Sec. 2-596. Definitions.

The following words and phrases used in this division shall have the meanings set forth below, unless a different meaning is plainly required by the context:

Accrued benefit shall mean, as of the date of termination or entry into the DROP, whichever is earlier, the member's monthly retirement benefit in an amount equal to 2.5 percent or 2.625 percent of final average earnings times credited service. Except as otherwise provided herein, credited service attributable to service prior to October 1, 2005 shall be multiplied by 2.5; credited service attributable to service from October 1, 2005 on, shall be multiplied by 2.625. For members who are police officers, credited service attributable to service prior to October 1, 2005 shall be multiplied by 2.5, credited service attributable to service from October 1, 2005 to June 30, 2013 shall be multiplied by 2.625, and credited service attributable to service from July 1, 2013 on, shall be multiplied by 2.5. For members who are firefighters, credited service attributable to service prior to October 1, 2005 shall be multiplied by 2.5, credited service attributable to service from October 1, 2005 to December 31, 2013 shall be multiplied by 2.625, and credited service attributable to service from January 1, 2014 on, shall be multiplied by 2.5.

Actuarial-equivalent or equivalent actuarial value shall mean a benefit of equivalent value to the benefit which otherwise would have been provided to the member, based on the 1994 Group Annuity Mortality Basic Table-Unisex 50/50 and an interest rate of 9.5 percent, unless otherwise specified in this ordinance.

Enrolled actuary shall mean an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

Beneficiary shall mean a person, or persons designated to receive benefits payable in the event of a member's death.

Benefit determination date shall mean the date(s) upon which calculations of benefits are based when determining final average earnings and credited service.

Deferred retirement option program means an optional program of the City of Gainesville's retirement systems or plans for deferring retirement income while remaining in the active employ of the City. This shall also be known as a regular DROP or reverse DROP.

Earnings shall mean only base pay (which shall include all paid leaves), all overtime pay (which shall include time paid at time-and-a-half, double-time, and double-time-and-a-half), working out of classification pay, longevity pay, State of Florida city firefighters supplemental education incentive payments, State of Florida police officer

[31]Cross reference(s)—Fire prevention and protection, Ch. 10; police, Ch. 21.

State law reference(s)—Municipal firefighters pension trust funds, F.S. Ch. 175; municipalities having their own pension plans for firefighters, F.S. § 175.351; municipal police officers retirement trust funds, F.S. Ch. 185; municipalities having their own pension plans for policemen, F.S. § 185.35.

educational salary incentive payments, police security ("billable" overtime), special assignment pay, special duty assignment pay, paramedic certification pay, stand-by pay, call-back pay, acting out of classification pay, and termination vacation pay or for members entering a DROP any lump sum payment of some or all such member's vacation balance upon entering the DROP, except as may be otherwise expressly provided for herein or in collective bargaining agreements. To calculate earnings for service earned on or after July 1, 2013 by members who are police officers, no more than 300 hours of overtime pay (including "billable" overtime) per year earned on or after July 1, 2013 shall be included, nor shall termination vacation pay or any lump sum payment of a member's vacation balance upon entering DROP earned on or after July 1, 2013 be included. To calculate earnings for service earned on or after July 1, 2013 but before January 1, 2021 by members who are firefighters, no more than 300 hours of overtime pay (including "billable" overtime) per year earned on or after July 1, 2013 but before January 1, 2021 shall be included, nor shall termination vacation pay or any lump sum payment of a member's vacation balance upon entering DROP earned on or after July 1, 2013 be included. To calculate earnings for service earned on or after January 1, 2021 by members who are firefighters, no more than 300 hours of overtime pay (including "billable" overtime, but excluding overtime paid for hours worked as part of the normal schedule) per year earned on or after January 1, 2021 shall be included, nor shall termination vacation pay or any lump sum payment of a member's vacation balance upon entering DROP earned on or after January 1, 2014 be included. For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code § 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of $150,000.00 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code § 401(a)(17)(b). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code § 401(a)(17)(1991).

Effective date shall mean the date on which the operation of the plan is to commence.

Eligible employee shall mean any full-time regular employee who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life, and to protect property, or any full-time regular employee who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.14, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers or firefighters, part-time law enforcement officers or firefighters, or auxiliary law enforcement officers or firefighters, but does not include part-time law enforcement officers or firefighters or auxiliary law enforcement officers or firefighters. Employees whose work is primarily secretarial or clerical are not classified as eligible employees. An otherwise eligible employee may elect to waive, in accordance with section 2-579, certain claims/rights arising under this plan, and become an ineligible employee as described in subsection 2-598(c)(1)a. Based on October 17, 2005 advice from the municipal members and firefighters trust funds office, a non-certified police officer or firefighter may be an eligible employee and earn credited service in the plan under the following circumstances: A non-certified employee that is hired in a firefighter or police officer position should be enrolled in the plan upon hire and earn credited service while so employed. If the employee fails to meet the certification requirements under F.S. chs. 633 or 943 within one year, then the employee's contributions should be refunded and the employee would be removed from the plan and would not receive credited service in the plan for that period of time. Such non-certified employee may not leave his/her contributions in the plan, nor later repay such refunded contributions for the purpose of obtaining credited service for that period, nor purchase credited service for such period pursuant to subsection 2-600(n).

Final average earnings shall mean:

(1) The average of a member's monthly earnings for the 36 consecutive months which produces the highest average, as of the date of benefit determination, except as otherwise expressly provided herein. Final average earnings shall be determined by dividing the total earnings earned and received by the member during the applicable 36-month period by 36.

(2) For a member whose most recent appointment to employment with the city as a police officer occurred on or after July 1, 2013, the average of a member's monthly earnings for the 48 consecutive months which produces the highest average, as of the date of benefit determination. Final average earnings shall be determined by dividing the total earnings earned and received by such member during the applicable 48-month period by 48.

(3) If a member has been absent from work (performs no duties) due to an injury claimed to be compensable under F.S. Ch. 440 during the period of time which would be utilized to determine his/her final average earnings, then such period of absence shall not be considered months of employment for the purposes of this section. The months of employment immediately preceding the absence shall be deemed to be consecutive with the months of employment, if any, earned after his/her return to work.

Firefighter shall mean any eligible employee who is certified as a firefighter as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it is to extinguish fires, to protect life, and to protect property. This definition includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters.

Gross pay shall mean those types of compensation which as of July 1, 1999, have member contributions deducted therefrom. Types of compensation created, or first applied to members after July 1, 1999 may, at the discretion of the city, have member contributions deducted therefrom provided that, unless otherwise agreed to, such types of compensation shall also thereafter be included in earnings effective upon the date contributions are deducted therefrom.

Member shall mean any eligible employee who participates in the plan pursuant to section 2-598.

Normal form of benefit shall be a monthly annuity, payable for the lifetime of the member, in accordance with the provisions of this division.

Plan shall mean the consolidated police officers and firefighters retirement plan, as set forth in this division, and as it may from time to time in the future be amended.

Plan year shall mean a twelve-month period beginning on October 1 and ending on September 30.

Police officer shall mean any eligible employee who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.14, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. § 943.10(6) and (8), respectively.

Retiree shall mean a former employee who has entered retirement status. A member who enters the DROP shall be considered a retiree for all purposes of the plan.

Retirement or retire shall mean a member's separation from city employment as an eligible employee with immediate eligibility for receipt of benefits under the plan. For purposes of the plan, "retire" also means the date a member commences the DROP.

Service credit rules shall mean the following:

(1) Day of service shall mean each day for which a member is:

a. Paid, or entitled to payment, by the city for performance of duties;

b. Paid, or entitled to payment, by the city on account of a period of time during which no duties are performed (e.g., vacation, holiday, illness, incapacity, layoff, jury duty, military duty or approved leave of absence);

c. Each day for which back pay, irrespective of mitigation or damages, has been either awarded to or agreed to by the city; provided, however, that the same day shall not be credited as a day of service more than once.

(2) Month of service shall mean a one-month period beginning on the day of the month corresponding to a member's date of employment, during which the member has earned at least ten days of service; provided however, that ten days of service will be deemed to have been earned in each month of service in which occurs:

a. An approved leave of absence, not to exceed 90 days, authorized by the city, in accordance with a uniform policy applied on a nondiscriminatory basis to all members similarly situated; or

b. Voluntary or involuntary service in the Armed Forces of the United States for a period not greater than five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The member is in the city's active employ as an eligible employee prior to such service and leaves such position for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. Such member is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

3. The member returns to his or her employment as an eligible employee within one year from the date of his or her release from such active service.

(3) A member shall not earn any days or months of service for any purpose under the plan after entering in a DROP, except as a re-employed retiree, if applicable.

(4) If the employment of a member is terminated, and such former member is subsequently reemployed by the city, the member's date of employment, for purposes of determining additional months of service, shall be reestablished as his/her date of reemployment.

(5) Credited service shall mean the aggregate number of months of service with the city as an eligible employee, expressed in terms of full and fractional year, subject to the following:

a. Additional months of service shall be credited for unused sick leave credits, assigning one day of service for each day of unused sick leave, unless otherwise expressly provided for herein, in applicable personnel policies, collective bargaining agreements, or DROP provisions. For service earned on or after July 1, 2013 by members who are police officers, no additional months of service shall be credited for unused sick leave earned on or after July 1, 2013. In calculating credited service on or after July 1, 2013, the lesser number of months between the additional months of service credited for unused sick leave earned on or before June 30, 2013 and months of unused sick leave available to members who are police officers at the time of their retirement shall be used. For service earned on or after January 1, 2014 by members who are firefighters, no additional months of service shall be credited for unused sick leave earned on or after January 1, 2014. In calculating credited service on or after January 1, 2014, the lesser number of months between the additional months of service credited for unused sick leave earned on or before December 31, 2013 and months of unused sick leave available to members who are firefighters

at the time of their retirement shall be used. Additional months of service and fractions thereof, as determined by the city, shall be credited to members for periods of employment while a CETA employee. Additional months of service attributable to public safety and military service prior to employment may be credited pursuant to subsection 2-600(n).

b. No member will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the member repays into the fund the amount he or she has withdrawn, plus interest as determined by the board. The multiplier applied to such service, and interest payments associated with the repayment, shall utilize the multiplier in effect at the time repayment is made. The member shall have 90 days after his or her re-employment to make repayment, except if re-employed after March 1, 2004, but prior to June 12, 2007, in which case the member shall have three years and six months after his or her re-employment to make repayment.

c. A member may voluntarily leave his or her contributions in the fund for a period of five years after ceasing to be an eligible employee, pending the possibility of his or her being rehired as an eligible employee, without losing credit for the time he or she has participated actively as a member. If he or she is not re-employed as an eligible employee within five years, his or her contributions shall be returned to him or her without interest.

(6) Notwithstanding any provision of this plan to the contrary, effective as of December 12, 1994, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended, USERRA and F.S. chs. 175 and 185, as applicable.

Trust fund shall mean the cash and other assets accumulated, held and maintained by the board of trustees of the consolidated plan in accordance with this division, including individual accounts authorized under the DROP and the Supplemental Retirement Program for Police Officers.

(Code 1960, § 20-110.1; Ord. No. 3075, § 3, 11-19-84; Ord. No. 3127, §§ 1, 2, 5-13-85; Ord. No. 3342, § 1, 6-1-87; Ord. No. 3439, §§ 1—5, 6-20-88; Ord. No. 3528, §§ 1, 2, 3-27-89; Ord. No. 3545, §§ 1—3, 7-10-89; Ord. No. 3867, § 2, 6-7-93; Ord. No. 950189, § 3, 6-26-95; Ord. No. 970591, §§ 1, 2, 11-24-97; Ord. No. 981266, §§ 1—9, 7-12-99; Ord. No. 000050, § 1, 6-26-00; Ord. No. 020202, § 1, 9-9-02; Ord. No. 070012, § 1, 7-9-07; Ord. No. 120680, § 1, 6-20-13; Ord. No. 130203, § 1, 9-19-13; Ord. No. 130411, § 1, 12-5-13; Ord. No. 210066 , § 1, 8-5-21)

Editor's note(s)—Section 27 of Ord. No. 981266 states: "Sections 1 and 2 of this ordinance are effective on July 1, 1999, provided, however, that the elimination of the Social Security offset to pension payments shall apply prospectively only, commencing with the July 1999 monthly benefit (payable August 1, 1999)."

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 2-597. Establishment.

(a) *Declaration of plan.* There is hereby created for the police officers and firefighters of the city, a pension plan to be known as the "City of Gainesville Police Officers and Firefighters Consolidated Retirement Plan," also referred to in this division as the "plan" or "consolidated plan." The creation and maintenance of the assets of the plan, the benefits provided for and the administration of the plan shall be in accordance with the provisions of this division. Neither the city nor the board of trustees shall authorize or permit any part of the trust fund to be diverted for purposes other than for the exclusive benefit of members and their beneficiaries.

(b) *Incorporation of predecessor plans:*

(1) The predecessor retirement plans, known as the firemen's pension trust fund and police officers' retirement fund, are hereby revoked, except that all retired members and beneficiaries under such repealed sections as of the effective date, shall continue to receive such benefits as provided for in the predecessor plans. The trustees of the predecessor retirement plans shall, by appropriate resolution, turn over to the board of trustees, for placement in the plan's trust fund, all cash, investments, and other assets held by them.

(2) Participation of police officers and firefighters (referred to as "eligible employees") in the employees pension plan is hereby revoked, and such employees are no longer eligible to participate in the employees retirement plan. Benefits for these eligible employees will be based entirely upon the provisions of the plan described in this division. The trustees of the employees pension plan shall turn over to the board of trustees, for placement in the plan's trust fund, all cash, investments, and other assets held by them for purposes of providing benefits to the active eligible employees transferring to the consolidated plan. All retired police officers and firefighters (and their beneficiaries), who have retired on or before the effective date, shall remain in the employees pension plan and continue to receive retirement benefits as provided in that plan.

(3) Participation of police officers and firefighters in the City of Gainesville Employees Disability Plan, as described in division 6 of this article is hereby revoked except for police officers and firefighters who have made the election/request described in section 2-598(c)(1)a.2. Disability benefits for eligible employees shall be provided under the terms and conditions of the consolidated plan described in this division. Members who enter a DROP shall thereafter not be eligible for disability benefits under the City of Gainesville Employees Disability Plan or this plan. Any employees currently receiving benefits from the disability plan will continue to receive benefits from that plan under its terms and conditions. No assets will be transferred from the disability plan to the consolidated plan.

(4) The officers of the former boards of trustees and other city officials are hereby authorized to execute any documents considered appropriate in order to effect the complete transfer of all assets, as provided for above, to the trust fund created by this division.

(Code 1960, § 20-110.2; Ord. No. 3075, § 5, 11-19-84; Ord. No. 981266, § 10, 7-12-99; Ord. No. 130203, § 2, 9-19-13)

Sec. 2-598. Eligibility and participation.

(a) *Eligibility.* Each individual in the employ of the city shall become eligible to participate in the plan on the first day of the month coincident with or next following the date of his/her appointment as an eligible employee.

(b) *Participation.* All eligible employees who, as of the effective date, were participating in predecessor retirement plans will become members of the plan as of the effective date. Each other eligible employee shall automatically become a member in the plan on the first day of the month following (or coinciding with) date he/she becomes eligible. Participation in the plan shall not give a member the right to be retained in the employ of the city, nor, upon dismissal, to have any interest in the trust fund other than as provided herein.

(c) *Limited participation.*

(1) Definitions:

a. *Ineligible employee* shall mean:

1. An employee of the city who is not an eligible employee.

2. An eligible employee who elects/requests in accordance with section 2-579 to have future employer contributions made to the ICMA program instead of this plan shall be considered to have become an ineligible employee.

b. *Limited participant* shall mean a member of the plan who, during part of his/her employment with the city, is an eligible employee, and, during other parts of his/her employment with the city is an ineligible employee.

c. *Limited participant service* shall mean, in the case of a limited participant, credited service as defined in the plan, but including service during all times of his/her employment with the city, whether as an eligible employee or an ineligible employee.

d. *Eligible service* shall mean, in the case of a limited participant, credited service as defined in the plan, during the part or parts of his/her employment during which he/she is an eligible employee.

(2) A member shall become a limited participant as of the date he/she becomes an ineligible employee.

(3) For the purpose of determining a limited participant's credited service for any purpose of this plan, except for the purpose of determining his/her accrued benefit, his/her credited service shall mean his/her limited participant service.

(4) For the purpose of determining a limited participant's accrued benefit, his/her credited service shall mean only his/her eligible service and calculation of final average earnings shall be based upon his/her eligible service earnings.

(d) *Termination of participation.* If the employment of a member is terminated for any reason except his/her retirement, separation after entering a DROP, disability or death, termination benefits, if any, shall be provided according to the provisions of section 2-600(e).

(e) *DROP participants.* Except as provided in (f) below, for all plan purposes, the credited service of an employee entering a DROP shall remain as it existed on the effective date of commencement (beginning of DROP period) of participation in the DROP. The participant shall not earn or be credited with any additional credited service under the plan, and service after the effective date of commencement in the DROP shall not be recognized by the plan or used for the calculation or determination of any benefits payable by the plan. After the effective date of commencement of participation in the DROP, a member shall be considered a retiree for all plan purposes, and for the period of his/her participation in the DROP to have deferred receipt of retirement benefits into his/her DROP account, while remaining an employee of the City of Gainesville.

(f) *Re-employed retirees and recipients of termination benefits.* A former employee of the City of Gainesville receiving retirement or termination benefits from the City of Gainesville Employees Disability Plan, the City of Gainesville Employees Pension Plan, or retirement benefits or monthly termination benefits from this plan may, upon becoming re-employed by the City of Gainesville become a member of this plan, earn credited service, and become entitled to receive an additional retirement benefit subject to the following conditions.

(1) Such member shall re-satisfy the eligibility requirements for participation in this plan.

(2) Such member shall not be entitled to disability benefits under this plan or the City of Gainesville Employees Disability Plan, or entitled to any other disability pension benefit payable from a retirement system or plan of the City of Gainesville.

(3) No service for which credit was received, or which remained unclaimed, at retirement or termination may be claimed or applied toward service credit earned following renewed membership.

(4) Such re-employed member shall not be entitled to purchase additional credit for service performed prior to re-employment for which retirement or termination benefits are being received.

(Code 1960, § 20-110.3; Ord. No. 3075, § 2, 11-19-84; Ord. No. 3127, § 3, 5-13-85; Ord. No. 981266, §§ 11, 12, 7-12-99; Ord. No. 070012, § 2, 7-9-07)

Sec. 2-599. Contributions.

(a) *Member contributions.*

(1) Except as provided herein, effective the first full pay period following October 1, 1999, members, except members who have entered a DROP, will have a fixed employee contribution rate of 7½ percent of gross pay. Effective the first full pay period following January 1, 2014, members who are firefighters, except members who have entered a DROP, will have a fixed employee contribution rate of nine percent of gross pay. There shall be no member contributions deducted from a member's compensation after entering a DROP, except as a re-employed retiree, if applicable. Employee contributions made after the effective date of commencement of participation in a reverse DROP shall be returned without interest.

(2) Effective January 1, 1998, the contributions made by each member to the plan shall be designated as employer contributions pursuant to I.R.C. section 414(h) of 1986. Such designation is contingent upon the contributions being excluded from the member's gross income for federal income tax purposes. For all other purposes of the plan, such contributions shall be considered to be member contributions.

(3) The city manager shall cause contributions provided for in subsection (a)(1) to be deducted from the compensation of each member on each and every payroll, for each and every payroll, so long as each member is performing eligible service, and has not entered a regular DROP. A member's contribution provided for herein shall be made notwithstanding that the minimum compensation provided by law for any members shall be changed thereby. Each member shall be deemed to consent and agree to the deduction made and provided for in this section and payment of his/her compensation less such deduction shall be full and complete discharge of all claims and demands whatsoever for the service rendered by the member during the period covered by such payment, except as to the benefits provided by this plan. The city manager shall cause the amount to be deducted from the compensation of each member for each and every payroll as authorized by this division and when deducted shall be paid into the fund of the plan and shall be credited to the individual member from whose compensation such deduction was made.

(b) *Tax levies.* There is hereby assessed, imposed and levied, on every insurance company, corporation or other insurer, now or hereafter engaged in or carrying on the business of property insurance or casualty insurance, an excise or license tax, as authorized by F.S. §§ 175.101, 185.08, as amended, as follows:

(1) One and eighty-five hundredths percent of the gross amount of receipts or premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of the city. In the case of multiple-peril policies with a combined premium for both the property and casualty coverage, 70 percent of the premium shall be used as the basis for the tax specified above.

(2) Eighty-five hundredths percent of the gross amount of receipts or premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of the city. In the case of multiple-peril policies with a single premium for both property and casualty coverage, 30 percent of such premium shall be used as the basis for the tax specified above.

(3) The base amount for determining extra benefits is $1,139,280.00. Subsequent annual premium tax receipts in excess of this base amount must be reserved for "extra benefits."

Such tax shall be payable annually on the first day of March each year.

(c) *City contributions.*

(1) The city manager or his/her designee shall transfer to the plan's trust fund all funds appropriated by the city commission as soon as practicable after they are authorized or received and in any event at

least quarterly. The net proceeds of the tax levies imposed by subsection (b) above, as authorized by F.S. §§ 175.101 and 185.08, shall be deposited in the plan's trust fund immediately upon receipt, where they shall become an integral part of the fund, and in no event more than five days after receipt. Employee contributions will be deposited in the fund immediately after each pay period.

(2) The city shall contribute to the plan each year an amount which, together with the assets of the predecessor plans, employee contributions, and the tax revenues placed in the fund, will be sufficient, as determined by the city's actuary, to meet the normal cost of the plan and to fund the actuarial deficiency, if any, over a period not longer than 40 years. For the purpose of securing these additional funds, the city commission is hereby authorized to levy such taxes as may be necessary to fulfill the contribution requirements.

(3) No city contributions shall be required or attributable to members during their participation in the DROP, or during any period subsequent to the conclusion of the DROP period when the member is not earning credited service.

(Code 1960, § 20-110.4; Ord. No. 3127, §§ 5, 6, 5-13-85; Ord. No. 3439, §§ 6—8, 6-20-88; Ord. No. 3500, § 1, 12-12-88; Ord. No. 970591, § 3, 11-24-97; Ord. No. 981266, § 13, 7-12-99; Ord. No. 000050, § 2, 6-26-00; Ord. No. 070012, § 3, 7-9-07; Ord. No. 130411, § 2, 12-5-13)

Sec. 2-600. Retirement dates and benefits.

(a) *Normal retirement.* Normal retirement under the plan is retirement from the employ of the city on the normal retirement date. In the event of normal retirement, a member shall have a non-forfeitable right to his/her benefit, and payment of the retirement benefit shall be governed by the following provisions:

(1) *Normal retirement date.* The normal retirement date of a member shall be the first day of the month coincident with or next following the completion of 20 years of credited service at any age, the date the member has both completed at least ten years of credited service and attained age of 55, or has attained a combination of years of credited service and age that equals 70, unless otherwise expressly provided for herein. For members whose most recent appointment to employment with the city as a police officer occurred on or after July 1, 2013, the normal retirement date shall be the first day of the month coincident with or next following the completion of 25 years of credited service at any age, the date the member has both completed at least ten years of credited service and attained age of 55, or has attained a combination of years of credited service and age that equals 70. For members whose most recent appointment to employment with the city as a firefighter occurred on or after January 1, 2014, the normal retirement date shall be the first day of the month coincident with or next following the completion of 25 years of credited service at any age, the date the member has both completed at least ten years of credited service and attained age of 55, or has attained a combination of years of credited service and age that equals 70.

(2) *Benefit amounts.* The monthly normal retirement benefit payable to a member shall be equal to his/her accrued benefit, except as provided in section 2-601, as defined in section 2-596, determined as of his/her normal retirement date.

(3) *Benefit payments.* The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the member's normal retirement date, or on the first day of the month coincident with or next following the member's actual retirement, if later, and the last payment will be the payment due next preceding the member's death; except that, in the event the member dies after retirement but before receiving retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the member for the balance of such ten-year period, or, if no beneficiary is designated, to the estate of the member, as provided in section 2-606. If a member continues in the service of the

city beyond his or her normal retirement date and dies prior to the date of actual retirement, without an option made pursuant to section 2-601 being in effect, monthly retirement income payments will be made for a period of ten years to a beneficiary (or beneficiaries) designated by the member as if the member had retired on the date on which death occurred, or, if no beneficiary is designated, to the estate of the member, as provided in section 2-606. A member may modify the amount and conditions of payments by electing an option in accordance with section 2-601, in which event the retirement benefit shall be paid in accordance with the terms of such option.

(b) *Early retirement.* Early retirement under the plan is retirement from the employ of the city, as of the first day of any calendar month which is prior to the member's normal retirement date but subsequent to the date as of which the member has both attained the age of 50 years and completed ten years of credited service. In the event of early retirement, payment of retirement income will be governed as follows:

(1) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a member retires from the service of the city under the provisions of this section prior to his or her normal retirement date.

(2) The monthly amount of retirement income payable to a member who retires prior to his or her normal retirement date under the provisions of this section shall be his or her accrued benefit, taking into account his or her credited service to the date of actual retirement and his or her final average earnings as of such date, such amount of retirement income to be actuarially reduced to take into account the member's younger age and the earlier commencement of retirement income payments. In no event shall the early retirement reduction exceed three percent for each year by which the member's age at retirement preceded age 55.

(3) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the member's early retirement date and the last payment will be the payment due next preceding the retired member's death; except that, in the event the member dies before receiving retirement benefits for a period of ten years, the same monthly benefit will be paid to the beneficiary(ies) designated by the member for the balance of such ten-year period, or, if no designated beneficiary is surviving, the same monthly benefit for the balance of such ten-year period shall be payable as provided in section 2-606.

(c) *Disability retirement.* Except for employees who have entered into a DROP, or are re-employed pursuant to subsection 2-598(f), a member who has met the eligibility requirements for disability retirement may retire under the plan if he/she becomes totally and permanently disabled, as defined herein. In the event of disability retirement, payment of disability benefits shall be governed by subsections (1) through (8) of this section, except as provided below. Employees making the election/request described in subsection 2-598(c)(1)a.2. shall not be eligible for disability retirement under this section, but shall instead be eligible for disability retirement under article VII, division 6 of this chapter.

(1) *Eligibility for disability benefits.*

a. *Line of duty.*

(i) A member who becomes totally and permanently disabled, as defined in (2)(a) below, while in the line of duty, as defined by the board and in (ii) below, shall be eligible for a disability benefit. For the purposes of this subsection (a), a member shall be eligible for a disability benefit on his/her first day of service.

(ii) Any condition or impairment of health of any and all police officer members caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active

performance of duty at some definite time or place without willful negligence on the part of the police officer member, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such member shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition. Any condition or impairment of health of a firefighter member caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such firefighter member shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition.

b. *Not in line of duty.*

(i) A member who becomes totally and permanently disabled, as defined in subsection (2)(a) below, while not in the line of duty, having ten or more years of credited service on the commencement of disability, shall be eligible for a disability benefit.

(ii) A member who becomes totally and permanently disabled as described in subsection (2)(b) below, while not in the line of duty, having at least five years, but less than ten years, of credited service on commencement of disability shall be eligible for a disability benefit.

(iii) A member who becomes totally and permanently disabled as described in subsection (2) below, while not in the line of duty, having less than five years of credited service as of the commencement of the disability, shall not be eligible for a disability benefit.

(2) *Total and permanent disability.*

a. A member shall be considered totally and permanently disabled by a disability incurred in the line of duty if, in the opinion of the board, he/she is wholly prevented from rendering useful and efficient service as a police officer or firefighter, by reason of a medically determinable physical or mental impairment and the member is likely to remain so disabled continuously and permanently.

b. A member shall be considered totally and permanently disabled by a disability suffered while not in the line of duty if, in the opinion of the board, he/she is wholly prevented from rendering useful and efficient service as a police officer or firefighter or wholly prevented from rendering useful and efficient service in a vacant position for which he/she is qualified and in which he/she may be placed anywhere in the city as approved by the city manager, by reason of a medically determinable physical or mental impairment and the member is likely to remain so disabled continuously and permanently.

c. The decision of the board of these questions shall be final and binding subject to the claims procedure set forth in the "administration of the plan" section.

(3) *Nonadmissible causes of disability.* A member shall not be entitled to receive disability benefits if the disability is the result of any of the following:

a. Excessive and habitual use by the member of drugs, intoxicants, or narcotics;

b. Injury or disease sustained by the member while willfully participating in acts of violence, riots, civil insurrections, or while committing a felony.

c. Injury or disease sustained by the member while serving in any armed forces or as a result of warfare.

d. Injury or disease sustained by a member after his/her employment has terminated.

e. Intentional, self-inflicted injury.

f. Injury or disease sustained by the member while working for anyone other than the city, including self-employment, and arising out of such employment.

(4) *Determination of eligibility.* No member shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any member retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that purpose, to determine if such disability has ceased to exist.

(5) *Amount of disability benefit.* The benefit payable to a member who retires from the service of the city with a total and permanent disability as a result of a disability is the monthly income payable for ten years certain and life for which, if the member's disability occurred in the line of duty, his or her monthly benefit shall be the accrued benefit, but shall not be less than 42 percent of his or her final average earnings as of the member's disability retirement date. If the disability is other than in the line of duty, the member's monthly benefit, if any, shall be the accrued benefit, but shall not be less than 25 percent of his or her average monthly compensation as of the member's disability retirement date.

(6) *Benefit payments.* The monthly retirement income for a member in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be, if the member recovers from the disability, the payment due next preceding the date of such recovery or, if the member dies without recovering from his or her disability, the payment due next preceding death or the 120th monthly payment, whichever is later. In lieu of the benefit payment as provided in this subsection, a member may select an optional form as provided in section 2-601. Any monthly retirement income payments due after the death of a disabled member shall be paid to the member's designated beneficiary (or beneficiaries) as provided in section 2-606 and subsection 2-600(d).

(7) *Termination of disability benefit.* If the board of trustees finds that a member who is receiving a disability retirement income is no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the member to render useful and efficient service as an eligible employee, or in the case of disability benefit awarded pursuant to subsection (c)(2)b, other city employment.

(8) If the member recovers from disability and reenters the service of the city as an eligible employee, his or her service will be deemed to have been continuous, but the period beginning with the first month for which the member received a disability retirement income payment and ending with the date he or she reentered the service of the city may not be considered as credited service for the purposes of the plan.

(d) *Death prior to retirement; refunds of contributions or payment of death benefits.*

(1) If an eligible employee dies before being eligible to retire, the heirs, legatees, beneficiaries, or personal representatives of such deceased member shall be entitled to a refund of 100 percent, without interest, of the contributions made to the plan by such deceased member.

(2) If an eligible employee having at least ten years of credited service dies prior to retirement, his or her beneficiary is entitled to the benefits otherwise payable to the member at early or normal retirement age, based upon his or her accrued benefit at time of death.

(e) *Termination of employment.* A member whose employment with the city terminates prior to the completion of at least ten years of credited service, for any reason other than his/her disability shall not be entitled to

any benefits under the plan, provided, however, that, except as provided in subsection (6) below, amounts contributed by members shall be paid without interest to the member or, as applicable, the member's beneficiary. A member whose employment with the city terminates after the completion of at least ten years of credited service shall be entitled to a termination benefit, or if s/he elects return of contributions without interest. A member whose employment as a police officer terminated with the city prior to July 9, 2007 after the completion of at least ten years of credited service may elect at any time before he/she receives any termination benefit a return of his/her contributions without interest in lieu of any benefits under the plan. Payment of the termination benefit shall be governed by the following provisions of this section:

(1) A member who has at least ten years of credited service and elects to leave his or her contributions in the trust fund may, upon attaining age 50 years or more, may then receive at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her, as provided in section 2-600(b), or, upon attaining age 55 years, may then receive the retirement income as provided in subsection 2-600(a).

(2) *Reemployed members.* In the event employment of a member, entitled to a termination benefit pursuant to subsection (1) above, is terminated, and he/she is subsequently reemployed as an eligible employee by the city prior to receiving a termination benefit, he/she shall continue to be entitled to the credited service he/she had previously earned, and shall again participate in the plan and accrue benefits after such date of reemployment, in accordance with the terms of the plan. A member who has had the amount, if any, he/she contributed to this plan repaid without interest, shall no longer be a member of the plan and shall not be entitled to receive any benefits under the plan. If such member is subsequently reemployed as an eligible employee by the city, he/she may recoup his/her previous credited service to which he/she was previously entitled, as described in section 2-596, Credited service.

(3) *Reemployment within five years.* If a member was not entitled to a termination benefit, he or she may voluntarily leave his or her contributions in the fund for a period of five years after ceasing to be an eligible employee, pending the possibility of being rehired as such, without losing credit for the time he or she has participated actively as an eligible employee. If the firefighter or police officer is not so reemployed within five years, his or her contributions shall be returned without interest.

(f) *Limitation of benefits.* Members receiving benefits from sources funded in whole or in part by city contributions, such as workers' compensation indemnity benefits, Social Security benefits, and retirement benefits from the consolidated pension plan, which when totaled exceed 100 percent of the member's average weekly wage used for the purpose of computing workers' compensation benefits, shall have their workers' compensation indemnity benefits and, if necessary, plan benefits reduced, so as to provide for a combined total of benefits not exceeding 100 percent of the member's average weekly wage. Any lump sum workers' compensation payment shall be converted to the monthly equivalent of the weekly rate upon which the lump sum was based and paid until such time as the lump sum would be exhausted at the monthly equivalent rate. Such limitations, are based upon the initial amount of retirement benefits and Social Security benefits, and are not affected by subsequent increases in workers' compensation supplemental benefits, Social Security or plan benefits. In applying offsets necessary to limit combined benefits to 100 percent, workers' compensation benefits shall be reduced first, pursuant to F.S. § 440.15(9), then if necessary, retirement plan benefits shall be reduced. The above-described limitations on plan benefits shall not, however, operate to lower the> retiree's monthly benefit below two percent of each year of credited service multiplied by final average earnings.

(g) *Restriction.* No member of the plan shall be allowed to receive a retirement benefit or pension which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement system or plan. This restriction does not apply to Social Security benefits or federal benefits under 10 U.S.C. Chapter 1223 2006.

(h) *Maximum benefit limitation.*

(1) The maximum annual benefit payable under the plan shall be limited to $205,000.00, subject to adjustment for increases in the cost of living in accordance with the following sentence. As of the first day of January of each calendar year, the maximum dollar limitation shall be adjusted automatically to an amount determined by the Commissioner of the Internal Revenue Service in accordance with Section 415 of the Internal Revenue Code effective for that calendar year and shall apply only to that calendar year.

Retirees in payment status whose benefits were limited in any year by the application of this limitation shall have their benefits adjusted automatically in subsequent years to take into account the then current dollar limit.

(2) In the event a member has earned a benefit which during a previous limitation year has met all the requirements of I.R.C. section 415, and if the member's accrued benefit exceeds the limitation of I.R.C. section 415 for the current limitation year, the member's maximum annual benefit, as described in subsection (1) of this section, shall not be less than the accrued benefit allowable under such previous limitation year.

(3) If the retirement benefit is payable in a form other than a straight-life annuity or a joint-and-survivor annuity with the spouse as joint annuitant, the annual benefit limitation in any year shall be the actuarial equivalent (as defined in subsection (5) of this section) of the maximum annual benefit for that year (payable in the form of a straight-life annuity), as described above.

(4) In the event payment of a retirement benefit under the plan to a member commences after the date the member attains age 65, the maximum benefit limitation shall be adjusted to be not more than the actuarial equivalent (as defined in subsection (5), below) of the then current dollar limit commencing at age 65 for the purpose of applying the benefit limit described in subsection (1).

For years subsequent to the payment commencement year, benefits payable shall be limited to the actuarial equivalent determined as of the benefit commencement date, of the subsequent year's dollar limit assumed to commence at age 65.

(5) For the purpose of adjusting benefits in accordance with this section, actuarial equivalent shall be determined using the 1994 Group Annuity Mortality Table (50/50 Unisex) and an interest rate of 9.5 percent for adjustments under subsections (3), and (4). For adjustment under subsections (3) and (4), no cost-of-living adjustment shall be taken into account before the year for which such adjustment first takes effect.

(6) If a retirement benefit is payable to a member who has less than ten years of plan participation, the limitation described in subsection (1), shall be multiplied by a fraction, the numerator of which is the member's years of plan participation and the denominator of which is ten.

(i) *Distribution rules.* Notwithstanding any other provision of this plan to the contrary, a form of retirement income payable from this plan after November 24, 1997, shall satisfy the following conditions:

(1) If any retirement income is payable before the member's death:

a. It shall either be distributed or commence to the member not later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70½ years or the calendar year in which he retires.

b. The distribution shall commence not later than the calendar year defined in subsection a. and (1) shall be paid over the life of the member or over the lifetimes of the member and his spouse, issue or dependent, or (2) shall be paid over the period extending not beyond the life expectancy of the member and his spouse, issue or dependent.

Where a form of retirement income payment has commenced in accordance with the preceding paragraphs and the member dies before his entire interest in the plan has been distributed, the remaining portion of such interest in the plan shall be distributed no less rapidly than under the form of distribution in effect at the time of the member's death.

(2) If the member's death occurs before the distribution of his or her interest in the plan has commenced, his or her entire interest in the plan shall be distributed within five years of his or her death, unless it is to be distributed in accordance with the following rules:

a. The member's remaining interest in the plan is payable to his or her spouse, issue or dependent;

b. The remaining interest is to be distributed over the life of the spouse, issue, or dependent; and

c. Such distribution begins within one year of the member's death unless the member's spouse is the sole designated beneficiary, in which case the distribution need not begin before the date on which the member would have attained age 70½, and if the member's spouse dies before the distribution to the spouse begins, this section shall be applied as if the spouse were the member.

(j) *Direct transfers of eligible rollover distributions.*

(1) *General.* Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) *Definitions.*

Direct rollover. A direct rollover is a payment by the plan to the eligible retirement plan specified by the distributee. Effective as of January 1, 2008, a non-spouse beneficiary may make a direct rollover only to an "inherited" individual retirement account as described in Section 408(b) of the Internal Revenue Code.

Distributee. A distributee includes an employee, or a former employee, a surviving spouse as described in I.R.C. Section 402(c)(9), or designated beneficiary. Effective as of January 1, 2008, an employee's or former employee's non-spouse beneficiary is a distributee with regard to the interest of the employee or former employee.

Eligible rollover distribution. An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for life (or life expectancy) of the distributee, or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under I.R.C. Section 401(a)(9); and the portion of any distribution that is not includable in gross income, i.e., member contributions made prior to 1998.

Eligible retirement plan. An eligible retirement plan as defined in I.R.C. Section 402(c)(8)(B), an individual eligible retirement account described in I.R.C. Section 408(a), an individual retirement annuity described in I.R.C. Section 408(b), an annuity plan described in I.R.C. Section 403(a), an annuity contract described in I.R.C. Section 403(b), a qualified trust described in I.R.C. Section 401(a) that accepts the distributee's eligible rollover distribution, or an eligible deferred compensation plan described in I.R.C. Section 457(b) maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan.

(k) *Deferred retirement option program.*

(1) A deferred retirement option program is hereby created for eligible employees.

(2) A member who is an eligible employee is eligible for participation in the DROP on the first day of the month coincident with or next following the completion of 25 years of limited participant service, or meeting the rule of 70 including limited participant service, and continuing up to 30 years of service as a regular employee, except as provided in subsections (7) and (17) below. In the case of a reverse DROP, such requirement must be met as of the effective date of commencement of participation in the DROP, including if applicable the lesser of the sick leave balances described below. Except as otherwise expressly provided for herein, upon entering into a regular DROP, members may elect to apply unused sick leave hours to attain the requisite years of credited service for eligibility to enter and for determining their accrued benefit, or retain some or all of their unused sick leave for use during their employment while participating in the regular DROP. For service earned by members who are police officers on or after July 1, 2013, upon entering regular or reverse DROP, no additional months of service shall be credited for unused sick leave earned on or after July 1, 2013. In calculating service earned by members who are police officers on or after July 1, 2013, the lesser number of months between the additional months of service credited for unused sick leave earned on or before June 30, 2013 and months of unused sick leave available to a member at the time of his or her entry into DROP shall be used. For service earned by members who are firefighters on or after January 1, 2014, upon entering regular or reverse DROP, no additional months of service shall be credited for unused sick leave earned on or after January 1, 2014. In calculating service earned by members who are firefighters on or after January 1, 2014, the lesser number of months between the additional months of service credited for unused sick leave earned on or before December 31, 2013 and months of unused sick leave available to a member at the time of his or her entry into DROP shall be used. Sick leave hours used in computing cash outs of sick leave balances upon retirement are considered already "used" and may not be converted to credited service, or used as sick leave during participation in the regular DROP. Sick leave balances retained upon entry into the regular DROP and accrued while participating in the regular DROP shall not count as days or months of credited service when determining the maximum period of participation in the DROP, in accordance with subsections (6) and (7) below. Any unused sick leave remaining at the expiration of the regular DROP participation or period will be forfeited. Except as otherwise expressly provided for herein, in the case of a reverse DROP, members may utilize the lesser of the vacation and sick leave balances in existence on the effective date of commencement of participation or the balances in existence 90 days after declaration of intention to enter the reverse DROP. Any cash outs shall be included in the FAE calculations for the month prior to the effective date of commencement of participation in the reverse DROP, at the member's base pay rate on that date.

(3) On the date of a member's entry into the DROP or date of deemed entry into a reverse DROP, the member's credited service, accrued benefit, and final average earnings shall be calculated as if the member had actually separated from service on that date and retired. There shall be no further member contributions after entry into the DROP, except as a re-employed retiree, if applicable, and employee contributions made after the effective date of commencement of participation in a reverse DROP shall be returned without interest. No additional credited service shall be earned after entering the DROP, except as re-employed retiree, if applicable. Any changes in plan benefits shall not apply to members in the DROP, unless otherwise applicable to retired members of the plan.

(4) Members otherwise eligible to receive longevity pay and who are eligible to and who elect to enter a DROP must, in order to enter and to continue to participate in the DROP, make an irrevocable election upon entry into the DROP as hereinafter provided. The member may (1) continue to receive longevity payments and merit increases (assuming merit increases are provided and applicable), but forego receipt of all future general (COLA) salary increases, or (2) continue to receive general (COLA) salary increases and merit increases (assuming merit increases are provided and applicable) but become ineligible for future receipt of longevity pay, or (3) in the case where the applicable pay plan does not

provide separately for general and merit increases, the member may forego either future receipt of longevity payments, or any and all future salary increases. In those cases where the member elects to forego receipt of future longevity payments, entry into the DROP shall be treated as separation from service for the purposes of section 2-484. This subsection does not apply to members in a reverse DROP.

(5) The member shall select the retirement option as provided for in section 2-601 and shall designate any beneficiary in accordance with plan provisions and practices applicable to normal and delayed retirements.

(6) The maximum period of participation in the DROP is 60 months from date of entry, or in the case of a reverse DROP 60 months from the effective date of commencement of participation. Except as provided in subsections (7) and (17), participation in the DROP must cease at the conclusion of a total of 30 years of regular employment with the City of Gainesville and, if applicable, a successor employer under F.S. § 112.0515 (1997). In the case of a reverse DROP, the end of the DROP period, and termination of employment, must occur at no later than a total of 30 years of regular employment with the City of Gainesville and, if applicable, a successor employer under F.S. § 112.0515 (1997).

(7) Members who have more than 27 years of limited participant service in the plan as of October 1, 1999, shall have until December 30, 1999 to elect to enter into the DROP, on or before February 1, 2000, and to then be eligible to participate for a maximum of 36 months from the date of entry. Such members making an election on or after December 31, 1999, to enter into the DROP shall be governed by normal eligibility and duration requirements described herein.

(8) A member may cease participating in the regular DROP prior to the expiration of the agreed upon (not to exceed the maximum allowed) DROP period only by terminating regular employment with the city. In the event that a member participating in the DROP fails to terminate regular employment on or before the conclusion of the DROP period, then the member's monthly retirement benefit shall cease at the conclusion of the DROP period until such time as the member terminates regular employment. In the case of a reverse DROP, a member's employment terminates simultaneously with commencement of participation in the reverse DROP, which is 90 days after the member makes a declaration of his/her intention to enter the reverse DROP.

(9) For members entering the regular DROP prior to July 10, 2007, during such member's participation in the DROP, an amount equal to the member's monthly retirement benefit shall be transferred to an account within the plan designated by the member for investment. Such members may direct their DROP money to any of the investment options offered by the third party administrator approved by the board. Monthly retirement benefits paid into DROP accounts shall be adjusted to take into account any retiree cost-of-living adjustments available under the plan to retired members. There shall be no guaranteed rate of investment return on these DROP accounts. Upon transfer of the DROP money to the account designated by the member, neither the city nor the board shall have any obligation to the member concerning investment gains or losses. Transfers between accounts shall be in accordance with the rules of the third party administrator.

(10) Members entering a regular DROP or declaring his/her entry into a reverse DROP on or after July 10, 2007 and before July 1, 2013 shall have his/her monthly benefits accrue in the fund on behalf of the member, plus interest at 5.5 percent compounded monthly on the prior months accumulated ending balance up to the month of termination, or death, or established termination date, whichever occurs first. If the plan's 2006—2007 assumed rate of return of 8.5 percent changes, then the interest rate will be prospectively adjusted from the date of the change to 65 percent of the plan's new assumed rate of return compounded monthly on the prior months accumulated ending balance up to the month of termination, or death, or established termination date, whichever occurs first. A separate accounting of each participant's accrued benefits shall be calculated and provided to the participants annually.

Monthly retirement benefits paid into DROP accounts shall be adjusted to take into account any retiree cost-of-living adjustments available under the plan to retired members.

(11) Members who are police officers entering a regular DROP or declaring his/her entry into a reverse DROP on or after July 1, 2013 shall have his/her monthly benefits accrue in the fund on behalf of the member, plus interest at 4.5 percent compounded monthly on the prior months accumulated ending balance up to the month of termination, or death, or established termination date, whichever occurs first, except as otherwise expressly provided for herein. Members who are police officers with 25 years of limited participant service on or before July 1, 2013 and declare entry into a reverse DROP on or after July 1, 2013 shall have his/her monthly benefits accrue in the fund on behalf of the member, plus interest at 5.5 percent compounded monthly on the prior months accumulated ending balance up to the month of termination, or death, or established termination date, whichever occurs first so long as the effective date of the reverse DROP is on or before July 1, 2013.

(12) The decision to participate in the regular DROP is irrevocable once DROP payments begin. Once the employee has completed participation in the DROP, his/her regular employment will end and he/she shall be separated from employment; this separation shall be processed as a voluntary resignation.

(13) Upon entry into the DROP, a member shall no longer be eligible for disability benefits under the plan or the City of Gainesville Employees Disability Plan. In the event of death during the DROP period or thereafter, the member shall be presumed to have retired on a normal or delayed retirement upon entry into the DROP for the purposes of subsection 2-600(a)(3). Distribution from the DROP account shall be made to the member, or in the case of the member's death, to the member's designated beneficiary.

(14) Upon the termination of a member's (who has entered a DROP) regular city employment (for any reason, whether by retirement, resignation, discharge or death), the retirement benefits payable to the member or to the member's beneficiary (if the member selected an optional form of retirement benefit which provides for payments to the beneficiary) shall be paid to the member or beneficiary and shall not be deposited into the member's deferred retirement option account or continue to accrue in the plan. Following the termination of a member's regular employment, the balance in the member's DROP account shall be payable in accordance with options made available by the third party administrator, or in the case of accounts accruing within the plan, distributed in accordance with the rules of the plan. Regardless of the option selected by the member, the board of trustees has the right to accelerate payments in order to comply with Section 401(A)(9) of the Internal Revenue Code and the right to defer payments to comply with Section 415 of the Internal Revenue Code.

(15) Nothing herein shall be construed to remove members who have entered the DROP from the scope of § 8(d), Art. II of the State Constitution, and F.S. § 112.3173(5)(f). Members who commit a specified offense while employed will be subject to forfeiture of all retirement benefits, including DROP benefits, pursuant to those provisions of law.

(16) During regular DROP participation, a member shall be considered a retiree with deferred receipt of benefits for all plan purposes. A member who fails to terminate regular employment during or at the conclusion of the regular DROP period shall be considered a retiree for all plan purposes, except that the member shall not be entitled to receive, or defer receipt of, monthly retirement benefits while continuing to remain employed as a regular employee. For other purposes, the employee shall be considered an active employee of the city entitled to all rights of employment, except as otherwise provided.

(17) Effective March 1, 2015, members whose limited participant service includes vested service in the City of Gainesville Employees Pension Plan (or "limited participant vested service") are eligible for participation in the DROP on the first day of the month coincident with or next following the completion of 25 years of limited participant vested service and continuing up to 35 years of service as

a regular employee, subject to the following limitations. Members entering DROP based on their limited participant vested service must do so prior to completing 25 years of service in the consolidated plan and are not eligible for a reverse DROP. In addition, the maximum period of participation in the DROP is 60 months from date of entry or must cease at the conclusion of a total of 35 years of limited participant vested service, whichever first occurs. Except for the limitations provided in this paragraph, members making an election to enter into the DROP based on limited participant vested service shall be governed by the requirements described herein.

(l) *Lump-sum payment of small retirement income.* Notwithstanding any provisions of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than $100.00, or if the single-sum value of the accrued retirement income is less than $5,000.00 for a firefighter or $2,500.00 for a member, as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

(m) *Rollovers to IRA's.* A mandatory distribution in excess of $1,000.00 made pursuant to subsection 2-600(l), or an involuntary return of employee contributions in excess of $1,000.00, shall be paid in a direct rollover to an IRA designated by the plan administrator if, after notice, the member does not elect to either receive the distribution directly or have it paid in a direct rollover to an eligible retirement plan. In addition, such payments shall be made only upon a written request by the participant in a form and manner determined by the board of trustees.

(n) *Public safety and military service prior to employment.* Members who are regular employees actively employed after July 9, 2007, and not then participating in the regular DROP, may have the year(s) that the member served as a police officer or firefighter, as defined in subsections (8) and (9), and years of military service, prior to initial employment with the city, added to his or her years of credited service provided that:

(1) The member contributes to the fund an actuarially determined amount so that crediting of the purchased service does not result in any cost to the plan. The multiplier applied to purchased credited service shall correspond to the multiplier in effect at the time the purchase is completed. The plan shall absorb the cost of professional services for obtaining one actuarial estimate for a member. Any subsequent estimates shall be paid for in advance by the requesting member.

(2) Purchase of credited service for service as a police officer or firefighter, or military service, prior to employment, shall be in increments of one or more whole years, except where the remaining service available to be purchased is less than one year. Lump sum purchases may not be made more frequently than once every 12 months. Such purchase of service may be made during 2007 and during the months of November, December and January each year thereafter. "Financed" purchases may be arranged during 2007 and during the months of November, December and January each year thereafter. Failure to complete a "financed" purchase shall preclude any future "financed" purchases by the member. Lump sum purchase of service and complete payment of "financed" service must occur prior to entry into a regular DROP and prior to declaration of intention to enter a reverse DROP.

(3) Payment by the member of the required amount may be made in one lump sum payment or "financed" at the plans assumed rate of interest as follows: Four to five years may be paid for over a maximum 60-month period from the date purchase is first arranged (subsection 2 above); three plus years—48 month maximum; two plus years—36 month maximum, one plus year—24 month maximum. Outstanding balances shall be charged interest compounded monthly at the plan's assumed rate of return for that month, thus the total "financed" payment, and required monthly payments will change. In no event shall any credit be given until total payment is completed. Failure to complete payment within the prescribed period shall result in amounts paid being then returned without interest and no credit given.

(4) The maximum credit purchased under this subsection (n) shall be five years, provided that no more than four years of prior military service may be purchased.

(5) Credited service purchased pursuant to this subsection (n) shall count for all purposes under the plan.

(6) Members may pay for prior service as provided in subsections (2) and (3) above; however, credit for such shall not be granted unless and until the member has otherwise earned ten years of credited service. A member who has paid for such service and whose employment terminates prior to the completion of ten years of credited service shall have the amount paid returned without interest to the member, or as applicable to the member's beneficiary, including as provided in subsection 2-606.

(7) A member may not obtain a benefit, nor base the amount of benefit received, upon service purchased under this subsection (n) if such service is claimed for retirement purposes under any other federal, state, or local retirement or pension system where "length of service" is a factor in determining the eligibility for, or the amount of compensation received, except where credit for such service has been granted in a pension system providing retired pay for non-regular service in the Armed Forces of the United States as provided in 10 U.S.C. Chapter 1223. Any member claiming credit under this subsection (n) must certify on a form prescribed by the plan that credit for such service has not and will not be claimed for retirement purposes under any other federal, state, or local retirement or pension system where "length of service" is a factor in determining the eligibility for, or the amount of compensation received, except where credit for such service has been granted in a pension system providing retired pay for non-regular service in the Armed Forces of the United States as provided in 10 U.S.C. Chapter 1223. Such certification shall also include written authorization for the plan to have access to information from any above-described pension systems to confirm that the requirements of this subsection are being complied with. If the member dies prior to retirement, the member's beneficiary must make the required certification before credit may be claimed. If such certification is not made by the member or the member's beneficiary, credit for prior police officer, firefighter, or military service shall not be allowed. If it is determined that a benefit based upon such service leave has been claimed in violation of this section, no credit for such service will be allowed under this plan, which may effect the eligibility for, or amount of, any benefit provided under this plan, and amounts contributed for purchase of such service shall be forfeited.

(8) Except as provided in subsection (9) below, the following words and phrases as used in this subsection (n) shall have the respective meanings set forth:

a. Military service means active duty in the military service of the Armed Forces of the United States, the United States Merchant Marine or the United States Coast Guard, voluntarily or involuntarily, and honorably or under honorable conditions.

b. Police officer means any person who was elected, appointed, or employed full time by any municipality, in the State of Florida who is certified or required to be certified as a law enforcement officer in compliance with F.S. § 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement officer of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties included, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in F.S. § 943.10(6) and (8), respectively. Police officer also includes a person who meets the above requirements and who was responsible for performing both police and fire services (public safety officer).

c. Firefighter means any person employed solely by a constituted fire department of any municipality or special fire control district in the State of Florida who was certified as a firefighter

as a condition of employment in accordance with the provisions of F.S. § 633.35, and whose duty it was to extinguish fires, to protect life, or to protect property.

(9) To the extent allowed by law, the board of trustees may permit purchase of credited service based upon service prior to employment with the city as a firefighter, certified in accordance with F.S. § 633.35, (2006), when the prior service was for a county, or state agency, of the State of Florida. To the extent allowed by law, the board of trustees may permit purchase of credited service based upon service prior to employment with the city as a law enforcement officer, as defined in F.S. § 943.10, (2006), when the prior service was for a county, or state agency, of the State of Florida. The purchase of prior service as described in this subsection (9) shall be in accordance with, and subject to the limitations of, the procedures set forth in this subsection (n), as if the prior service was based upon prior service as a firefighter or police officer described in subsections (8)(b) and/or (c).

Provided further that in the event that the City of Gainesville or the board of trustees is notified by a regulatory agency, such as the department of management services of the State of Florida, that permitting purchase of credited service as described in this subsection (9) is unlawful, or that such makes the plan non-compliant with applicable statutory or regulatory requirements, then the city may unilaterally, after meeting and conferring with certified bargaining representatives of employees who are members of the plan, direct the board that further implementation of this subsection (9) cease, and amend the plan to eliminate this subsection (9). Upon such direction, those members not yet retired who have availed themselves of the opportunity to purchase or arrange for purchase of credited service under this subsection (9) shall have any payments made returned without interest and shall receive no credited service for any service sought to be purchased under this subsection (9).

(o) *Sources of funds for purchase of credited service.* The plan will accept cash, direct rollover contributions, direct transfers and/or direct cash rollovers of distributions for the purchase of credited service under the plan, as follows:

(1) *Direct rollovers or transfers from other plans.* The plan will accept a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 403(a) of the Code or an annuity contract described in section 403(b) of the Code, cash, or a direct transfer from a 401(a) qualified plan, or from an eligible plan under section 457(b) of the Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

(2) *Member rollover contribution from section 401(a) plans and IRAs.* The plan will accept a member rollover contribution of the portion of a distribution from a qualified plan described in section 401(a) of the Code, or from an individual retirement account or annuity described in section 408(a) of the Code, that is eligible to be rolled over and would otherwise be includible in the member's gross income.

(Code 1960, § 20-110.5; Ord. No. 3075, § 4, 11-19-84; Ord. No. 3127, §§ 7—16, 5-13-85; Ord. No. 3439, §§ 9—14, 6-20-88; Ord. No. 3528, §§ 3, 4, 3-27-89; Ord. No. 3545, §§ 4—8, 7-10-89; Ord. No. 3867, § 3, 6-7-93; Ord. No. 950189, § 4, 6-26-95; Ord. No. 970591, §§ 4—7, 11-24-97; Ord. No. 981266, §§ 14, 15, 7-12-99; Ord. No. 000050, §§ 3, 4, 6-26-00; Ord. No. 002186, § 1, 1-14-02; Ord. No. 020202, § 2, 9-9-02; Ord. No. 050595, § 2, 12-12-05; Ord. No. 070012, § 4, 7-9-07; Ord. No. 120680, § 2, 6-20-13; Ord. No. 130203, § 3, 9-19-13; Ord. No. 130411, §§ 2, 3, 12-5-13; Ord. No. 140571 , § 1, 6-18-15)

Sec. 2-601. Optional forms of retirement income.

(a) (1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in section 2-600, a member, upon written request to the board of trustees, submitted at least three months prior to the date of benefit commencement, and subject to the approval of the board of trustees,

may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

a. A retirement income of larger monthly amount, payable to the member for his or her lifetime only.

b. A retirement income of a modified monthly amount, payable to the member during the joint lifetime of the member and a joint annuitant designated by the member, and following the death of either of them, 100 percent, 75 percent, 66⅔ percent, or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

c. A reduced monthly retirement benefit which shall be payable during the joint lifetime of the member and his/her beneficiary, with two-thirds of such reduced annuity amount continuing after the death of the member during the lifetime of the beneficiary. If the beneficiary predeceases the member, 100 percent of the reduced benefit will continue to be received by the member.

d. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring member.

(2) The member upon electing any option of this section must designate the joint annuitant or beneficiary to receive the benefit, if any, payable under the plan in the event of the member's death, and may change such designation only twice, but any such change shall be deemed a new election and is subject to approval by the board. Such designation must name a joint annuitant or one or more primary beneficiaries where applicable. If a member has elected an option with a joint annuitant or beneficiary and his or her retirement income benefits have commenced, he or she may change the designated joint annuitant or beneficiary but only if allowed by law and if the board of trustees consents to such change and if the joint annuitant last previously designated by the member is alive when he or she files with the board of trustees a request for such change. Except as otherwise required by law, the consent of a member's joint annuitant or beneficiary to any such change is not required. To the extent allowed by law, the board of trustees may request such evidence of the good health of the joint annuitant that is being removed and to the extent allowed by law, the amount of the retirement income payable to the member upon the designation of a new joint annuitant shall be actuarially redetermined taking into account the age and gender of the former joint annuitant, the new joint annuitant, and the member. Each designation must be made in writing on a form prepared by the board of trustees, and filed with the board of trustees. If no designated beneficiary survives the member, such benefits as are payable in the event of the death of the member subsequent to his or her retirement shall be paid as provided in section 2-606. Notwithstanding the provisions of this paragraph, a retired member may change his or her designation of joint annuitant or beneficiary up to two times as provided herein without the approval of the board or the current joint annuitant or beneficiary. Under such circumstances, the retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(b) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(1) If a member dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under subsection 2-600(d).

(2) If the designated beneficiary or joint annuitant dies before the member's retirement under the plan, the option elected is canceled automatically and a retirement income of the normal form and amount is payable to the member upon his or her retirement as if the election had not been made, unless a new election is made in accordance with this section or a new beneficiary is designated by the member before his or her retirement and within 90 days after the death of the beneficiary.

(3) If both the retired member and the designated beneficiary die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subsection (a)(1)c. of this section, the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with section 2-606.

(4) If a member continues beyond his or her normal retirement date and dies prior to actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary designated by the member in the amount or amounts computed as if the member had retired under the option on the date on which death occurred.

(c) No member may make any change in his or her retirement option within three months prior to benefit commencement, except that for a period of 90 days after adoption of Ordinance No. 070012 a member may change his or her retirement option any time prior to benefit commencement.

(Code 1960, § 20-110.6; Ord. No. 3076, § 1, 11-19-84; Ord. No. 3439, § 15, 6-20-88; Ord. No. 3545, § 9, 7-10-89; Ord. No. 970591, § 8, 11-24-97; Ord. No. 981266, § 16, 7-12-99; Ord. No. 070012, § 5, 7-9-07; Ord. No. 130203, § 4, 9-19-13)

Sec. 2-602. Administration of the plan.

(a) *General supervision.* The general supervision of the plan shall be the responsibility of a board of trustees established in accordance with this section.

(b) *Board of trustees.* There is hereby created a board of trustees whose duty shall be to administer, manage and operate the plan, carrying into effect its provisions. The board of trustees shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the city who shall be appointed by the city commission. One member of the board shall be a full-time firefighter as defined in F.S. § 175.032, and may be a participant in the DROP, and one member of the board shall be a full-time police officer as defined in F.S. § 185.02, respectively elected by a majority of the active firefighters or police officers who are members of the plan. Retirees, including those members who have entered the DROP are not considered "active firefighters or police officers" for the purposes of the preceding sentence. The fifth member shall be chosen by a majority of the previous four members and shall be appointed, as a ministerial duty, by the city commission.

(c) *Terms of office.* The members of the board of trustees shall hold office for two-year terms, unless they lose their qualifications sooner, and they may succeed themselves in office.

(d) *Officers and compensation.* The trustees shall, by majority vote, elect a chairperson and a secretary. The trustees shall not receive any compensation for such, but may receive expenses and per diem as provided by law.

(e) *Meetings of the board; form.*

(1) The board shall hold regular meetings at least quarterly, and shall designate the time and place thereof. It shall adopt its own rules and procedures and shall keep a record of its procedure. All regular meetings of the board shall be public.

(2) The majority of the board shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote at the meeting of the board and any and all acts and decisions shall be effectuated by a vote of a majority of the members of the board.

(f) *Plan officers.*

(1) The director of the department of finance may be treasurer of the plan and custodian of the fund.

(2) Reserved.

(3) The board shall employ such professional and clerical services as required for the proper operation of the plan and provide for their compensation.

(4) The board may sue or be sued as an entity.

(g) *Records; annual report.* The treasurer of the plan shall keep or cause to be kept such data as shall be necessary for an actuarial valuation of the assets and liabilities of the plan. The board shall cause to be made an annual audit showing the fiscal transactions of the plan for the preceding fiscal year. The most recent report showing the financial condition of the plan by means of an actuarial valuation of its assets and liabilities shall be attached to the report. The report shall be filed within 90 days following the end of the fiscal budgetary year.

(h) *Administrative regulations and plan description.* The board, after consulting with the advisory committee, may promulgate, by resolution, written rules and regulations not in conflict with the terms of this division or the requirements of law to cover the operation of any phase or part of the plan that is defined in this division. Copies of such rules and regulations shall be furnished to any member of the plan upon request and at least one copy thereof shall be kept available in the office of the city clerk for examination by any interested person at any time during ordinary business hours, otherwise a copy of this division shall fully meet the requirements of this subsection. The material provisions of the plan shall be contained in a written plan description. The plan description shall be furnished to members upon their initial employment or participation and, thereafter, upon the request of the member.

(i) *Interpretation of the plan; denial of benefits.* The board has the power to construe all rules, conditions and limitations of the plan, and its construction made in good faith shall be final and conclusive. There shall be timely, adequate written notice given to any member or beneficiary whose claim for benefits under the terms of this plan have been denied. The notice shall set forth, in a manner calculated to be understood by the claimant, the following:

(1) Specific reason(s) for the denial;

(2) Specific reference to plan provisions on which the denial is based;

(3) A description of any materials or information necessary to perfect the claim and why they are necessary;

(4) An explanation of the review procedure of the plan.

A claimant shall have 60 days to appeal a denial of a claim for benefits to the board. A claimant or his/her duly authorized representative must request an appeal in writing to the board, and shall be allowed to review pertinent documents and submit issues and comments in writing. The board shall afford the claimant a full and fair review of his/her claim for benefits, and shall make a decision on review as promptly as possible, but in no event later than 60 days following the written request for review. The decision on review shall be in writing and shall include specific reasons for the decision and specific references to plan provisions on which the decision is based, and shall be written in a manner calculated to be understood by the claimant.

(j) *Agents and employees.* The board shall have the power to select, employ and compensate, or cause to compensate, from time to time such consultants, accountants, actuaries, attorneys, investment counsel, and other agents and employees as they may deem necessary and advisable in the proper and efficient administration of the plan. The board may authorize one or more of its members or any agent to make any payment in its behalf, or to execute or deliver any instrument, including a requisition for funds for benefit payments.

(k) *Other powers and duties.* The powers and duties of the board or of any other person as set out herein are not intended to be complete and exclusive but each such body or person shall have powers and duties as they are reasonably implied under the terms of this division.

(l) *Duties of the secretary.* It shall be the duty of the secretary to keep minutes and records of the acts, proceedings or hearings of the board under this plan separate and apart from minutes of the city commission meetings. The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of all police officers and firefighters employed by the municipality. The record shall show the name, address, and time of employment of such police officer or firefighter and when he or she ceases to be employed by the municipality.

(m) *Membership records.* All notices, elections, designations and changes in beneficiary, and similar writings pertaining to the operation of the plan shall be made and preserved in writing on such forms as the board may direct. A service record for each employee shall be maintained in the office of the personnel department which shall show date of birth, date of employment, earnings for each year of service under the plan, and any other such information as is necessary for complete determination of his/her status under the plan. In order to receive benefits under this plan a member, upon request, shall be required to submit, or authorize the board to secure, any information concerning his/her entitlement to benefits (such as matter pertaining to social security benefits) or other information reasonably related to the operation of the plan.

(n) *Deposits and disbursements.* Predecessor plan assets, gifts, bequests, devises and appropriations to the fund shall be received by the director of the department of management and financial services, who shall be liable for the safekeeping of the funds under his/her bond. The director of the finance department shall transfer to the pension fund all pension funds appropriated by the city commission. City contributions shall be deposited in the plan fund as soon as practicable after they are received, provided, however, that in no event shall the contributions be deposited in the plan fund later than 30 days after the close of the budget or fiscal year of the plan. The director of the finance department shall be responsible for making all payments and disbursements from pension funds.

(o) *Professionally qualified independent consultant.*

(1) At least once every three years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(2) For the purpose of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:

a. Provides services on a flat-fee basis.

b. Is not associated in any manner with the money manager of the pension fund.

c. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.

d. Has three or more years of experience working in the public sector.

(p) *Adoption of tables.* If any actuarial computations are authorized by the board, the tables, charts, and other statistical information shall be selected by the board or its actuary, provided that the valuation must be on basis and methods not less conservative than those set forth by the department of insurance.

(q) *Personal liability.* The board and its members and agents thereof shall each be fully protected in relying on the advice of the city attorney or his/her assistant or any other attorney employed by the city or the board or either of them insofar as legal matters are concerned, and any accountant similarly employed insofar as accounting matters are concerned, and any actuary similarly employed insofar as actuarial matters are concerned to the extent it is prudent to do so. The board may purchase fiduciary insurance to cover liability or losses incurred by an act or omission of the board or its agents.

(r) *Filing.* Where any notice, election, claim or other instrument is required or permitted by this division to be filed with the board, the same shall be filed with the secretary, on forms prescribed by the board. In the case of claims for benefits, such requests shall instead be filed with the secretary of the advisory committee for the committee's review and recommendation.

(s) *Investment of funds.* The trustees shall, in acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of the City of Gainesville Consolidated Police Officers' and Firefighters' Retirement Plan, exercise the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The foregoing standard of care shall not apply to, nor shall the board be responsible for, account investment options selected by the third party administrator or the gains or losses resulting from DROP participants' selections from among those options. Within the limitations of the foregoing standard, the trustees are authorized to acquire and retain all types of investments permitted by F.S. Chs. 175 and 185 and additionally may invest in the stocks, preferred or common, of any company regardless of the rating or lack thereof, assigned by a major rating service, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Anything the contrary notwithstanding, the board of trustees shall not invest more than 70 percent of the fund at market value in equities. If at any time the market value of equities exceeds 70 percent of the total fund, the fund shall be adjusted to be in compliance with the 70 percent allocation within a reasonable and prudent period of time. Individual DROP accounts established prior to July 10, 2007 shall not be considered part of the "total fund" when evaluating percentages or types of investments in the fund.

(t) *Method of making payments.* Except as otherwise provided in the plan, all payments from the fund shall be made according to charter provisions governing the disbursement of moneys from the city's general fund provided that no payment shall be made from the funds of the plan unless the payment has been previously authorized by the board. All payments shall be made monthly except that payments which would amount to less than $100.00 may be made quarterly, semiannually or annually, as the case may be. The board of trustees may, upon written request by the retiree of the plan, or by a dependent, when authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment those funds that are necessary to pay for the benefits being received through the city, including payments to the Retiree Health Insurance Trust Fund, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony. A member who is retired pursuant to section 2-600(b) or (c) and has separated as an eligible employee may then elect to have some or all of the annuity she or he receives as a result of normal or disability retirement distributed directly to an accident or health insurance plan, as payment of qualified health insurance premiums for her or him and her or his spouse and dependents, to the extent such distribution complies with the requirements of Section 402(1) of the Internal Revenue Code.

(u) *Errors; interest on delayed payment.* If any error results in a member or beneficiary's receiving a greater or lesser amount of benefit than he/she is entitled to receive, the committee shall correct the error, and, as far as is practicable, shall adjust any future benefit payments in such manner as to provide for the member the actuarial equivalent of the total benefits to which the member was correctly entitled. If benefit payments are delayed, the committee, in its discretion, may authorize interest, at a rate not to exceed seven percent per annum, to take into account the period of time over which the payments were delayed.

(v) *Reports by the trustee or insurance company.* Any corporate trustee or insurance company or companies with which a trust agreement or contract may be entered into for the administration of the trust funds shall be required to submit a statement of the condition of the funds on deposit to the credit of the plan as prescribed by the board but at least once yearly, and may be required to supply copies of the statements to an actuarial consultant designated by the commission. The original shall be retained among the records of the secretary of the board.

(Code 1960, § 20-110.7; Ord. No. 3342, §§ 1—5, 6-1-87; Ord. No. 3528, §§ 5—7, 3-27-89; Ord. No. 3976, § 1, 6-13-94; Ord. No. 980281, § 1, 9-28-98; Ord. No. 981266, § 17, 7-12-99; Ord. No. 000050, §§ 5—7, 6-26-00; Ord. No. 020202, § 3, 9-9-02; Ord. No. 070012, § 6, 7-9-07; Ord. No. 130203, § 5, 9-19-13; Ord. No. 210562 , § 11, 6-16-22)

Sec. 2-603. Separability and construction.

If any section, subsection, sentence, clause or phrase of this division shall be held to be invalid, ineffective, or unconstitutional, such adjudication shall not in any manner affect the remaining portions of this division which shall be and remain in full force and effect as fully as if the portion so adjudicated invalid, ineffective or unconstitutional were not originally a part thereof.

(Code 1960, § 20-110.8; Ord. No. 3731, § 1, 7-15-91)

Sec. 2-604. False, misleading, or fraudulent statements made to obtain public retirement benefits prohibited; penalty.

(a) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit available under this plan.

(b) (1) A person who violates subsection (a) commits a misdemeanor of the first degree, as provided in F.S. §§ 175.195 and 185.185, punishable as provided in F.S. § 775.082 or § 775.083.

(2) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (a), a participant or beneficiary of this plan may, in the discretion of the board of trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this plan. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(Code 1960, § 20-110.9; Ord. No. 000050, § 8, 6-26-00)

Sec. 2-605. Amendment; termination of plan.

(a) *Power to amend.*

(1) The city commission shall have the right, at any time, to amend any or all of the provisions of the plan; provided, however, that it is impossible for any part of the corpus or income of the trust fund to be used for, or diverted to, purposes other than the exclusive benefit of the plan participants and their beneficiaries.

(2) Any plan amendment which changes any benefit accrual rate or vesting schedule under the plan shall not reduce the nonforfeitable amount of any participant's accrued benefit determined as of the later of the date such amendment is adopted or becomes effective.

(b) *Termination of plan.*

(1) The board of trustees expects to continue this plan indefinitely, but reserves the right to terminate the plan and its city contributions thereunder at any time. In the event of the termination or partial termination of the plan, or complete discontinuance of contributions under the plan, the rights, if any, of all members to benefits accrued to the date of the termination, partial termination, or discontinuance, to the extent funded as of that date, shall be nonforfeitable.

(2) Upon receipt of written notice of termination of the plan, the board shall arrange for the trust fund to be distributed in accordance with the following procedure:

a. The board shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after taking into account the expenses of such distribution. The board shall inform the city if additional assets are required, in which event the city shall continue to financially support the plan until all nonforfeitable benefits have been funded.

b. The board shall determine the method of distribution of the asset value, whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each member entitled to benefits under the plan as specified in section 2-605(b)(2)c.

c. The board shall distribute the asset value as of the date of termination in the manner set forth herein, on the basis that the amount required to provide any given retirement income is the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under section 2-605(b)(2)b. involves the purchase of an insured annuity, the amount required to provide the given retirement income is the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

d. If there is asset value remaining after the full distribution specified in section 2-605(b)(2)c., and after the payment of any expenses incurred with such distribution, such excess shall be returned to the city, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the city and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the city and the state.

e. The board shall distribute, in accordance with section 2-605(b)(2)b., the amounts determined under section 2-605(b)(2)c.

(Code 1960, § 20-110.10; Ord. No. 110452, § 1, 12-1-11; Ord. No. 130203, § 6, 9-19-13)

Sec. 2-606. Miscellaneous.

(a) *Beneficiaries.*

(1) Each member shall, on a form provided for that purpose, signed and filed with the board of trustees, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the member's death, and to the extent allowed, each designation may be revoked by such member by signing and filing with the board of trustees a new designation or beneficiary form.

(2) If no beneficiary is named in the manner provided by subsection (1), or if no beneficiary designated by the member survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased member shall be paid by the board of trustees to the estate of such deceased member, provided that in any of such cases the board of trustees, in its discretion, may direct that the

commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased member and beneficiaries and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(3) Notwithstanding any other provision of law to the contrary, the surviving spouse of any pension participant member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries.

(b) *Exemption from execution.* The pensions, annuities, or any other benefits accrued or accruing to any person under this plan and the accumulated contributions and the cash securities in the funds created under this plan are hereby exempted from any state, county, or municipal tax and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable.

(c) *Payments to legally incompetent.* If any member or beneficiary is a minor, or, in the judgment of the board of trustees is otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him/her, the board of trustees may, unless claim shall have been made by a duly appointed guardian, direct that payments be made to the person's spouse, registered domestic partner, child, parent, brother, or sister, or other person deemed by the board to have assumed responsibility for the expenses of the member or beneficiary.

(d) *Disappearance of member or beneficiary.* If any member or beneficiary, receiving or entitled to receive benefits under the plan, should disappear and fail to respond within 60 days to a written notice sent by the board of trustees by registered or certified mail informing the member or beneficiary of his/her settlement to receive benefits under the plan, the board of trustees may pay the benefits, or any portion thereof which the board determines to be appropriate, to the dependents of the member or beneficiary, whichever is applicable, having regard to the needs of the dependents, until the member or beneficiary is located or until the benefits have been paid in full, whichever event shall first occur.

(Code 1960, § 20-110.11; Ord. No. 000050, § 9, 6-26-00; Ord. No. 070012, § 7, 7-9-07; Ord. No. 080439, § 3, 11-20-08)

Sec. 2-607. Cost of living adjustment of benefits.

(a) A retired member who was receiving on or before October 1, 1999, a monthly normal, delayed or disability retirement benefit and is age 62 or older on or before October 1, 1999, shall have his/her monthly retirement benefit adjusted by two percent beginning with the benefit for the month of October, 1999 (which monthly benefit is payable November 1, 1999). The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(b) A retired member who was receiving on or before October 1, 1999, a monthly normal, delayed, or disability retirement benefit shall, upon the attainment of age 62 on or before October 1, have his/her monthly retirement benefit adjusted by two percent, beginning with the benefit for the month of October (which monthly benefit is payable in November) next following or coincident with (October 1 birthday) the retiree's attainment of age 62. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(c) Unless otherwise expressly provided for herein, a retired member who first receives a monthly normal or delayed (including DROP participants) retirement benefit for October, 1999, or later (first payable November 1, 1999, or later) which benefit is based upon 25 or more years of credited service shall, upon the attainment of age 55 on or before October 1, have his/her monthly retirement benefit adjusted by two percent,

beginning with the benefit for the month of October next following or coincident with (October 1 birthday) the retiree's attainment of age 55. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(d) Unless otherwise expressly provided for herein, a retired member who first receives a monthly normal or delayed retirement benefit for October, 1999, or later (first payable November 1, 1999, or later) which benefit is based upon 20 or more years of credited service but less than 25, or by retiring under the "Rule of 70" with less than 20 years of service, shall, upon the attainment of age 62 on or before October 1, have his/her next monthly retirement benefit adjusted by two percent beginning with the benefit for the month of October next following or coincident with (October 1 birthday) the retiree's attainment of age 62. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(e) A retired member who first receives a monthly disability retirement benefit on or after October 1, 1999, shall, upon the attainment of age 62 on or before October 1, have the next monthly retirement benefit adjusted by two percent beginning his/her benefit for the month of October next following or coincident with (October 1 birthday) the retiree's attainment of age 62. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(f) A retired member who was a police officer with less than 20 years of credited service on or after July 1, 2013 or whose most recent appointment to employment with the city as a police officer occurred on or after July 1, 2013 who first receives a monthly normal or delayed retirement benefit (including DROP participants) for July 2013, or later (first payable August 1, 2013, or later) which benefit is based upon 25 or more years of credited service shall, upon the attainment of age 55 on or before October 1, have his/her monthly retirement benefit adjusted by one percent, beginning with the benefit for the month of October next following or coincident with (October 1 birthday) the retiree's attainment of age 55. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by one percent each October thereafter for the duration of the annuity.

(g) A retired member who was a police officer with less than 20 years of credited service on or after July 1, 2013 or whose most recent appointment to employment with the city as a police officer occurred on or after July 1, 2013 who first receives a monthly normal or delayed retirement benefit (including DROP participants) for July, 2013, or later (first payable August 1, 2013, or later) which benefit is based upon 25 or more years of credited service shall, upon the attainment of age 62 on or before October 1, have his/her next monthly retirement benefit adjusted by two percent beginning with the benefit for the month of October next following or coincident with (October 1 birthday) the retiree's attainment of age 62. The monthly benefit payable to the retired member or the retired member's beneficiary, as the case may be, shall be adjusted by two percent each October thereafter for the duration of the annuity.

(h) A retired member who was a police officer with less than 20 years of credited service on or after July 1, 2013 or whose most recent appointment to employment with the city as a police officer occurred on or after July 1, 2013 shall not receive a cost of living adjustment if such a member retired under the "Rule of 70" on or after July 1, 2013 or if the member receives a retirement benefit based upon less than 25 years of credited service.

(Ord. No. 981266, § 18, 7-12-99; Ord. No. 070012, § 8, 7-9-07; Ord. No. 120680, § 3, 6-20-13)

Sec. 2-608. Supplemental retirement program for police officers.

(a) *Definitions.* The following words and phrases used in this section shall have the meanings set forth below, unless a different meaning is plainly required by the context:

(1) *Additional premium tax revenues* means the premium tax revenues received from the state pursuant to F.S. Ch. 185, in plan years 2001 through and including 2006 that exceeded $485,156.16 annually; and premium tax revenues received from the state pursuant to F.S. § Ch. 185, in plan years 2007 and thereafter that exceed $558,361.13 annually.

(2) *Annual allocation* means the pro rata amount for each share eligible member, calculated on an annual basis, of premium tax revenues received from the state in plan years 2013 and thereafter pursuant to F.S. Ch. 185, that exceed $558.361.13, plus prior plan year forfeited balances.

(3) *Effective date* means July 1, 2013, the date on which this supplemental share program shall take effect.

(4) *Forfeiture* means the termination of a member's account, or eligibility for annual or initial allocations, pursuant to F.S. § 112.3173, section 2-604, section 2-608(d)(3), or other forfeiture required by law, and reversion of such funds to the plan.

(5) *Initial allocation* means the pro rata amount for each share eligible member, calculated on an annual basis, of premium tax revenues received from the state in each plan year 2001 through and including 2006 that exceeded $485,156.16, premium tax revenues received from the state in each plan year 2007 through and including 2012 that exceeded $558,361.13. Based on the foregoing, the premium tax revenues available for pro rata distribution for plan years 2001 through and including 2012 shall be as follows:

2001: $47,489.07

2002: $92,473.27

2003: $128,534.50

2004: $113,964.78

2005: $122,126.39

2006: $147,619.49

2007: $55,989.29

2008: $83,458.87

2009: $109,443.49

2010: $55,897.01

2011: $51,242.95

2012: $41,547.90

Sum total: $1,049,787.01

(6) *Member* means any police officer who was or is in the regular, full-time employ of the city on or after October 1, 2000.

(7) *Premium tax revenue* means the revenues received by the city from the tax assessed on premiums collected on casualty insurance policies pursuant to section 2-599(b)(2). Said tax is collected on policies issued in a calendar year within the city and remitted to the state. Following an annual review and approval of the consolidated plan by the state, said tax, less state fees, is provided to the board, in approximately August or September of the following calendar year.

(8) *Retired* means any member who is receiving a retirement benefit under sections 2-600(a), (b), or (c), a member who met the conditions set forth in section 2-601(b)(4) regardless of the form of benefit, or a member who died in the line of duty, as defined and determined by the board, consistent with F.S. § 185.34, regardless of years of credited service, or months of credited service in the plan year prior to

death. A member eligible for re-employment under USERRA who died while performing qualified military services as defined in USERRA shall be deemed to have retired on the day before he died regardless of years of credited service at time of death. Members who are employed by the city and participants in the deferred retirement option program (DROP) under the consolidated plan are not considered retired for purposes of this section.

(9) *Service credit rules* shall mean the following:

a. Day of service shall mean each day for which a member is:

i. Paid, or entitled to payment, by the city for performance of duties as a police officer;

ii. Paid, or entitled to payment, by the city on account of a period of time during which no duties are performed as a police officer (e.g., vacation, holiday, illness, incapacity, layoff, jury duty, military duty or approved leave of absence);

iii. Each day for which back pay as a police officer, irrespective of mitigation or damages, has been either awarded to or agreed to by the city; provided, however, that the same day shall not be credited as a day of service more than once.

b. Month of service shall mean a one-month period beginning on the day of the month corresponding to a member's most recent date of employment with the city as a police officer, during which the member has earned at least ten days of service; provided however, that ten days of service will be deemed to have been earned in each month of service in which occurs:

i. An approved leave of absence, not to exceed 90 days, authorized by the city, in accordance with a uniform policy applied on a nondiscriminatory basis to all members similarly situated; or

ii. Voluntary or involuntary service in the Armed Forces of the United States for a period not greater than five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if: the member is in the city's active employ as an eligible employee prior to such service and leaves such position for the purpose of voluntary or involuntary service in the Armed Forces of the United States; such member is entitled to re-employment under the provisions of the USERRA; and the member returns to his or her employment as a police officer as an eligible employee within one year from the date of his or her release from such active service.

c. A member shall earn days or months of service for purposes of calculating benefits due under the share program after entering in a DROP.

d. If the employment of a member as a police officer with the city is terminated, and such former member is subsequently re-employed by the city as a police officer, the member's date of employment, for purposes of determining credited service, shall be based on the member's subsequent re-employment date as a police officer.

e. Credited service shall mean the aggregate number of months of service with the city as a police officer, expressed in terms of full and fractional year, subject to the following:

i. No additional months of service shall be credited for unused sick leave.

ii. No member shall receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the consolidated plan for those years or fractional parts of years of service, even if the member repays into the consolidated plan the amount he or she has withdrawn, plus interest as determined by the board.

(10) *Share eligible member* means a member of the program who meets the eligibility criteria set forth in section 2-608(c).

(11) *Supplemental share program, share program,* or *program* means the supplemental retirement program for police officers, as set forth in this section, and as it may be amended from time to time in the future.

(b) *Establishment.* There is hereby created for the police officers of the city a program to be known as the "Supplemental Retirement Program for Police Officers," also referred to in this section as the "program," "supplemental share program," or "share program." The creation and maintenance of the assets of the program, the benefits provided for and the administration of the program shall be in accordance with the provisions of this section.

(c) *Eligibility.*

(1) *Eligibility to receive the initial allocation.*

a. For members retired on or before the effective date to be eligible to receive the initial allocation for each plan year from 2001 to 2012, an individual must be a member of the program and must have:

i. Retired and terminated employment in connection therewith;

ii. Been employed by the city as a police officer for the entire plan year.

b. For members employed by the city after the effective date to be eligible to receive the initial allocation for each plan year from 2001 to 2012, an individual must be a member of the program and must have been employed by the city as a police officer for the entire plan year.

(2) *Eligibility to receive the annual allocation of share program funds received on or before September 30, 2019.*

a. For retired members to be eligible to receive the annual allocation, an individual must be a member of the program and must have:

i. Retired and terminated employment in connection therewith prior to the actual receipt of premium tax revenues by the board for the plan year; and

ii. Been employed by the city as a police officer for the entire plan year.

b. For members employed by the city to be eligible to receive the annual allocation, an individual must be a member of the program and must have:

i. Been employed on the date the premium tax revenues are received by the board for the plan year; and

ii. Been employed by the city as a police officer for the entire plan year.

(3) *Eligibility to receive the annual allocation of share program funds received after September 30, 2019.*

a. For retired members to be eligible to receive their annual allocation, an individual must have been a member of the program and must have:

i. Retired and terminated employment in connection therewith prior to the actual receipt of premium tax revenues by the board for the plan year;

ii. Been employed as a law enforcement officer for the entire plan year; and

iii. A minimum of 19 years of credited service at the beginning of the plan year.

b. For members employed by the city to be eligible to receive the annual allocation, an individual must be a member of the program and must have:

i. Been employed as a law enforcement officer for the entire plan year; and

ii. A minimum of 19 years credited service at the beginning of the plan year.

(4) *Forfeiture.* Members whose retirement benefits have been forfeited pursuant to F.S. § 112.3173, section 2-604, or any other law, and members who terminate their employment with the city as a police officer prior to the completion of at least ten years of credited service are not eligible for any distributions or allocations under the share program.

(5) *Re-employed retirees and recipients of termination benefits.* A former employee of the city receiving retirement or termination benefits from the City of Gainesville Employees Disability Plan, the City of Gainesville Employees Pension Plan, or retirement benefits or monthly termination benefits under the consolidated plan may, upon becoming re-employed by the city become a member of the share program, earn credited service, and become entitled to receive a supplemental retirement benefit subject to the following conditions:

a. Such member shall re-satisfy the eligibility requirements for participation in this program.

b. No service for which credit was received, or which remained unclaimed, at retirement or termination may be claimed or applied toward service credit earned following renewed membership.

c. Such re-employed member shall not be entitled to purchase additional credit for service performed prior to re-employment for which retirement or termination benefits are being received.

(d) *Funding and benefits.*

(1) *Allocation of additional premium tax revenues.*

a. *Initial allocation.*

i. The board shall distribute the initial allocation to each share program eligible member as described in section 2-608(e) based upon his or her status as a share eligible member for each plan year additional premium tax revenues were received by the board from plan years 2001 to 2012.

ii. The board shall make the initial allocation within 90 days of the effective date.

b. *Annual allocation.*

i. The board shall distribute the annual allocation to each share program eligible member as described in section 2-608(e) based upon his or her status as a share eligible member for each plan year additional premium tax revenues are received by the board in plan years 2013 and thereafter. If the board receives no additional premium tax revenues or the administrative fees and expenses exceed the additional premium tax revenues received, there shall be no annual allocation to share eligible members.

ii. The board shall make the annual allocation no later than 90 days after its receipt of such additional premium tax revenues.

(2) *City's contributions to the program.* The city shall not be required to levy any additional taxes on its residents or make any contributions to the supplemental share program.

(3) *Forfeiture.* Members whose retirement benefits have been forfeited pursuant to F.S. § 112.3173, section 2-604, or any other law, and members who terminate employment with the city as a police officer prior to the completion of at least ten years of credited service shall not be deemed a share eligible member for the purposes of any allocation or distribution under this section and any amounts of additional premium tax revenues which otherwise would be allocated shall revert to the plan and, after final resolution of all claims, be included in the next annual allocation.

(4) *Payment of costs, expenses and fees.* All costs, expenses and fees of developing and administering the supplemental share program shall be paid from the assets of the share program in such fashion as the board shall reasonably determine. Any direct distribution and any allocation to a share eligible member's account shall be net of such member's pro rata portion of the share program's costs, expenses and fees of administering the share program.

(e) *Accounts; distributions.*

(1) *Distributions to employee members.*

a. For share eligible members who are employed by the city on or after the effective date, initial and annual allocations shall be transferred to individual accounts on behalf of the member in accordance with this section. Members' share accounts shall annually be credited or debited with gains or losses equal to the overall market rate of return on investments of the consolidated plan, less any fees or expenses related to administration of the share program, on or before December 31. Upon termination of a member's employment with the city as a police officer and becoming retired under the consolidated plan in connection therewith, the balance of the member's account shall be paid to the member or member's beneficiaries in a single lump sum or a member may elect a direct rollover as allowed in section 2-600(j). Failure to make an election will result in the payment being made in a lump sum.

b. After the completion of at least ten years of credited service, share eligible members who are employed by the city may make a one-time, irrevocable election, at the time and in the manner prescribed by the board, to transfer the balance of their account to another account within the plan designated by the member for investment. Such members may direct their share money to any of the investment options offered by the third party administrator approved by the board. There shall be no guaranteed rate of investment return on these accounts. Upon transfer of the share money to the account designated by the member, neither the city nor the board shall have any obligation to the member concerning investment gains or losses. Transfers between accounts shall be in accordance with the rules of the third party administrator.

c. Members who terminate their employment with the city as a police officer prior to the completion of at least ten years of credited service shall forfeit their share of any annual or initial allocation, shall not be eligible for any distribution under this section, and their share shall revert to the plan for pro rata allocation to eligible members during the following plan year.

(2) *Distributions to retired members.* For share eligible members who are no longer employed by the city at the time the board makes allocations, such members or members' beneficiaries shall be paid in a single lump sum or a member may elect a direct rollover as allowed in section 2-600(j). Failure to make an election will result in the payment being made in a lump sum.

(f) *Miscellaneous.*

(1) *City's responsibilities.* The city shall have no responsibility for the operation of the share program except those specified herein and shall bear no expense in connection therewith.

(2) *USERRA.* Notwithstanding any provision of the program to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

(Ord. No. 120680, § 4, 6-20-13; Ord. No. 200657 , § 1, 2-4-21)

Sec. 2-609. Supplemental retirement program for firefighters.

(a) *Definitions.* The following words and phrases used in this section shall have the meanings set forth below, unless a different meaning is plainly required by the context:

(1) *Additional premium tax revenues* means the premium tax revenues received from the state pursuant to F.S. § 175.101, in plan years 1999 through and including 2006 that exceeded $310,569.70 annually; and premium tax revenues received from the state pursuant to Section 175.101, Florida Statutes, in plan years 2007 and thereafter that exceed $580,918.87 annually.

(2) *Annual allocation* means the pro rata amount for each share eligible member, calculated on an annual basis, of premium tax revenues received from the state in plan years 2016 and thereafter pursuant to F.S. § 175.101, that exceed $580,918.87, plus prior plan year forfeited balances.

(3) *Effective date* means February 1, 2017, the date on which this supplemental share program shall take effect.

(4) *Forfeiture* means the termination of a member's account, or eligibility for annual or initial allocations, pursuant to F.S. § 112.3173, section 2-604, section 2-609(d)(3), or other forfeiture required by law, and reversion of such funds to the plan.

(5) *Initial allocation* means the pro rata amount for each share eligible member, calculated on an annual basis, of premium tax revenues received from the state in each plan year 1999 through and including 2006 that exceeded $310,569.70, premium tax revenues received from the state in each plan year 2007 through and including 2015 that exceeded $580,918.87. Based on the foregoing, the premium tax revenues available for pro rata distribution for plan years 1999 through and including 2015 shall be as follows:

1999: $29,907.09

2000: $54,481.26

2001: $76,261.69

2002: $94,392.76

2003: $110,331.08

2004: $168,037.44

2005: $228,947.65

2006: $58,129.99

2007: $72,672.13

2008: $5,543.40

2009: $0.00

2010: $0.00

2011: $0.00

2012: $0.00

2013: $35,811.35

2014: $16,687.50

2015: $0.00

Sum Total: $951,203.44

(7) *Member* means any firefighter who was or is in the regular, full-time employ of the city on or after October 1, 1998.

(8) *Premium tax revenue* means the revenues received by the city from the tax assessed on premiums collected on casualty insurance policies pursuant to section 2-599(b)(2). Said tax is collected on policies issued in a calendar year within the city and remitted to the state. Following an annual review and approval of the consolidated plan by the state, said tax, less state fees, is provided to the board, in approximately August or September of the following calendar year.

(9) *Retired* means any member who is receiving a retirement benefit under sections 2-600(a), (b), or (c), a member who met the conditions set forth in section 2-601(b)(4) regardless of the form of benefit, or a member who died in the line of duty, as defined and determined by the board, regardless of years of credited service, or months of credited service in the plan year prior to death. A member eligible for re-employment under USERRA who died while performing qualified military services as defined in USERRA shall be deemed to have retired on the day before he died regardless of years of credited service at time of death. Members who are employed by the city and participants in the deferred retirement option program (DROP) under the consolidated plan are not considered retired for purposes of this section.

(10) *Service credit rules* shall mean the following:

a. Day of service shall mean each day for which a member is:

i. Paid, or entitled to payment, by the city for performance of duties as a firefighter;

ii. Paid, or entitled to payment, by the city on account of a period of time during which no duties are performed as a firefighter (e.g., vacation, holiday, illness, incapacity, layoff, jury duty, military duty or approved leave of absence);

iii. Each day for which back pay as a firefighter, irrespective of mitigation or damages, has been either awarded to or agreed to by the city; provided, however, that the same day shall not be credited as a day of service more than once.

b. Month of service shall mean a one-month period beginning on the day of the month corresponding to a member's most recent date of employment with the city as a firefighter, during which the member has earned at least ten days of service; provided however, that ten days of service will be deemed to have been earned in each month of service in which occurs:

i. An approved leave of absence, not to exceed 90 days, authorized by the city, in accordance with a uniform policy applied on a nondiscriminatory basis to all members similarly situated; or

ii. Voluntary or involuntary service in the Armed Forces of the United States for a period not greater than five years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if: the member is in the city's active employ as an eligible employee prior to such service and leaves such position for the purpose of voluntary or involuntary service in the Armed Forces of the United States; such member is entitled to re-employment under the provisions of the USERRA; and the member returns to his or her employment as a firefighter as an eligible employee within one year from the date of his or her release from such active service.

c. A member shall earn days or months of service for purposes of calculating benefits due under the share program after entering in a DROP.

d. If the employment of a member as a firefighter with the city is terminated, and such former member is subsequently re-employed by the city as a firefighter, the member's date of employment, for purposes of determining credited service, shall be based on the member's subsequent re-employment date as a firefighter.

e. Credited service shall mean the aggregate number of months of service with the city as a firefighter, expressed in terms of full and fractional year, subject to the following:

i. No additional months of service shall be credited for unused sick leave.

ii. No member shall receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the consolidated plan for those years or fractional parts of years of service, even if the member repays into the consolidated plan the amount he or she has withdrawn, plus interest as determined by the board.

(11) *Share eligible member* means a member of the program who meets the eligibility criteria set forth in section 2-609(c).

(12) *Supplemental share program, share program, or program* means the supplemental retirement program for firefighters, as set forth in this section, and as it may be amended from time to time in the future.

(b) *Establishment.* There is hereby created for the firefighters of the city a program to be known as the "supplemental retirement program for firefighters," also referred to in this section as the "program," "supplemental share program," or "share program." The creation and maintenance of the assets of the program, the benefits provided for and the administration of the program shall be in accordance with the provisions of this section.

(c) *Eligibility.*

(1) *Eligibility to receive the initial allocation.*

a. For members retired on or before the effective date to be eligible to receive the initial allocation for each plan year from 1999 to 2015, an individual must be a member of the program and must have:

i. Retired and terminated employment in connection therewith: and

ii. Been employed by the city as a firefighter for the entire plan year.

b. For members employed by the city after the effective date to be eligible to receive the initial allocation for each plan year from 1999 to 2015, an individual must be a member of the program and must have been employed by the city as a firefighter for the entire plan year.

(2) *Eligibility to receive the annual allocation.*

a. For retired members to be eligible to receive the annual allocation, an individual must be a member of the program and must have:

i. Retired and terminated employment in connection therewith prior to the actual receipt of premium tax revenues by the board for the plan year; and

ii. Been employed by the city as a firefighter for the entire plan year.

b. For members employed by the city to be eligible to receive the annual allocation, an individual must be a member of the program and must have:

i. Been employed on the date the premium tax revenues are received by the board for the plan year; and

ii. Been employed by the city as a firefighter for the entire plan year.

(3) *Forfeiture.* Members whose retirement benefits have been forfeited pursuant to F.S. § 112.3173, section 2-604, or any other law, and members who terminate their employment with the city as a firefighter prior to the completion of at least ten years of credited service and have not received a disability retirement or have withdrawn their contributions from the plan after termination of employment are not eligible for any distributions or allocations under the share program.

(4) *Re-employed retirees and recipients of termination benefits.* A former employee of the city receiving retirement or termination benefits from the City of Gainesville Employees Disability Plan, the City of Gainesville Employees' Pension Plan, or retirement benefits or monthly termination benefits under the consolidated plan may, upon becoming re-employed by the city become a member of the share program, earn credited service, and become entitled to receive a supplemental retirement benefit subject to the following conditions:

a. Such member shall re-satisfy the eligibility requirements for participation in this program.

b. No service for which credit was received, or which remained unclaimed, at retirement or termination may be claimed or applied toward service credit earned following renewed membership.

c. Such re-employed member shall not be entitled to purchase additional credit for service performed prior to re-employment for which retirement or termination benefits are being received.

(d) *Funding and benefits.*

(1) *Allocation of additional premium tax revenues.*

a. *Initial allocation:*

i. The board shall distribute the initial allocation to each share program eligible member as described in section 2-609(e) based upon his or her status as a share eligible member for each plan year additional premium tax revenues were received by the board from plan years 1999 to 2015.

ii. The board shall make the initial allocation within 90 days of the effective date.

b. *Annual allocation:*

i. The board shall distribute the annual allocation to each share program eligible member as described in section 2-609(e) based upon his or her status as a share eligible member for each plan year additional premium tax revenues are received by the board in plan years 2016 and thereafter. If the board receives no additional premium tax revenues or the administrative fees and expenses exceed the additional premium tax revenues received, there shall be no annual allocation to share eligible members.

ii. The board shall make the annual allocation no later than 90 days after its receipt of such additional premium tax revenues.

(2) *City's contributions to the program.* The city shall not be required to levy any additional taxes on its residents or make any contributions to the supplemental share program.

(3) *Payment of costs, expenses and fees.* All costs, expenses and fees of developing and administering the supplemental share program shall be paid from the assets of the share program in such fashion as the board shall reasonably determine. Any direct distribution and any allocation to a share eligible member's account shall be net of such member's pro rata portion of the share program's costs, expenses and fees of administering the share program.

(e) *Accounts; distributions.*

(1) *Distributions to employee members.*

a. For share eligible members who are employed by the city on or after the effective date, initial and annual allocations shall be accounted for in individual accounts on behalf of the member in accordance with this section. Members' share accounts shall annually be credited or debited with gains or losses equal to the overall market rate of return on investments of the consolidated plan net of investment related expenses and less any fees or expenses related to administration of the share program, on or before December 31 each year. Upon termination of a member's employment with the city as a firefighter and becoming retired under the consolidated plan in connection therewith, the balance of the member's account shall be paid to the member or member's beneficiaries in a single lump sum or a member may elect a direct rollover as allowed in section 2-600(j). Failure to make an election will result in the payment being made in a lump sum.

b. Members who terminate their employment with the city as a firefighter prior to the completion of at least ten years of credited service and have not received a disability retirement shall forfeit their share of any annual or initial allocation, shall not be eligible for any distribution under this section, and their share shall revert to the plan for pro rata allocation to eligible members during the following plan year.

c. For members who terminate their employment after the completion of ten years of credited service but prior to retirement eligibility (early or normal), there will be no additional shares earned and the share plan balance will be distributed upon electing the receipt of the vested benefit. A member who withdraws their accumulated contribution after vesting, shall not be eligible to receive a share plan distribution.

(2) *Distributions to retired members.* For share eligible members who are no longer employed by the city at the time the board makes allocations, such members or members' beneficiaries shall be paid in a single lump sum or a member may elect a direct rollover as allowed in section 2-600(j). Failure to make an election will result in the payment being made in a lump sum.

(f) *Miscellaneous.*

(1) *City's responsibilities.* The city shall have no responsibility for the operation of the share program except those specified herein and shall bear no expense in connection therewith.

(2) *USERRA.* Notwithstanding any provision of the program to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

(Ord. No. 170591 , § 1, 1-18-18)

ARTICLE VIII. REGISTERED DOMESTIC PARTNERSHIPS

Sec. 2-610. Definitions.

Committed relationship means a family relationship, intended to be of indefinite duration, between two individuals characterized by mutual caring and the sharing of a mutual residence.

Declaration of registered domestic partnership means the document that is filed with the city clerk's office according to the procedures established in section 2-611.

Dependent is a person who resides within the household of a registered domestic partnership and is:

1. A biological, adopted, or foster child of a registered domestic partner; or

2. A dependent as defined under IRS regulations; or

3. A ward of a registered domestic partner as determined in a guardianship or other legal proceeding.

Mutual residence means a residence shared by the registered domestic partners; it is not necessary that the legal right to possess the place of residence be in both of their names. Two people may share a mutual residence even if one or both have additional places to live. Registered domestic partners do not cease to share a mutual residence if one leaves the shared place but intends to return.

Registered domestic partnership means a committed relationship between two persons who consider themselves to be a member of each other's immediate family and have registered their partnership in accordance with section 2-611.

(Ord. No. 051224, § 1, 7-23-07; Ord. No. 210562 , § 12, 6-16-22)

Sec. 2-611. Registration, amendment, termination and administration procedures.

(a) *Registration.*

(1) *Declaration of registered domestic partnership.* A declaration of registered domestic partnership shall be filed with the city clerk and shall contain the names and addresses of the applicants who shall swear or affirm under penalty of perjury that each partner:

a. Is at least 18 years old and competent to contract;

b. Is not married to, or a member of another registered domestic partnership or civil union, with anyone other than the co-applicant;

c. Agrees to share the common necessities of life and to be responsible for each other's welfare;

d. Considers the mutual residence to be the applicant's primary residence;

e. Considers the co-applicant to be a member of the applicant's immediate family;

f. Agrees to mutually support the other by contributing in some fashion, not necessarily equally, to maintain and support the registered domestic partnership; and

g. Are not related by blood to one another in any way which would prohibit legal marriage in the State of Florida.

(2) Each partner agrees to immediately notify the city clerk, in writing, if the terms of the registered domestic partnership are no longer applicable or one of the domestic partners wishes to terminate the domestic partnership.

(b) *Amendment.* Registered domestic partners may amend a registered domestic partnership previously filed with the city clerk to show a change in their household address or to add or delete dependents. Amendments shall be signed by both members of the registered domestic partnership under penalty or perjury.

(c) *Termination.*

(1) *Termination statement.* A registered domestic partner may terminate the registered domestic partnership by filing a termination statement with the city clerk. The person filing the termination statement shall swear or affirm under penalty of perjury that:

a. The registered domestic partnership is to be terminated; and

b. If the termination statement is not signed by both registered domestic partners, a copy of the termination statement shall be served, by certified or registered mail, on the other registered domestic partner, and proof of service shall be filed with the city clerk, and/or other good faith efforts are made to notify the other registered domestic partner, as described in an affidavit filed with the city clerk.

(2) *Effective date.* The termination shall become effective on the date of filing of the termination statement signed by both registered domestic partners or if the termination statement is not signed by both parties, on the date proof of service or a good faith efforts affidavit is filed with the city clerk pursuant to subsection (c)(1)b. above.

(3) *Automatic termination.* A registered domestic partnership shall automatically terminate upon the following events:

a. One of the domestic partners marries;

b. One of the domestic partners dies;

c. One of the domestic partners enters into a civil union with someone other than their registered domestic partner; or

d. Registers with another domestic partner.

(d) *Administration.*

(1) *Forms.* The city clerk shall provide forms for the establishment, amendment, and termination of registered domestic partnerships, and otherwise be responsible for implementing and interpreting the provisions of this article.

(2) *Certificate of registered domestic partnership.* The city clerk shall issue to the registered domestic partners a certificate of registered domestic partner no later than ten business days after the declaration of registered domestic partnership is filed.

(3) *Maintain records.* The city clerk shall maintain copies of the declaration of registered domestic partnerships, any and all amendments thereto, certificates of registered domestic partnership, and termination statements filed by registered domestic partners.

(Ord. No. 051224, § 1, 7-23-07; Ord. No. 080219, § 1, 9-4-08; Ord. No. 210562 , § 13, 6-16-22)

Sec. 2-612. Rights and legal effect of registered domestic partnership.

To the extent not superseded or preempted by federal, state, or county law or ordinance, or contrary to rights conferred by contract or separate legal instrument, registered domestic partners shall have the following rights:

(1) *Health care facility visitation.* The term "health care facility" includes, but is not limited to, hospitals, convalescent facilities, walk-in clinics, doctor's offices, mental health care facilities, and other short and long term facilities located within, or under the jurisdiction of, the city. All health care facilities operating within the city shall allow a registered domestic partner the same visitation rights as a spouse (or parent, if the patient is a dependent of the registered domestic partnership) of the patient. A dependent of a registered domestic partner shall have the same visitation rights as a patient's child.

(2) *Funeral/burial decisions.* Following the death of a registered domestic partner, the surviving partner shall have the same rights to make decisions with regard to funeral/burial decisions and disposition of the decedent's body as a surviving spouse. The surviving partner shall retain these rights notwithstanding the automatic termination provision of subsection 2-611(c)(3)b.

(3) *Notification of family members.* In any situation providing for mandatory or permissible notification of family members, including, but not limited to, notification of family members in an emergency, or when permission is granted to inmates to contact family members, "notification of family" shall include registered domestic partners, provided the domestic partner has notified the person, entity or agency of such request.

(4) *Preneed guardian designation.* Any person who is registered as a registered domestic partner pursuant to this article shall have the same right as any other individual to be designated as a pre need guardian pursuant to F.S. § 744.3045, and to serve in such capacity in the event of his or her declarant registered domestic partner's incapacity. A registered domestic partner shall not be denied or otherwise be defeated in serving as the plenary guardian of his or her registered domestic partner or the partner's property, under the provisions of F.S. Ch. 744, to the extent that the incapacitated partner has not executed a valid preneed guardian designation, based solely upon his or her status as the domestic partner of the incapacitated partner.

(5) *Correctional facility visitation rights.* The term "correctional facility" includes, but is not limited to, holding cells, jails, and juvenile correction centers of any kind, located within or under the jurisdiction of the city. A registered domestic partner shall have the same visitation rights at all correctional facilities operating within the city as a spouse (or parent, if the person in custody is a dependent of the registered domestic partnership) of a person in custody. A dependent shall have the same visitation rights afforded to the child of a person in custody.

(6) *Participation in education.* A registered domestic partner shall have the same rights to participate in the education of a dependent of the registered domestic partnership as a parent to participate in the education of their child, in all educational facilities located within or under the jurisdiction of the city. This includes the right of a registered domestic partner to participate in the home schooling of a dependent in accordance with Florida law.

(Ord. No. 051224, § 1, 7-23-07)

Sec. 2-613. Rights and legal effect of registered domestic partnership.

(a) Nothing in this article shall be interpreted to alter, affect, or contravene county, state, or federal law, or apply to county, state, or federal agencies, or officers or employees thereof, when acting in their official capacities.

(b) Nothing in this article shall be construed as recognizing or treating a registered domestic partnership as a marriage.

(c) All rights, privileges, and benefits extended to registered domestic partnerships registered pursuant to this article shall also be extended to all persons legally partnered in another jurisdiction.

(d) A registered domestic partner may enforce the rights under section 2-612 by filing a private action against a person or entity in any court of competent jurisdiction for declaratory relief, injunctive relief, or both.

(Ord. No. 051224, § 1, 7-23-07)

Sec. 2-614. Reserved.

ARTICLE IX. LIVING WAGE REQUIREMENTS[32]

DIVISION 1. REQUIREMENTS THAT APPLY TO CONTRACTS SOLICITED BY THE CITY PRIOR TO MIDNIGHT ON MARCH 31, 2021

Sec. 2-615. Definitions.

[The following words and phrases as used in this article shall have the following meanings unless a different meaning is clearly required by the context:]

City means the City of Gainesville Municipal Corporation.

Cooperative purchasing agreement is materials, equipment or services purchased under the terms and conditions of another local, state, federal, or other public agency's bid or cooperative bids put together by agencies.

Covered employee means an employee of a service contractor/subcontractor, as further defined in this article, that is directly involved in providing covered services pursuant to the service contractor's/subcontractor's contract with the city, during the period of time he or she is providing the covered services. The term "covered employee" shall not include a person described in 29 USC 213(a)(3) (seasonal employee), a student enrolled in a degree program who is employed under the auspices of the educational institution, a person who is employed by the service contractor/subcontractor through an ongoing written job training program, a worker with a disability as defined in 29 CFR 525.3, or employees hired or leased for temporary assignments of less than one year such as short-term projects, substituting for an absent employee, or substituting while a vacant position is being filled.

Covered services are the following services purchased by the city under a single contract over $100,000.00:

(1) Food preparation and/or distribution;

(2) Custodial/cleaning;

(3) Refuse removal;

(4) Maintenance and repair;

(5) Recycling;

(6) Parking services;

(7) Painting/refinishing;

(8) Printing and reproduction services;

(9) Landscaping/grounds maintenance;

(10) Agricultural/forestry services;

[32]Ord. No. 180999 , § 1, adopted December 3, 2020, amended article IX in its entirety to read as herein set out. Former article IX, §§ 2-615—2-618, pertained to similar subject matter, and derived from Ord. No. 080755, § 1, 4-2-09; Ord. No. 140296, § 1, 7-2-15.

(11) Construction services;

except when such services are services provided under a cooperative purchasing agreement, or services provided by service contractors/subcontractors located within the City of Gainesville enterprise zone.

Health benefits are any plan, fund, or program established or maintained by the service contractor/subcontractor for the purpose of providing for its participants or beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits.

Payroll records include name, address, the covered employee's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid and, if applicable, those records necessary to determine whether health benefits, as described herein, are being provided or offered to covered employees.

Service contractor/subcontractor is a for-profit individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business, providing a covered service, who or which employs 50 or more persons, but not including employees of any subsidiaries, affiliates or parent businesses. The calculation of number of employees is made as of the date of execution of the contract for covered services.

(Ord. No. 180999 , § 1, 12-3-20)

Sec. 2-616. Amount of living wage.

(a) *Living wage paid.* A service contractor/subcontractor shall pay to all of its covered employees a living wage of no less than $8.70 per hour (health benefit wage) and offer health benefits as described in this section, or otherwise $9.95 per hour (non-health benefit wage).

(b) *Health benefits.* For a service contractor/subcontractor to comply with the living wage provision by choosing to pay the lower wage scale available when the service contractor/subcontractor also offers health benefits, such health benefits shall cost an average of $1.25 per hour per employee towards the provision of health benefits. The requirement may be satisfied by a cafeteria plan, which includes health benefits, towards which the service contractor/subcontractor makes a contribution of at least $1.25 per hour for each covered employee. If the health benefit program of a service contractor/subcontractor requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period), such service contractor/subcontractor may pay the health benefit living wage scale for up to six months of a new employee's initial eligibility period. In this event, upon six months of employment, the new employee will be paid the non-health benefit wage until such time as the new employee is offered or provided health benefits.

(c) *Adjustment.* The living wage (health benefit wage) specified in subsection (a) above is based on the federal poverty guidelines for a family of four as determined by the U.S. Department of Health and Human Services (DHHS), and published in the Federal Register February 14, 2002. It will be adjusted annually as of the first day of the second month following the month of publication of the new federal poverty guidelines by the DHHS, the non-health benefit wage will be adjusted the same amount, and the adjusted rates will be applied to contracts for which bids/proposals are solicited, or extensions/amendments of existing contracts entered into, after the effective date of the adjustment. Provided further, however, that in no event shall the health benefit wage exceed the lowest hourly base rate of pay of any regular, full-time city employee in effect at the time bids/proposals for contracts are solicited, or in the case of extensions/amendments of then existing contracts, the rate in effect at the time such extension/amendment is entered into. The applicable living wage shall be noted in all solicitations for covered services, and disclosed during negotiations for extensions/amendments of contracts for covered services.

(d) *Certification.* Prior to executing any contract with the city or service contractor for a covered service the service contractor/subcontractor, as applicable, shall certify to the contractor administrator (city) that it will pay each of its covered employees a living wage as herein defined, during the period of time they are directly

involved in providing covered services under the contract. Upon execution, the certification shall become an obligation under the contract. The certification must also include, at a minimum, the following:

(1) The name, address, and phone number of the service contractor/subcontractor and a local contact person;

(2) The specific project for which the service contract is sought;

(3) The amount of the contract and the department contract administrator;

(4) An agreement to comply with the terms of this article as part of its contractual obligations.

(e) *Posting.* A copy of the living wage rate shall be kept posted by the employer in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request. In addition, it is the responsibility of the service contractors/subcontractors to make any person submitting a bid for a subcontract providing covered services aware of the requirements of this article.

(Ord. No. 180999 , § 1, 12-3-20)

Sec. 2-617. Application; enforcement.

(a) Procurement specifications. The living wage shall be required for new contracts for covered services solicited, and extensions or amendments of existing contracts for covered services with service contractors/subcontractors entered into, prior to midnight on March 31, 2021. This article shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.

(b) Each contracting department shall include the following clause in each of its contracts for covered services (and extensions/amendments to existing contracts if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor shall comply with the provisions of the City of Gainesville's living wage requirements, as applicable. Failure to do so shall be deemed a breach of contract and shall authorize the city to withhold payment of funds until the living wage requirements have been met.

(2) The contractor will include the provision of (1) above in each subcontract for covered services with a service contractor/subcontractor, as defined herein, so that the provisions of (1) above will be binding upon each such service contractor/subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the contract administrator as a means of enforcing such provisions; provided, however, the city shall not be deemed a necessary or indispensable party in any litigation between the contractor and a subcontractor concerning compliance with living wage requirements.

(c) A person who claims that this article applies or applied to him or her as a covered employee and that the service contractor/subcontractor is or was not complying with the requirements of this article has a right to file a written complaint. Each charter officer shall establish administrative procedures for the filing, processing and resolution of written complaints under this ordinance for their respective areas of responsibility(s) of the city. A covered employer may be required to produce payroll and other records deemed relevant to the investigation of a complaint. Remedies set forth in any administrative procedures will not be exclusive or in any way meant to prohibit any relief afforded by a court of law or otherwise prohibit the city from terminating a contract, filing a complaint, or taking legal action for noncompliance.

(d) Retaliation and discrimination unlawful. It shall be unlawful and punishable as provided in section 1-9 of this Code for an employer to discharge, reduce the compensation of, or otherwise discriminate against any employee for filing a written complaint or otherwise asserting his or her rights under this ordinance,

participating in any of its proceedings or using any available remedies to enforce his or her rights under the ordinance.

(Ord. No. 180999 , § 1, 12-3-20)

DIVISION 2. REQUIREMENTS THAT APPLY TO CONTRACTS SOLICITED BY THE CITY AFTER MIDNIGHT ON MARCH 31, 2021

Sec. 2-618. Definitions.

City means the City of Gainesville, Florida, a municipal corporation.

Contract means a written agreement between the city and the service contractor. Any set of documents, including a purchase order provided both the city and the service contractor have agreed to the terms and conditions.

Cooperative purchasing agreement means a contract of a public agency which allows the use of the contract by other agencies under the same pricing and contract terms.

Covered employee means an employee of a service contractor/subcontractor, as further defined in this article, that is directly involved in providing covered services pursuant to the service contractor's/subcontractor's contract with the city, during the period of time they are providing the covered services. Covered employee does not include a student enrolled in a degree program who is employed under the auspices of the educational institution, a person who is employed through an ongoing written job training program, or a worker with a disability as defined in 29 CFR 525.3, or employees hired or leased for temporary assignments of less than one year such as short-term projects, substituting for an absent employee, or substituting while a vacant position is filled.

Covered services means any services contracted for by the city, whether the contract is solely for services or for both goods and services (such as a construction contract, where construction services are provided as well as the goods that are necessary for the construction project). This division does not apply to contracts that are solely for goods (i.e., tangible objects or products). This division does not apply to contracts for software as a service. For purposes of this division, examples of services include, but are not limited to, construction work, janitorial services, security services, food preparation services, mowing, and maintenance.

Health benefits means any plan, or fund, or program established or maintained by the service contractor or subcontractor for the purpose of providing for its participants beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits.

Living wage means an hourly wage that is no less than the hourly base pay of the lowest pay grade of the city as of the preceding October 1 of the effective date of the contract with the city. The living wage will increase annually thereafter on October 1 of each succeeding year the contract or any extension thereof is in effect. If the service contractor/subcontractor does not offer health benefits to the covered employee, then the hourly wage must be increased by 15 percent for that covered employee.

Payroll records means the records pertaining to covered employees that document their name, address, employee classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid and whether health benefits, as described herein, are being provided or offered to covered employees.

Service contractor/subcontractor means a natural person or legal entity (such as, but not limited to, a corporation, partnership, limited liability company or joint venture) providing services to the city, but not including any subsidiaries, affiliates or parent entities of the entity providing services to the city.

(Ord. No. 180999 , § 1, 12-3-20)

Sec. 2-619. Living wage requirements.

(a) The following are requirements of each service contractor/subcontractor:

(1) A service contractor/subcontractor shall pay a living wage to each of its covered employees during the time they are providing the covered services.

(2) A copy of the living wage rate shall be posted by the service contractor/subcontractor in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request.

(3) Each service contractor shall make all of its service subcontractors aware of the requirements of this division and shall include the contract provisions listed in subsection (b) below in each of its service subcontracts to ensure compliance with this article. The city shall not be deemed a necessary or indispensable party in any litigation between the service contractor and a subcontractor.

(4) A service contractor/subcontractor shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage under this division. A covered employee who claims their employer has not paid them a living wage as required by this division may file a written complaint with the city.

(5) Each service contractor/subcontractor shall produce payroll records, and any other requested documentation to the city as necessary for the city to audit or investigate compliance with or a reported violation of this division.

(b) Each contract between the city and a service contractor (and between the service contractor and its subcontractor(s)) shall include language referencing the requirements of this division, in substantially the following form: "The definitions, terms and conditions of the city's living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of Ordinances shall apply to this agreement. These requirements include that the service contractor/subcontractor: shall pay a living wage to each covered employee during the term of this agreement, including any extension(s) to this agreement; shall maintain records sufficient to demonstrate compliance with the living wage requirements; shall not discharge, reduce the compensation of, or otherwise retaliate against any covered employee for filing a complaint, participating in any proceedings or otherwise asserting the requirement to pay a living wage; shall cooperate with any city audit or investigation concerning compliance with or a reported violation of the living wage requirements, including providing all requested documentation. Failure to comply with the City's living wage requirements shall be a material breach of this agreement, enforceable by the city through all rights and remedies at law and equity."

(c) The living wage requirements in this division do not apply in the following circumstances:

(1) If a city solicitation for services results in no responsive bids/proposals/quotes, the applicable charter officer, or designee, may waive the living wage requirement and authorize award to the lowest bidder responsive to the other bid requirements.

(2) If the work to be performed under the contract is funded by a federal or state grant and that grant does not allow local living wage requirements.

(3) If the living wage requirements are precluded by law.

(4) Purchases made under state, federal, or other public agency agreements or cooperative contracts.

(5) Non-competitive situations as defined by the city's current procurement policy.

(6) For the emergency related services procured during a declared state of emergency.

(7) All other exceptions will need to be justified and waiver approved by the city manager or designee for general government or the general manager or designee for Gainesville Regional Utilities.

(Ord. No. 180999 , § 1, 12-3-20)

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

(Ord. No. 001261, § 1, 3-29-04; Ord. No. 050896, § 1, 3-27-06)

Sec. 2-621. Definition.

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

(Ord. No. 001261, § 2, 3-29-04; Ord. No. 050896, § 1, 3-27-06; Ord. No. 070022, § 1, 6-25-07)

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

In bidding of, or letting contracts for procurement of, supplies, materials, equipment and services, as described in the purchasing policies, the city commission, or other purchasing authority, may give a preference to local businesses in making such purchase or awarding such contract in an amount not to exceed five percent of the local business' total bid price, as described below, and in any event the cost differential should not exceed $25,000.00. Total bid price shall include not only the base bid price but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other authority. In the case of requests for proposals, letters of interest, best evaluated bids, qualifications or other solicitations and competitive negotiation and selection in which objective factors are used to evaluate the responses, local businesses are assigned five percent of the total points of the total evaluation points.

(Ord. No. 001261, § 3, 3-29-04; Ord. No. 050896, § 1, 3-27-06)

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

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

(1) Good or services provided under a cooperative purchasing agreement;

(2) Contracts for professional services procurement of which is subject to the Consultants' Competitive Negotiation Act (F.S. § 287.055) or subject to any competitive consultant selection policy or procedure adopted or utilized by the city commission or charter officer;

(3) Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference; or

(4) Purchases made or contracts let under emergency or noncompetitive situations, or for litigation related legal services, etc., as such are described in the city's purchasing policies;

(5) Purchases with an estimated cost of $50,000.00 or less;

(6) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation of the charter officer and approval of the city commission. The preferences established herein in no way prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals. Further, the preferences established herein in no way prohibit the right of the city commission or other purchasing authority from giving any other preference permitted by law in addition to the preference authorized herein.

(Ord. No. 001261, § 4, 3-29-04; Ord. No. 050896, § 1, 3-27-06)

Sec. 2-624. Application, enforcement.

The local preference shall apply to new contracts for supplies, materials, equipment and services first solicited after October 1, 2004. This article shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.

(Ord. No. 001261, § 5, 3-29-04; Ord. No. 050896, § 1, 3-27-06)

Secs. 2-625—2-629. Reserved.

ARTICLE XI. PURCHASING REQUIREMENTS FOR CERTAIN CITY CONSTRUCTION PROJECTS

Sec. 2-630. Definitions.

The following words and phrases used in this article shall have the following meanings unless a different meaning is clearly required by the context:

Apprentice means any person who is enrolled and participating in an apprenticeship program registered with the State of Florida Department of Education and/or the United States Department of Labor.

Construction means the building (verb), altering, repairing, improving, demolishing or replacing of any public structure, roadway, utility or other public improvement.

Construction project (or *"project"*) means any construction contracted by the city the anticipated total bid price of which equals or exceeds $300,000.00 for construction or $75,000.00 for electrical work. The total bid price shall include not only the base bid price but also any adjustments to the base bid price which are a result of alternates requested by the city.

Cooperative purchasing agreement means purchases made through a public agency contract which allows the use of the contract by other agencies under the same pricing and contract terms.

Disadvantaged worker means (i) a person who has a criminal record, (ii) a disabled veteran, (iii) a person who is homeless, (iv) a person without a GED or high school diploma, (v) a person who is a custodial single parent, (vi) a person who is emancipated from the foster care system, or (vii) a person who has received public assistance benefits within the six months preceding employment by the prime contractor or subcontractor. Public assistance benefits means unemployment benefits, Medicare or Medicaid benefits, or food assistance benefits as administered by the federal government or State of Florida.

Employ (or *employed*) means to permit a person to work for wages.

Labor hours means the actual time that is spent working on the site of a construction project by workers who are employed by the prime contractor or subcontractor, or who are performing offsite fabrication in direct support of the construction project. Labor hours excludes hours worked by forepersons, superintendents, owners, professionals (such as architects, engineers or surveyors), or administrative/office staff.

Manager means the city manager and/or the general manager for utilities, as applicable, or their designees.

Prime contractor means the party or parties to a contract with the city for a construction project.

Subcontractor means any party or parties that, through a secondary contract with the prime contractor, performs some or all of the obligations of the prime contractor on a construction project.

(Ord. No. 200586 , § 1, 4-1-21)

Sec. 2-631. Apprentice and disadvantaged worker requirements.

(a) At least ten percent of all labor hours performed on a construction project shall be performed by apprentices and at least ten percent of all labor hours performed on a construction project shall be performed by disadvantaged workers. Labor hours worked by a person who is both an apprentice and a disadvantaged worker shall count toward meeting both requirements. The apprentices and disadvantaged workers may be employed by the prime contractor and/or subcontractor.

(b) The prime contractor must make, and require an subcontractor to make, good faith efforts to replace any apprentice or disadvantaged worker who ceases working on the construction project with another apprentice or disadvantaged worker.

(c) When responding to a solicitation for a construction project, the prime contractor must demonstrate that at least ten percent of all labor hours on that project will be performed by apprentices. The response must include, at a minimum:

(1) The estimated total labor hours for the construction project;

(2) A description of the type of labor and estimated labor hours to be performed by apprentices; and

(3) Identification of the apprenticeship program(s) and the agency or entity who is responsible for overseeing the apprenticeship program which the prime contractor and/or subcontractor anticipate utilizing.

(d) When responding to a solicitation for a construction project, the prime contractor must demonstrate that at least ten percent of all labor hours on that project will be performed by disadvantaged workers. The response must include, at a minimum:

(1) The estimated total labor hours for the construction project;

(2) A description of the type of labor and estimated labor hours to be performed by disadvantaged workers; and

(3) A list of the resources that will be used to recruit disadvantage workers.

(Ord. No. 200586 , § 1, 4-1-21)

Sec. 2-632. Compliance; corrective action; enforcement.

(a) The contract for a construction project between the city and a prime contractor shall include a provision requiring the prime contractor to comply with the requirements of this article, unless the requirements were waived by the manager pursuant to section 2-633 or the construction project is exempt pursuant to section 2-635, and a provision advising that failure of the prime contractor to comply with the requirements of this article may result in termination of the contract.

(b) If the prime contractor is unable to achieve the required percentage of labor hours performed by apprentices and disadvantaged workers, the prime contractor must submit documentation to the manager evidencing the prime contractor made good faith efforts to comply. Good faith efforts documentation includes, but is not limited to, proof the prime contractor: (i) conducted at least one monthly outreach event; (ii) placed at least two monthly advertisements in two different community targeted local publications to promote prime contractor's monthly outreach event and to inform the public of apprenticeship and disadvantaged worker employment opportunities; (iii) worked with workforce development organizations to recruit apprentice and disadvantaged worker applicants; and (iv) registered job openings, and required subcontractors to register job openings, with social service organizations that offer same. Upon receipt and review of the documentation, the manager may waive or lower the required percentage as set forth in section 2-633.

(c) The prime contractor shall keep, and require subcontractors to keep, records that document:

(1) The total labor hours for the construction project;

(2) The total labor hours performed by apprentice and disadvantaged workers;

(3) The apprentice and/or disadvantaged worker status for each such person;

(4) The name, address, work classification and hours worked each pay period for each apprentice and disadvantaged worker on the construction project.

The prime contractor shall submit these records to the manager each quarter and upon completion of the work and at any time upon request of the manager. The records shall be cumulative for the duration of the construction project.

(d) If the prime contractor has not met the requirements of this article and they have not been waived or lowered pursuant to section 2-633, the manager will provide written notice of violation to the prime contractor. The prime contractor must take action to correct the violation within 30 days of receipt of the written notice, unless the manager determines that a longer time period is necessary and in the best interest of the city. Failure of the prime contractor to correct the violation within the time period specified by the city may result in the city terminating the contract and/or seeking other remedies, including damages.

(Ord. No. 200586 , § 1, 4-1-21)

Sec. 2-633. Manager authority.

(a) The manager is authorized to prepare administrative policies and procedures to implement, monitor and enforce the requirements of this article.

(b) The manager is authorized to waiver or lower the apprentice and/or disadvantaged worker requirements in the solicitation documents if the manager determines that the construction project involves a high proportion of equipment and/or material costs compared to the anticipated labor hours, or in the case of the apprentice requirements, that there is an insufficient number of apprentices available for the type of labor in the project. The manager shall document in writing their reasoning for the waiver or lowering of the requirements.

(c) After bid opening and prior to award of a contract, the manager is authorized to waive the apprentice and/or disadvantaged worker requirements or reject all bids and re-solicit, if none of the responses meet the requirements of section 2-631(c) and (d).

(d) During the performance of a construction contract, the manager is authorized to waive or lower the apprentice and/or disadvantaged worker requirements during the performance of a construction project, upon finding that despite documented good faith efforts, as described in section 2-632(b), the prime contractor is unable to meet the requirements. The manager shall document in writing their reasoning for the waiver or lowering of the requirements and the waiver or lower requirement shall be documented in an amendment to the contract with the prime contractor.

(e) The manager shall annually provide a report to the city commission regarding the employment of apprentices and disadvantaged workers in construction projects. At a minimum, the report must include the total dollar value of awards of construction projects, the number of apprentices and disadvantaged workers who worked on such projects, the total number of labor hours worked on such projects and the number of labor hours worked by apprentices and disadvantaged workers on such projects.

(Ord. No. 200586 , § 1, 4-1-21)

Sec. 2-634. Living wage exception for apprentices.

If a wage is set by the registered apprenticeship program in which the apprentice is enrolled, the prime contractor or subcontractor shall pay that wage to the apprentice. If a wage is not set by the apprenticeship program, the city's living wage requirements as set forth in article IX of this chapter shall apply.

(Ord. No. 200586 , § 1, 4-1-21)

Sec. 2-635. Exemptions.

The requirements set forth in this article shall not apply to any of the following:

(a) Construction projects where application of the apprentice or disadvantaged worker requirement is prohibited or in conflict with federal or state law or the terms of a federal or state grant applicable to the construction project;

(b) Construction projects that are awarded under a cooperative purchasing agreement;

(c) Construction projects awarded through another public agency's procurement process when the city's involvement is limited as set forth in an interlocal agreement, or other document; or

(d) Construction projects necessary to address an emergency situation.

(Ord. No. 200586 , § 1, 4-1-21)

Secs. 2-635—2-639. Reserved.

ARTICLE XII. RETIREE HEALTH INSURANCE PROGRAM AND TRUST FUND[33]

Sec. 2-640. Purpose.

The purpose of the retiree health insurance program and trust fund is to accumulate, invest and manage the funds described in section 2-642 that are necessary to meet the premium costs of providing health insurance to eligible retirees and their eligible dependents and beneficiaries through the program of self insurance and/or insurance provided by the City of Gainesville. This is accomplished pursuant to a trust, which trust assets are dedicated to providing benefits to eligible retirees and their eligible dependents through the payment of health insurance premiums, and which trust assets are protected from the creditors of the city. The program encourages use of other health care systems, such as Medicare.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-641. Definitions.

City shall mean the City of Gainesville, Florida.

City group health plan shall mean the group insurance or self insurance plan(s) maintained by the city to provide health coverage for eligible employees, retirees and dependents.

Credited service shall mean service with the city upon which the retirement benefit the retiree is receiving (or will be receiving in the case of delayed retirement) is based, or would be based in the case of an "ICMA" retiree.

Current premium costs shall mean the payment of the current months premium owed or owing to the city group health plan for such month's retiree health insurance coverage as of the effective date of the termination of the plan pursuant to section 2-652(b).

DROP means a deferred retirement option program as set forth in the city firefighters retirement plan.

Participant means a retiree or dependent as defined in the city group health plan.

Premium shall mean the monthly amount(s) the city charges for retiree health insurance coverage, including, if applicable, under a Medicare supplement plan, as established by the city manager.

Retiree shall mean:

(1) A former employee, who is a member of the city employees pension plan or a member of the consolidated police officers and firefighters retirement plan and received, immediately after separation from employment, a monthly annuity pursuant to an application for normal or early retirement, in accordance with the provisions of these pension plans; or

(2) A former employee upon whose behalf employer contributions were made to the ICMA deferred compensation program and/or 401(a) plan and who, at the time of their separation from the city,

[33]Editor's note(s)—The provisions contained in this article, and the repeal of former Art. XI of this chapter, are effective January 1, 2009.

would have met the age and/or service requirements for normal or early retirement under the city employee pension plan or the consolidated police officers and firefighters retirement plan as applicable to the classification they held at the time of their separation, and would have been entitled to the immediate receipt of a monthly annuity; or

(3) A former employee, who is a member of the consolidated police officers and firefighters retirement plan and is receiving a monthly annuity pursuant to an approved application for disability retirement in accordance with the provisions of that pension plan; or

(4) A former employee of the city receiving a monthly benefit pursuant to an approved application for disability retirement under the city employee's disability plan or disability benefit under the city employees pension plan.

Retiree health insurance program shall mean the retiree health insurance program established pursuant to this article as further described herein to pay a portion of the premium costs of the city group health plan for eligible retirees of the city and then eligible dependents, and as may be amended.

(Ord. No. 080155, § 1, 9-4-08; Ord. No. 170102 , § 1, 7-6-17)

Sec. 2-642. Trust fund established; contributions.

(a) *Establishment.* There is hereby created a trust fund to be known as the retiree health insurance trust fund (the "trust fund"). the creation and maintenance of the trust fund's assets shall be in accordance with and for the benefit of the retiree health insurance program, described in this article. The trust fund shall initially consist of an amount equal (i) all trust assets of the retiree health insurance trust fund described in article XI of this chapter, which retiree health insurance program and trust fund, all liabilities having been satisfied, is being terminated by the ordinance from which this article derives, except for the principal and all earnings derived from the issuance by the City of Gainesville, Florida, Taxable and Other Post Employment Benefits Obligations Bonds - Series 2005 (retiree health plan), and (ii) such other amount transferred from the assets of such terminated program and trust as is necessary to fund the retiree health insurance program created by this article, as determined by an actuarial valuation performed by the city, which amounts shall be irrevocably transferred to said trust fund after adoption of the ordinance from which this article derives. Any remaining assets of the terminated trust shall be returned to the city, where they may be used for any lawful purpose.

(b) *Contributions.* In addition to premium payments made by retirees, gifts to the fund accepted by the city, and earnings, the city manager shall irrevocably transfer and/or deposit in the fund sum(s), which together with the other sources of income to the fund shall be sufficient to pay for the premium for health insurance benefits of the participants, including both the normal costs of such benefits and those necessary to amortize the unfunded liability (excluding that resulting from any implicit subsidy) for such benefits over a period of not longer than 40 years. For the purpose of securing the necessary funds, the city commission is hereby authorized to levy such taxes and generate such other revenues as may be necessary to provide the appropriate level of city contributions.

(c) *Disbursements.* Monies in this fund may be disbursed only to the city group health plan for the payment of premiums for retiree health insurance for participants of the city group health plan and for the costs associated with managing, administering, and operating the retiree health insurance program and the retiree health insurance trust fund and any appropriate transfers as described herein.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-643. City contributions for future retirees.

For persons retiring, or applying for retirement, as applicable, after the dates set forth in this section, the city contribution towards a monthly premium shall be determined as follows:

(1) *Normal or early retirement.* Subject to the provisions contained herein, the amount that the city will contribute towards the required premium for persons first retired effective after August 31, 2008, under normal or early retirement, will be calculated in accordance with the following formula:

Ten dollars × number of years of credited service and portion thereof of:

a. Plus $5.00 × number of years of age and portion thereof over 65, on the date that retiree first accesses (enters) the retiree health insurance program; or

b. Minus $5.00 × number of years of age and portion thereof under 65, on the date that retiree first accesses (enters) the retiree health insurance program.

(2) *DROP service.* Employees who have entered a regular DROP after August 31, 2008, or who declare their intention to reverse DROP after August 31, 2008, shall not have the period of employment while in regular DROP, or the period of employment after the effective date of commencement of participation in the (reverse) DROP, count as credited service under subsection (a) above.

(3) *Disability retirees.* The amount that the city will contribute towards the required premium, for persons who became retirees based upon an application for disability retirement submitted after August 31, 2008, will be:

a. For approved "in-line-of-duty" disabilities under the consolidated police officers and firefighters retirement plan, the city employees disability plan, or the city employees pension plan, the city will contribute towards an individual premium an amount equal to 80 percent of the individual premium of the least costly (lowest premium) city group health insurance plan option being offered at the time the disability retirement is approved.

b. For approved "in-line-of-duty" disabilities under the consolidated police officers and firefighters retirement plan, the city employees disability plan, or the city employees pension plan, the city will contribute towards any other (than described in subsection a. above) tier of coverage an amount equal to 150 percent of the individual premium of the least costly (lowest premium) city group health insurance plan option being offered at the time the disability retirement is approved.

c. For approved disabilities other than "in-line-of-duty", the city will contribute 50 percent of the amount described in subsections a. and b. above.

(Ord. No. 080155, § 1, 9-4-08; Ord. No. 170102 , § 2, 7-6-17)

Sec. 2-644. City contribution for current retirees.

For persons retiring or applying for retirement, as applicable, before the dates set forth in this section, the city contribution towards a premium shall be determined as follows:

(1) *Normal or early retirement.* Subject to the provisions contained herein, the amount that the city will contribute towards the required premium for persons first retired effective before September 1, 2008, under normal or early retirement will be calculated in accordance with the following formula:

Ten dollars × number of years of credited service and portion thereof of:

a. Plus $5.00 × number of years of age and portion thereof over 65, on the date that retiree first accessed (enters) the retiree health insurance program or January 1, 2009, whichever is later; or

b. Minus $5.00 × number of years of age and portion thereof under 65, on the date that retiree first accesses (enters) the retiree health insurance program or January 1, 2009, whichever is later.

(2) *DROP service.* Employees who have entered a regular DROP before September 1, 2008, or who have declared their intention to reverse DROP before September 1, 2008, shall have the period of employment while in the regular DROP, or the period of employment after the effective date of commencement of participation in the (reverse) DROP, added to credited service for purposes of the calculation under subsection (1) above.

(3) *Disability retirees.*

a. The amount that the city will contribute towards the required premium, for persons who became retirees based upon application for disability retirement submitted before September 1, 2008, will be an amount equal to 80 percent of the individual premium of the least costly (lowest premium) city group health plan option being offered at that time.

b. The city will contribute towards any other (than described in subsection a. above) tier of coverage of an amount equal to 150 percent) of the individual premium of the least costly (lowest premium) city group plan option being offered at that time.

(4) *Retirees at least 65 years of age January 1, 2009.* For current retirees age 65 years or older on January 1, 2009, the amount the city will contribute towards the required Premium will be the greater of the amount contributed for the month of August 2008 or the amount determined under the provisions of this article. Said amount shall however be subject to the limitations and adjustments described in sections 2-646 and 2-647.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-645. Opting-out and re-entry; rehired retirees.

(a) A retired participant may exercise a one-time opt-out and re-enter the city group health plan or Medicare supplement plan in the future. The retiree and any dependents covered at the time of the opt-out will be able to re-enter the city group health plan, subject to eligibility requirements of the of the city group health plan, without pre-existing condition waiting periods applying to such retirees and dependent(s). In addition, a retiree/participant may choose to not exercise his/her initial enrollment opportunity and this will not count as his/her one-time opt-out. Also, an employee non-participant who was eligible to apply for coverage during the most recent annual enrollment period (and any dependents who would have been eligible for coverage at that time) who does not elect to enter the plan at the time of retirement (initial enrollment) will also not have this count as his/her one-time opt-out.

Opt-out means the retiree's ability to terminate coverage with the city group health plan after becoming a retiree as defined by the city group health plan.

(1) The opt-out applies to:

a. Termination of the contract

b. Dependents can be terminated subject to enrollment provisions of the city group health plan.

(2) Termination of the contract effective date:

a. If during open enrollment period, end of the plan year

b. If voluntary, end of the month in which the election is made.

(3) Termination of dependent coverage effective date:

a. When eligibility ends as defined by the city group health plan.

b. If voluntary, end of the month in which the election is made.

(b) *Opting-out and its effect on the city contribution.* The intent of the opt-out provisions is to give the retiree an opportunity to decline or terminate coverage under the city's group health plan one-time without foregoing the benefit (eligibility to participate in the city group health plan) in the future. The benefit to the city is the transfer of premium cost and claims risk to another health plan during the opt-out period. Except as provided below, the city will recalculate the city's contribution based on the retiree's age upon re-entry into the city group health plan or the Medicare supplement plan, if applicable. This will potentially increase the city's contribution towards the retiree's monthly health insurance premium.

(c) The retiree's city contribution shall be recalculated upon re-entry to the city group health plan or Medicare supplement plan when opting-out results in a transfer of claims risk from the city group health plan. A retiring employee (participant or not) might elect to not enroll initially, or opt-out later when:

(1) Retiree choosing coverage with a successor employer.

(2) Retiree becomes a covered dependent under a non-city-employee spouse's health plan.

(3) Retiree is covered under an individual policy.

(4) Retiree elects not to carry health insurance.

(5) Retiree elects to participate in a city sponsored Medicare supplement plan.

(d) The retiree's city contribution shall not be recalculated when the opt-out does not result in a transfer of claims risk from the city group health plan. examples of this would be:

(1) Retiree transfers coverage to a city employee spouse's plan. In this case the spouse would be an active city employee.

(2) Rehired retiree (see rehired retiree provision below).

In the cases immediately above, the retiree's city contribution will be frozen at the initial city contribution (not recalculated upon re-entry but subject to adjustment per section 2-647) because decreasing the age reduction would be inconsistent with the transfer of risk policy. Upon re-entry, the city contribution would be based on calculation described in sections 2-643(a) and 2-644(a) when the retiree first entered the plan, or was first eligible to enter the plan.

(e) *Opting-In (other than initial enrollment period) Effective Date of Coverage.* The effective date of coverage upon re-entry to the City Group Health Plan (opting-in) will be the first day of the month following the election to opt-in.

(f) *Rehired Retirees.* In the event a retiree is rehired by the City of Gainesville as a regular employee, the rehired retiree is treated as an active employee for the purposes of benefits during such period or re-employment. This includes participation in the City Group Health Plan. If the rehired retiree continues health insurance with the City of Gainesville, the retiree is considered an active employee and will pay the premium associated with an active employee in the same tier. Credited service earned as a rehired retiree shall not count as credited service under section 2-643(1) and section 2-644(2). Upon re-entry to the retiree health insurance program, the rehired retiree's benefit will not be recalculated based upon age at re-entry (see subsection (d) above).

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-646. Limitations on contributions.

(a) Except as may be required by the application of section 2-644(4), in no event shall the city's contribution toward a required premium exceed the amount of the premium the city contributes for active employees for the least costly (lowest premium) city group health plan option being offered at that time, for the applicable tier of coverage involved. In the event that the eligible retiree has elected to participate in the city sponsored, if any. Medicare supplement plan in lieu of participating in the city group health plan(s), the city's contribution shall not exceed the amount of the premium for the Medicare supplement plan.

(b) Retiree and dependents participating in the city group health plan or Medicare supplement plan will be required to authorize payment of premiums from RHS accounts or pension annuities, where sufficient funds are reasonably available for such purposes, in order to remain eligible to receive contributions from the city towards the premium.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-647. Annual adjustments.

Subject to section 2-646, limitations on contributions, the city's contribution towards the required Premium will be adjusted annually at rate of 50 percent of the annual percentage change in the individual premium for the least costly (lowest premium) city group health plan option being offered, compared to the premium of the least costly (lowest premium) option offered the prior plan year.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-648. Administration of the program.

(a) *General supervision.* The general supervision of the retiree health insurance program shall be the responsibility of a board of trustees established in accordance with this section.

(b) *Board of trustees.* There is hereby created a board of trustees whose duty shall be to administer, manage and operate the retiree health insurance program carrying into effect its provisions. The members of the board of trustees shall be the members of the city commission.

(c) *Trustees' term.* Members of the city commission shall serve as trustees of the program during their term of office as members of the city commission.

(d) *Compensation of trustees.* Trustees of the program shall serve without compensation for their services as trustees.

(e) *Meetings of the board; form.*

(1) The board shall hold meetings as required, and shall designate the time and place thereof. It shall adopt its own rules and procedures and shall keep a record of its procedure. All meetings of the board shall be public.

(2) The majority of the board shall constitute a quorum at any meeting of the board. Each trustee shall be entitled to one vote at the meeting of the board and at least four concurring votes shall be necessary for decisions of the trustees.

(f) *Retirement program officers:*

(1) The mayor of the city commission shall be the chair of the board and the mayor pro-tem of the commission shall be the chair pro-tem of the board.

(2) The city clerk shall be the secretary of the board.

(3) The director of finance shall be the treasurer of the program and shall be custodian of the funds. The city manager shall be the program administrator and shall have the power to finally approve members' or beneficiaries' claims for benefits, to issue rules, and otherwise interpret the program.

(4) The city attorney shall be legal advisor to the board.

(5) The program administrator shall employ such professional and clerical services as required for the proper operation of the program and provide for their compensation.

(g) *Actuarial evaluation; annual report.* The treasurer of the program shall keep or cause to be kept such data as shall be necessary for an actuarial valuation of the assets and liabilities of the program. On a periodic basis, at least once every two years, the retiree health insurance program shall be subject to an actuarial evaluation which shall determine the adequacy of the payments into the fund to meet premium requirements and shall determine the changes in contributions, if any, needed in such to achieve the funding through premiums, earnings, and other sources of income that is deemed adequate to enable payment through the indefinite future of the retiree health insurance program described herein. As may be required, an actuarial report shall be prepared which shall include a description of the current total premium, current retiree premium payment, and current city contributions; a valuation of present assets based upon statement value and prospective assets and liabilities of the retiree health insurance program fund and the extent of unfunded liabilities; a plan to amortize any unfunded liabilities; a description of actions taken to reduce unfunded liabilities; a description and explanation of actuarial assumptions, a schedule illustrating amortization of any unfunded liabilities; a comparative review illustrating the level of funds available to the plan from premiums, investment income, and other sources realized over the period covered by the report with the assumptions used; and a statement by the actuary that the report is complete and accurate and that in his opinion the techniques and assumptions used are reasonable and meet the requirements and intent of this article. The board shall cause to be made an annual audit showing the fiscal transactions of the program for the preceding fiscal year. The most recent report showing the financial condition of the program by means of an actuarial valuation of its assets and liabilities shall be attached to the report.

(h) *Administrative regulations.* The program administrator may promulgate regulations not in conflict with the terms of this article to cover the operation of any phase or part of the retiree health insurance program that is defined in this article. Copies of the rules and regulations shall be furnished to any eligible retiree or dependent participant upon request and at least one copy thereof shall be kept available in the office of the city clerk for examination by any interested person at any time during ordinary business hours. The most current report of pertinent financial and actuarial information on the solvency and actuarial soundness of the retiree health insurance program shall be kept available in the office of the city clerk for examination and shall be provided at no cost to the program members upon their request.

(i) *Interpretation of the retiree health insurance program, denial of benefits.* The board and administrator have the power to construe the provisions and terms of the retiree health insurance program, and their construction made in good faith shall be final and conclusive. There shall be timely, adequate written notice given to any whose claim for eligibility under the terms of the retiree health insurance program have been denied, setting forth the specific reasons for such denial and the program administrator shall provide procedures for appeals of such decisions.

(j) *Agents and employees.* The program administrator shall have the power to select, employ and compensate, or cause to compensate from time to time such consultants, actuaries, accountants, investment counsel, and other agents and employees as the retiree health insurance program administrator may deem necessary and advisable in the proper and efficient administration of the program. The city attorney shall have the power to select, employ and compensate, or cause to compensate, from time to time an attorney as the city attorney may deem necessary and advisable in the proper and efficient administration of the retiree health insurance program.

(k) *Other powers and duties.* The powers and duties of the board or of any other person as set out herein are not intended to be complete and exclusive but each such body or person shall have powers and duties as they are reasonably implied under the terms of this article.

(l) *Duties of the secretary.* It shall be the duty of the secretary to keep minutes and records of the acts of the board under this program separate and apart from minutes of the city commission meetings and these shall be maintained in the office of the city clerk.

(m) *Membership records.* All notices, elections, designations and changes in beneficiary, and similar writings pertaining to the operation of the program shall be made and preserved in writing on such forms as the administrator may direct. A service record for each member shall be maintained in the risk management department which shall show, at least:

(1) For each participant of the system, a number or other means of identification, date of birth, sex, date of employment, current address, period of credited service;

(2) Beginning date of participation, date and type of retirement and amount of monthly benefit, and type of survivor benefit. In order to receive benefits under this program, the participant or beneficiary, upon request, shall be required to submit, or authorize the administrator to secure, any information concerning his/her entitlement to eligibility and contributions or other information reasonably related to the operation of the program.

(n) *Fiduciary duties.* The board of trustees and retirement program officers shall, in the performance of program duties, discharge their duties with respect to the program solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the program. The program may purchase insurance for its fiduciaries to cover liabilities or losses incurred by reason or acts or omissions of the fiduciaries.

(o) *Investment of funds.* The program administrator shall have full power to invest and reinvest all funds within its control and to make investments of all kinds except as otherwise provided by statute or ordinance or policy direction of the board of trustees.

(p) *Errors.* Should any change or error in the records result in any participant or beneficiary contributing to the program more or less than he/she would have been entitled had the records been correct, the program administrator shall correct such error and as far as practical shall adjust the contributions in such manner that so as to correct such error or underpayment within a reasonable period of time.

(Ord. No. 080155, § 1, 9-4-08; Ord. No. 210562 , § 14, 6-16-22)

Sec. 2-649. Separability and construction.

If any section, subsection, sentence, clause, or phrase of this article be held to be invalid or unconstitutional, such adjudication shall not in any manner affect the remaining portions of this article, which shall be, and remain, in full force and effect, as fully as if the portion so adjudicated invalid or unconstitutional were not originally a part thereof. The section headings included in this article shall not be construed to limit the text included thereunder.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-650. Protection against fraud and deceit.

Whosoever with intent to deceive shall make or cause to be made any statement, report, certificate, election, notice, claim or other instrument, authorized or required under this article, whether of the enumerated classes or otherwise, which shall be untrue, or shall falsely or cause to be falsified any record comprising a part of

the operation or administration of this program contemplated by this article shall be punished as provided in section 1-9 of this Code.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-651. Limitations of assignment.

None of the assets shall be subject to the claim or to any legal process of any creditor of the participant or the city. No participant or other persons or entity shall have any interest in, or right in or to, the trust fund or any part thereof, or any assets comprising the same, except only as to the extent expressly provided in this article.

(Ord. No. 080155, § 1, 9-4-08)

Sec. 2-652. Amendment; termination of the program.

(a) *Power to amend.* The city commission shall have the right, at any time, to amend any or all of the provisions of the retiree health insurance program; provided, however, that no such amendment shall authorize or permit any part of the trust fund to be diverted for purposes other than for the exclusive benefit of retirees and their dependents and beneficiaries.

(b) *Termination of program.* The city commission expects to continue the retiree health insurance program indefinitely, but reserves the right to terminate the retiree health insurance program and/or city contributions hereunder at any time. In the event of the termination of the retiree health insurance program, the rights, if any, of all participants to assets utilized to pay premiums of participants up to the date of termination shall be non-forfeitable. Notwithstanding anything herein to the contrary, in the event of termination of the retiree health insurance program and trust fund, if arrangements have been made for the payment of the full amount of the current premium costs for the benefits provided under the retiree health insurance program for the participants and their dependents and beneficiaries, through the trust fund, so that the retiree health insurance program has no unfunded liability under the retiree health insurance program remaining, then the remaining assets in the retiree health insurance trust fund shall be returned to the city to be used for any legally permitted purpose, and the city shall have no further liability under the retiree health insurance program after the effective date of such termination.

(Ord. No. 080155, § 1, 9-4-08)

Chapter 3 ECONOMIC DEVELOPMENT

ARTICLE I. ENTERPRISE ZONE

Sec. 3-1. Gainesville Enterprise Zone Area.

(a) The area described in subsection (b) below has been found and determined:

(1) To chronically exhibit extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;

(2) That the rehabilitation, conservation or redevelopment of the area is necessary in the interest of public health, safety, and welfare of the residents of the city; and

(3) That the revitalization of the area can occur only if the private sector can be induced to invest its own resources to build or rebuild the economic vitality of the area;

Such area shall be known as the "Gainesville Enterprise Zone Area" in which the city shall undertake activities to decrease levels of poverty, unemployment, physical deterioration, and economic disinvestment in accordance with this article.

(b) The area shall consist of all the land lying within the boundaries described as follows:

ALL THAT AREA LYING WITHIN THE EXISTING CITY OF GAINESVILLE LIMITS BEING EAST OF WEST 6TH STREET FROM THE SOUTHERLY RIGHT-OF-WAY LINE OF NW 53RD AVENUE TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SW ARCHER ROAD; AND ALL THAT AREA LYING EAST OF SW 13TH STREET AND THOSE PROPERTIES ABUTTING THE WEST LINE OF SW 13TH STREET, ALL BEING BETWEEN ARCHER ROAD AND THE SOUTHERLY CITY LIMIT LINE EXCLUDING THE SHANDS HOSPITAL PROPERTY; AND THAT AREA WITHIN THE EXISTING CITY LIMITS BEING BOTH NORTH OF NE 53RD AVENUE AND EAST OF NE 15TH STREET.

ALSO, THAT PORTION OF AREA NO. 3 OF THE FORMER ENTERPRISE ZONE PER CITY ORDINANCE NO. 4069, LYING WEST OF WEST 6TH STREET, EAST OF WEST 13TH STREET, SOUTH OF NW 8TH AVENUE AND NORTH OF ARCHER ROAD (STATE ROAD NO. 24) AND THAT PORTION OF SAID EXISTING AREA NO. 3 LYING WEST OF NW 13TH STREET, SOUTH OF NW 5TH AVENUE, EAST OF NW 19TH STREET AND NORTH OF UNIVERSITY AVENUE (STATE ROAD NO. 26).

The area is depicted on the map attached as Exhibit "A" to Ord. No. 170722 , and made a part hereof, said map also being on file in the city's office of economic development and innovation.

(Ord. No. 170580 , § 4, 1-4-18; Ord. No. 170722 , § 4, 2-1-18)

Sec. 3-2. Gainesville Enterprise Zone Programs.

(a) *Manufacturing retention/expansion incentive program for electric service.*

(1) *Creation and purpose of program.* There is hereby created an economic development incentive program known as the "manufacturing retention/expansion incentive program for electric service." The purpose of the program is to encourage manufacturing businesses to stay within or expand within the Gainesville Enterprise Zone Area. The program provides reimbursement for 20 percent of the Gainesville Regional Utilities (GRU) Customer Charge, Demand (kW) Charge and Energy (kWh) Charge, after application of any other discounts, paid by the manufacturing business. Each year during the city's budget process, including the amendatory budget process, the city commission may, in its sole discretion, decide whether to fund this program. If the program is funded, new applications will be processed in order of date and time received and approvals will be limited to the funding, if any, provided for the program in the city budget.

(2) *Eligibility.* In order to apply for the program, a business must meet the following requirements:

a. Be an existing non-residential customer receiving electric utility service from GRU;

b. Have a minimum annual average electric usage of 400,000 kilowatt hours per month, calculated as the total kilowatt hours usage during the previous 12 full months divided by 12;

c. Not have any delinquencies in payment of its GRU bill within the 12 months immediately preceding the application date;

d. Be engaged in manufacturing (as defined in Sector 31-33 of the North American Industry Classification System, as same may be updated from time to time) within the Gainesville Enterprise Zone Area; and

e. Must demonstrate that it is actively seeking to relocate its manufacturing operations outside of the Gainesville Enterprise Zone Area or that it is seeking to expand (defined as a minimum additional average annual monthly usage of 100,000 kilowatt hours on the same site and not transferred from another site receiving GRU electric service) its manufacturing operations within the Gainesville Enterprise Zone Area.

(3) *Application process.* A business that meets the above requirements may apply for the program by submitting an application on the form provided by the city. Upon receipt of a complete application, the city commission will evaluate the application to determine, in its sole discretion, if:

a. All eligibility requirements specified in subsection (2) above are met;

b. The business has demonstrated that "but for" the program, the business would either move its manufacturing operations outside of the Gainesville Enterprise Zone Area or would not expand its manufacturing operations within the Gainesville Enterprise Zone Area;

c. The manufacturing operations are consistent with the city's economic development strategic action plan on file on the city's economic development and innovation webpage; and

d. The manufacturing operations are consistent with the city's comprehensive plan and are not the subject of any pending citation(s) for violation of the city's code of ordinances.

(4) *Program terms.* Approval by the city commission will be subject to the following program terms:

a. The incentive granted shall be for a term of four years, with an opportunity to request one extension for up to an additional four years. The city commission may determine, in its sole discretion, to grant or deny the extension. No applicant may receive more than eight years of incentive payments under this program;

b. The business shall remain actively engaged in manufacturing (as defined in Sector 31-33 of the North American Industry Classification System, as same may be updated from time to time) within the Gainesville Enterprise Zone Area throughout the term of the incentives;

c. The business shall maintain a minimum annual average electric usage of 400,000 kilowatt hours per month, calculated as the total kilowatt hours usage during the previous 12 full months divided by 12 throughout the term of the incentives;

d. The business shall submit its invoice for reimbursement to the city manager or designee after the end of each fiscal quarter (December, March, June and September.) The invoice shall include copies of the actual GRU bills, that include the customer charge, demand (kW) charge and energy (kWh) charge, after application of any other discounts, paid by the business during that fiscal quarter pursuant to this program. Upon verification of actual amounts paid to GRU, the city will process the invoice for reimbursement to the business; and

e. In order to receive payment under this program, the approved applicant shall enter into a contract on the form provided by the city that includes the above program terms, along with other standard contract terms.

(Ord. No. 170580 , § 4, 1-4-18; Ord. No. 170722 , § 4, 2-1-18)

Chapter 25 TAXATION[1]

ARTICLE I. IN GENERAL

Sec. 25-1. Determination of rate of property taxation; proportioning of taxes to different funds.

The city commission shall by resolution, determine the rate of taxation within the city on real and personal property and shall specify such rate or rates to be so levied for each fund respectively and shall certify the aggregate to cover all such taxes and report the same to the county tax assessor and county tax collector as provided by general law and the county tax assessor and county tax collector, respectively, shall perform those duties in the process of assessing and collecting taxes on real and personal property within the city as provided by general law.

(Ord. No. 3337, § 1, 54-87)

Editor's note(s)—Ord. No. 3337, § 1, adopted May 4, 1987, amending § 25-13 of the 1960 Code, has been included as § 25-1 hereof at the editor's discretion.

Secs. 25-2—25-15. Reserved.

ARTICLE II. PUBLIC SERVICE TAX[2]

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

[1]Cross reference(s)—Administration, Ch. 2; department of finance, § 2-226 et seq.; finances generally, § 2-431 et seq.; schedule of fees, rates and charges, App. A.

State law reference(s)—Municipal finance and taxation, F.S. § 166.201 et seq.; taxation and finance generally, F.S. Ch. 192 et seq.

[2]Cross reference(s)—Utilities, Ch. 27.

State law reference(s)—Public service tax, F.S. § 166.231 et seq.

a unit, and shall include the state and any political subdivision, municipality, state 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.

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

(Code 1960, § 25-4; Ord. No. 3286, § 1, 9-29-86; Ord. No. 3662, § 1, 9-24-90; Ord. No. 970352, § 1, 10-27-97; Ord. No. 001358, § 2, 6-25-01)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 25-17. Levy.

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

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

(Code 1960, § 25-5; Ord. No. 3286, § 2, 9-29-86; Ord. No. 3662, § 2, 9-24-90; Ord. No. 950558, § 1, 9-11-95; Ord. No. 970352, § 1, 10-27-97; Ord. No. 001358, § 2, 6-25-01)

Sec. 25-18. Exemptions.

(a) *Political subdivisions, churches.* Purchases by the United States government, the State of Florida, and all counties, school districts and the city, and by public bodies exempted by law or court order, and by any recognized church of this state for use exclusively for church purposes, are exempt from the tax levied under section 25-17. Any religious institution that possesses a consumer certificate of exemption issued under F.S. ch. 212, is exempt from the tax on telecommunications services levied under section 25-17(c).

(b) *Fuel costs and purchased gas adjustments.* All increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973, are hereby exempt from the payment of the tax imposed by section 25-17. The following Gainesville Regional Utilities' fuel costs and adjustments are hereby exempt:

    (1) Electric fuel costs in excess of the October 1, 1973 cost of six and five-tenths mills ($0.0065) per kilowatt-hour.

    (2) Firm natural gas fuel costs in excess of the October 1, 1973 cost of sixty-nine and six one-hundredths mills ($0.06906) per therm.

    (3) Interruptible natural gas fuel costs in excess of the October 1, 1973 cost of fifty-five and sixteen one-hundredths mills ($0.05516) per therm.

    (4) Liquid propane gas fuel costs in excess of the October 1, 1973 cost of one hundred fifty-eight and eight-two one-hundredths mills ($0.15882) per gallon.

(c) *Special fuels, fuels in certain quantities and for certain uses.*

(1) For the purposes of this article, the tax imposed by section 25-17 shall not include the following:

a. Purchases of special fuels as defined in F.S. Ch. 209;

b. The purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines.

c. The purchase of natural gas or fuel oil by a public or private utility, including municipal corporations and rural electric cooperative associations, either for resale or for use as fuel in the generation of electricity.

(2) The extension of the utility tax authorized by F.S. § 166.231, to fuel oil as defined by this article is based upon the legislative finding that fuel oil as defined by this article is competitive with other utilities taxed by this article under the doctrine announced by the Florida Supreme Court in the case of *Central Oil Company v. Cheney* (Fla. 1971 253 So 2d 869). It is further determined and declared that items that are exempt under this article and other items which are not taxed under this article, such as coal, wood, charcoal and alcohol are not competitive with those other items that are taxed by this article.

(d) *Enterprise zones; partial exemption for qualified businesses.*

(1) Any business located within the enterprise zone established by Resolution R-95-6, shall be eligible to receive an exemption of 50 percent of the utility tax imposed by the city on the purchase of electrical energy if such business is a qualified business under the provisions of F.S. § 212.08, and is determined to be eligible for the exemption by the Department of Revenue.

(2) To receive the exemption, a business must file an application with the enterprise zone development agency on a form provided by the Department of Revenue for the purposes of F.S. §§ 166.231(8) and 212.08(15). A qualified business may receive the benefit herein provided for a period of five years from the billing period beginning not more than 30 days following notification to Gainesville Regional Utilities by the Department of Revenue that an exemption has been authorized. The benefits of this article shall expire on December 31, 2015. Any qualified business which has been granted an exemption under F.S. § 212.08(15) shall be entitled to the full benefit of that exemption as if expiration had not occurred on that date. Notwithstanding the expiration referenced above, if a subsequent audit conducted by the Department of Revenue determines that the business did not meet the criteria mandated in F.S. § 212.08(15), the amount of taxes exempted pursuant to this article shall immediately be due and payable to the City of Gainesville by the business, together with the appropriate interest and penalty, computed from the due date of each bill for the electrical energy purchased as exempt under this article.

(Code 1960, §§ 25-4, 25-5.1, 25-9; Ord. No. 3062, § 1, 9-24-84; Ord. No. 3261, § 1, 9-22-86; Ord. No. 3838, § 1, 3-1-93; Ord. No. 950800, § 1, 10-23-95; Ord. No. 970352, § 1, 10-27-97; Ord. No. 050668, § I, 12-12-05)

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

It shall be the duty of every seller of electricity, metered or bottled gas (natural, liquefied petroleum gas, or manufactured), water service, and fuel oil, within the corporate limits of the city to collect from the purchaser thereof for the use of the city, the tax levied by section 25-17 at the time of collecting the selling price thereof, and to report and pay over on or before the 20th day of each calendar month to the city manager or designee, all such taxes levied and collected during the preceding calendar month. It shall be unlawful for any seller to collect for any utility service without at the same time collecting the tax hereby levied unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser. Any seller failing to collect such tax at the time of collecting for any such utility service where the seller has not elected to assume and pay such tax shall be liable to the city for the amount of such tax; provided, however, that the seller shall not be liable for the payment of such tax upon uncollected bills. If any purchaser shall fail, neglect or refuse to pay for such utility service, including the

tax hereby imposed, the seller shall have the right and is hereby authorized and empowered to immediately discontinue further service to such purchaser until the tax and the seller's bill shall have been paid in full.

(Code 1960, § 25-6; Ord. No. 3286, § 3, 9-29-86; Ord. No. 3662, § 3, 9-24-90; Ord. No. 970352, § 1, 10-27-97; Ord. No. 001358, § 2, 6-25-01)

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

(a) *Records.* Each seller of services that are taxable under section 25-27 shall preserve applicable records relating to such taxes until the expiration of the time within which the city may make an assessment with respect to that tax. The city may, during the seller's normal business hours at the official location of the seller's books and records, audit the records of any seller of a service that is taxable under section 25-17, for the purpose of ascertaining whether taxable services have been provided or the correctness of any return that has been filed or payment that has been made. Each such seller must provide to the city, upon 60-days' written notice of intent to audit, access to applicable records for such service, except an extension of this 60-day period shall be granted if reasonably requested by the seller. The seller may at its option waive the 60-day notice requirement.

(b) *Monthly statements; payments.*

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

(2) Statements and payments shall be accepted as timely if postmarked on or before the 20th day of the month; if the 20th day falls upon a Saturday, Sunday, or federal or state holiday, statements and remittances shall be accepted as timely if postmarked on the next succeeding workday.

(Code 1960, § 25-7; Ord. No. 950558, § 2, 9-11-95; Ord. No. 970352, § 1, 10-27-97; Ord. No. 001358, § 2, 6-25-01)

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

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

(b) The city manager or designee shall prescribe, prepare and furnish forms for the reporting and return of the tax levied and collected under the terms of this article and sellers of utility service shall make all returns of the taxes collected by them on such forms. The city manager or designee is hereby further authorized to prescribe and promulgate necessary rules and regulations pertaining to the administration of the provisions of this article.

(Code 1960, § 25-8; Ord. No. 970352, § 1, 10-27-97; Ord. No. 001358, § 2, 6-25-01)

Sec. 25-22. Interest on late payment.

Any seller failing to file any required return or pay the tax imposed by section 25-17 when due shall be subject to assessment of interest at the rate of one percent per month of the delinquent tax from the date the tax was due until paid. Interest shall be computed on the net tax due after application of any overpayments.

(Code 1960, § 25-7; Ord. No. 3077, § 1, 11-19-84; Ord. No. 970352, § 1, 10-27-97)

Sec. 25-23. Penalties for non-payment or not filing return.

Any purchaser willfully failing or refusing to pay the tax imposed by section 25-17 or to file any required return shall be subject to the following:

(1) In the case of willful neglect, willful negligence, or fraud, penalties shall be assessed at the rate of five percent per month of the delinquent tax, not to exceed a total penalty (not including interest) of 25 percent. The penalty for failure to file a return shall not be less than $15.00.

(2) In the case of a fraudulent return or a wilful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax shall be liable for a specific penalty of 100 percent of the tax.

(3) Penalties shall be computed on the net tax due after application of any overpayments.

(Code 1960, § 25-10; Ord. No. 970352, § 1, 10-27-97)

Secs. 25-24—25-40. Reserved.

ARTICLE III. LOCAL BUSINESS TAX[3]

Sec. 25-41. Levy.

There is hereby levied a local business tax in the amounts set out in this article for the privilege of engaging in or managing any business, profession or occupation within the city limits on the following:

(1) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any business within its jurisdiction; and

(2) Any person who maintains a permanent business location or branch office within the city for the privilege of engaging in or managing any profession or occupation within its jurisdiction; and

(3) Any person who does not qualify under the provisions of subsection (1) or (2) above and who transacts any business or engages in any occupation or profession in interstate commerce where such business tax is not prohibited by Section 8 of Article 1 of the United States Constitution.

(Code 1960, § 16-1(a); Ord. No. 070022, § 10, 6-25-07)

Sec. 25-42. Business tax receipt—Required; issuance; penalty for violation.

(a) No person shall engage in or manage any business, occupation or profession for which there is a local business tax receipt required by this article or any other ordinance of the city, unless the person shall first procure a business tax receipt to conduct the same from the director of finance.

(b) All business tax receipts shall be signed by the director of finance or designee.

(c) Any person engaging in or managing any business, occupation or profession without first obtaining a local business tax receipt, if required hereunder, shall be subject to a penalty of 25 percent of the tax determined

[3]Cross reference(s)—Code enforcement board, § 2-376 et seq.; peddlers, solicitors and canvassers, Ch. 19.

State law reference(s)—Local occupational license taxes, F.S. Ch. 205.

to be due, either within seven days of written notification by the city or within 30 days of opening to the public, whichever occurs first, in addition to any other penalty provided by law or ordinance.

(d) Any person who engages in any business, occupation, or profession who does not pay the required local business tax within 180 days after the initial notice of tax due for either the initial local business tax receipt or any renewal thereof, and who does not obtain the required local business tax receipt shall be required to pay a penalty of $250.00 per offense and may be subject to civil actions and penalties, including court costs, reasonable attorneys' fees, plus any collection and administrative costs authorized in accordance with F.S. Ch. 205.

(e) All applications and affidavits required by this article shall be retained and destroyed pursuant to the guidelines of the state.

(Code 1960, §§ 16-1(b), (c), 16-5(b); Ord. No. 3613, § 1, 4-2-90; Ord. No. 3975, § 1, 6-13-94; Ord. No. 980033, § 1, 7-13-98; Ord. No. 070022, § 10, 6-25-07)

State law reference(s)—Similar provisions, F.S. § 205.022.

Sec. 25-43. Same—A business tax receipt for each location; change in location.

A business tax receipt shall only be valid for the location to which it is issued. Additional locations require separate receipts. When determining which apartment, condominium, etc., rental units under common controlling ownership comprise a location for assessing the business tax on the rental of the units, the following factors shall be considered: common management, common signage, common rental account, and site of the units in a compact, contiguous neighborhood. A change in location will require reapplication and payment of a transfer fee as provided by section 25-45.

(Code 1960, § 16-1(d); Ord. No. 3975, § 2, 6-13-94; Ord. No. 070022, § 10, 6-25-07)

Sec. 25-44. Same—Application in writing; affidavit as to basis of business tax receipt.

No business tax receipt shall be issued except upon written application of the person applying for the same, and it shall be the duty of the director of finance, before issuing a business tax receipt based wholly or in part upon property valuation, capacity, number of workers, or any other contingency, to require the person applying for such a receipt to file with the director of finance an affidavit giving full and complete information thereof. Any business, profession or occupation failing to provide information to the director of finance as to property valuation, capacity, number of workers, or any other contingency prior to August 1 each year and who engages in business on October 1 shall be considered as operating without a business tax receipt and subject to the penalty provided by section 25-47. The applications and affidavits required by this section shall be retained as part of the records of the office of the director of finance.

(Code 1960, § 16-2; Ord. No. 3975, § 3, 6-13-94; Ord. No. 070022, § 10, 6-25-07)

Sec. 25-45. Same—Transfer.

(a) All business tax receipts except those issued pursuant to the business tax exemptions set forth in section 25-50 may be transferred to a new owner when there is a bona fide sale of the business upon payment of a transfer fee of ten percent of the annual business tax but not less than $3.00 nor more than $25.00 and presentation of evidence of the sale and the original business tax receipt.

(b) Upon written application and presentation of the original business tax receipt, any receipt may be transferred from one location to another location in the same municipality, upon payment of a transfer fee in accordance with the schedule set out in Appendix A.

(Code 1960, § 16-3; Ord. No. 3249, § 2, 9-15-86; Ord. No. 3975, § 4, 6-13-94; Ord. No. 070022, § 10, 6-25-07; Ord. No. 171078 , § 1, 2-21-19)

State law reference(s)—Similar provisions, F.S. § 205.043(2), (3).

Sec. 25-46. Same—Terms; due dates for renewals; half-year business tax receipts.

(a) No business tax receipt shall be issued for longer than one year.

(b) All business tax receipts shall expire on the 30th day of September and shall be renewable on or before the first day of October. If October 1 falls on a weekend or holiday, the tax shall be due and payable on or before the first working day following October 1.

(c) Half-year business tax receipts may be issued by the director of finance under the provisions of this article for the period April 1 to September 30th, upon payment of one-half of the tax fixed as the amount for the business tax receipt for one year.

(Code 1960, § 16-4; Ord. No. 070022, § 10, 6-25-07)

State law reference(s)—Similar provisions, F.S. § 20.053(1).

Sec. 25-47. Same—Penalty for delinquent renewals.

Those business tax receipts not renewed when due and payable shall be considered delinquent and subject to a delinquency penalty of ten percent for the month of October, plus an additional five-percent penalty for each month of delinquency thereafter until paid; provided that the total delinquency penalty shall not exceed 25 percent of the local business tax for the delinquent establishment.

(Code 1960, § 16-5(a); Ord. No. 070022, § 10, 6-25-07)

State law reference(s)—Similar provisions, F.S. § 205.053.

Sec. 25-48. Business taxes based on number of workers or inventory; how computed.

Whenever the amount of a business tax shall be based wholly or in part on the basis of the number of workers, the number to be used in calculating the amount of the business tax shall be the average number of workers during the preceding receipted year or business operating period, or the average number of workers reasonably expected to be employed during the period for which the business tax receipt license is to be issued, whichever number shall be the greater. The average shall be obtained by adding the maximum and minimum number of workers for the period for which the average is to be obtained and the division by two of the sum of the maximum and the minimum. The term "workers" includes all persons actively working in the business, whether owners thereof or not. Whenever the amount of a business tax shall be based wholly or in part on the basis of inventory, the cost value of inventory shall be based on the most recent fiscal year end inventory taken prior to June 1 of the year the business tax receipt is issued.

(Code 1960, § 16-6; Ord. No. 3975, § 5, 6-13-94; Ord. No. 070022, § 10, 6-25-07)

Sec. 25-49. Gambling and lotteries, zoning violations not authorized.

The issuance of any business tax receipt under the terms of this article shall not be construed to authorize or permit the conduct of any business, occupation or profession in any area of the city in violation of the zoning laws or any other ordinance of the city or any law of the state; nor shall anything in this article or other ordinances of the city be construed to authorize gambling or the operation of a lottery.

(Code 1960, § 16-9; Ord. No. 070022, § 10, 6-25-07)

Sec. 25-50. Exemptions.

(a) The following persons are entitled to an exemption from a business tax and any fees imposed under this chapter, provided such person completes and signs, under penalty of perjury, a request for fee exemption furnished by the city and provides written documentation in support of his or her request for an exemption:

(1) A veteran of the United States Armed Forces who was honorably discharged upon separation from service, or the spouse or unremarried surviving spouse of such a veteran.

(2) The spouse of an active duty military servicemember who has relocated to the municipality pursuant to a permanent change of station order.

(3) A person who is receiving public assistance as defined in F.S. § 409.2554.

(4) A person whose household income is below 130 percent of the federal poverty level based on the current year's federal poverty guidelines.

(b) If a person who is exempt under subsection (a) owns a majority interest in a business with fewer than 100 employees, the business is exempt. Such person must complete and sign, under penalty of perjury, a request for fee exemption to be furnished by the city and provide written documentation in support of his or her request for an exemption for the business under this subsection.

(c) With the exception of a veteran under subsection (a)(1), any person who claims an exemption under subsection (a) must annually certify each fiscal year that he or she continues to qualify for the exemption on record, and provide written documentation.

(d) All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years of age or older, with not more than one employee or helper, and who use their own capital only, not in excess of $1,000.00, and who live in Alachua County, may engage in any business or occupation without being required to pay a business tax. The exemption provided in this section shall be allowed only upon the certificate of the county physician, or other reputable physician, that the applicant is disabled, the nature and extent of the disability be specified therein, and in case the exemption is claimed by a widow with minor dependents, or a person over 65 years of age, proof of the right to the exemption shall be provided.

(e) Neither subsection (d) nor any other law or ordinance exempts any person from the payment of any amount required by law for the issuance of a license to sell intoxicating liquors or malt and vinous beverages.

(f) Any person who claims an exemption under subsection (d) must annually certify each fiscal year that he or she continues to qualify for the exemption on record.

(g) College and high school students may, with the approval of the athletic association or proper school authorities, sell the pennants, badges, insignia and novelties of their school without being required to pay a business tax.

(h) Nothing in this article shall be construed to require a business tax receipt for practicing the religious tenets of any church.

(i) All persons who are full-time employees of the University of Florida, do not have offices off the University of Florida campus, and do not hold themselves out to the public as available for practice of their professions, shall be exempt from the payment of the local business tax.

(j) All persons engaging in or managing a business, profession, or occupation regulated by the department of business and professional regulation who have paid a local business tax for the current year to the county or municipality in the state where their permanent business location or branch office is maintained shall be exempt from payment of the local business tax levied by this article for work or services on a temporary or transitory basis in the city.

(Code 1960, § 16-7; Ord. No. 3249, § 1, 9-15-86; Ord. No. 3975, § 6, 6-13-94; Ord. No. 070022, § 10, 6-25-07; Ord. No. 171078 , § 1, 2-21-19)

State law reference(s)—Exemptions, F.S. § 205.063 et seq.

Sec. 25-50.1. Reserved.

Editor's note(s)—Ord. No. 171078 , § 1, adopted February 21, 2019, repealed § 25-50.1, which pertained to exemptions—enterprise zone. See Code Comparative Table for complete derivation.

Sec. 25-51. Schedule.

EXHIBIT A

ZONING GROUP I—AGRICULTURE, FORESTRY, FISHING

Hatchery$131.25

Nursery-shrubs, trees & plants131.25

ZONING GROUP II—MINING

Sand, dirt, rock or shell131.25

Wood & coal yards131.25

ZONING GROUP III—CONSTRUCTION

Burglar alarm-install, monitor & service131.25

Contractor/sub-contractor131.25

Signs-installation131.25

Tree service—unlimited131.25

Tree service—trimming & pruning only84.00

ZONING GROUP IV—MANUFACTURING

Bottling plant &/or distributorsee below*

Manufacturingsee below*

*Fee schedule:

1—6 Workers52.50

7—13 Workers105.00

14—20 Workers157.50

21—50 Workers210.00

Over 50 Workers525.00

ZONING GROUP V—TRANSPORTATION, COMMUNICATIONS, ELECTRIC, GAS & SANITARY SERVICES (INCLUDES WAREHOUSES)

Agency—travel105.00

Aircraft—fixed base operator210.00

Aircraft—rental/leasing:

—Aircraft for rent:

1—652.50

7—13105.00

14—20157.50

21—50210.00

Over 50525.00

Ambulance service105.00

Auto—Buses:

—First vehicle52.50

—Each additional vehicle10.50

—Maximum525.00

Auto—Limousines with drivers:

—First vehicle52.50

—Each additional vehicle10.50

—Maximum525.00

Auto—Storage 14 day maximum105.00

Auto—Storage or parking lot:

—Spaces not in excess of 2552.50

—Over 25 spaces157.50

Auto—Taxicabs or vehicles with drivers:

—First vehicle52.50

—Each additional vehicle10.50

—Maximum525.00

Auto—transfer, hauling or delivery company:

—First vehicle52.50

—Each additional vehicle10.50

—Maximum525.00

Auto—wrecker yard—storage—no retail sales105.00

Cold storage plant105.00

Directories—compiling &/or selling105.00

Gas (L/P) and/or fuel oil dealer105.00

Gas company—natural or manufactured105.00

Gas company—natural or manufactured/fran105.00

Gasoline and oil dealer wholesale105.00

Radio wire or background music105.00

Radio/TV—Studio for O/C station105.00

Radio/TV/cable broadcasting105.00

Radio/TV/cable broadcasting/franchise105.00

Radio/TV/cable mobile studio105.00

Railroad company525.00

Storage warehouse or lot105.00

Studio—TV advertising, etc. Film made105.00

Telegraph company210.00

Telephone company525.00

Telephone company/franchise446.25

Telephone solicitation105.00

ZONING GROUP VI—WHOLESALE TRADE

Bakery—Wholesale, plant outside city105.00

Distributor—Merchandise or commodities105.00

Livestock bet/commission agent105.00

Merchant—Wholesale from vehicle/$3000105.00

Merchant—Wholesale

—When cost value of inventory based on most recent fiscal year end inventory prior to June 1st equals:

0—$10,000.00105.00

10,001.00—20,000.00157.50

20,001.00—50,000.00210.00

50,001.00—100,00.00315.00

100,001.00—150,000.00420.00

Over $150,000.00525.00

ZONING GROUP VII—RETAIL TRADE

Art show, festival, etc.:

—First ten booths/stalls78.75

—Each additional booth/stall3.15

—Maximum525.00

Auto—New car dealer315.00

Auto—New car dealer—Second location315.00

Auto—Salvage yard210.00

Auto—Service station:

—1—6 pumps52.50

—7—13 pumps105.00

—14—20 pumps157.50

—21—50 pumps210.00

—Over 50 pumps525.00

Auto—Used cars210.00

Auto—Used cars sold by new car dealer99.75

Bakery—Baking on premises for R/T sales:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Catalogue order service/mail order105.00

Caterer105.00

Caterer—Food prep—Off premises only105.00

Cemetery315.00

Christmas tree lot99.75

Coin-op/vending mach. Less than five cents:

—Each machine10.50

—Maximum525.00

Coin-op/vending mach. five cents or more:

—Each machine15.75

—Maximum525.00

—Concession stand52.50

Drive-in/B-B-Q Stand, etc105.00

Flea/farmer's market:

—First ten booths/stalls78.75

—Each additional booth/stall3.15

—Maximum525.00

Florist105.00

Florist—Catalogue sales only105.00

Home party sales (comb. With 1805, 1811, 1812)78.75

Indoor sales—Temporary location315.00

Junk or scrap metal dealer315.00

Manufacturing—Silk/cut floral arrang. Only52.50

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Merchant—retail

—When cost value of inventory based on most recent fiscal year end inventory prior to June 1st equals:

—0—$5,000.0052.50

—$5,001.00—$10,000.00105.00

—$10,001.00—$20,000.00157.50

—$20,001.00—$50,000.00210.00

—$50,001.00—$100,000.00262.50

—$100,001.00—$300,000.00315.00

—$300,001.00—$500,000.00420.00

—Over $500,000.00525.00

Merchant—retail w/pharmacy

—When cost value of inventory based on most recent fiscal year end inventory prior to June 1st equals:

—0—$5,000.0052.50

—$5,001.00—$10,000.00105.00

—$10,001.00—$20,000.00157.50

—$20,001.00—$50,000.00210.00

—$50,001.00—$100,000.00262.50

—$100,001.00—$300,000.00315.00

—$300,001.00—$500,000.00420.00

—Over $500,000.00525.00

Mobile home sales315.00

Motorcycle sales or rental only105.00

Motorcycle sales, repairs & rental210.00

Pawnshop315.00

Peddler52.50

Peddler—food cart105.00

Physical therapy devices78.75

Restaurant:

—0—10 Seating accommodations52.50

—11—15 Seating accommodations78.75

—16—20 Seating accommodations105.00

—21—50 Seating accommodations131.25

—51—100 Seating accommodations210.00

—101—200 Seating accommodations288.75

—201—250 Seating accommodations367.50

—251—300 Seating accommodations472.50

—Over 300 Seating accommodations525.00

Stand—Farm products, fruits, plants52.50

ZONING GROUP VIII—FINANCE, INSURANCE, & REAL ESTATE

Appraisal bureau or agency105.00

Auto broker (purchasing service)105.00

Bail bonding agent99.75

Bank building & loan association315.00

Bank building & loan association-Branch131.25

Bank, building & loan assn.-Auto teller105.00

Bonding company131.25

Bonding company criminal or bail131.25

Broker—Business105.00

Broker—Business (multiple), each105.00

Broker—Management office105.00

Insurance adjustor105.00

Insurance adjustors (multiple), each105.00

Insurance agent47.25

Insurance agents (multiple), each47.25

Insurance Claims Investigator99.75

Insurance company or broker131.25

Loan & finance co.—Chapter 516315.00

Loan & finance co.—Chapter 520315.00

Loan & finance co.—Lease installment315.00

Loan & finance co.—2nd mortgage only315.00

Merchant—Importer105.00

Money transfer only105.00

Mortgage or loan—Broker105.00

Mortgage or loan—Solicitor/agent99.75

Real estate appraiser105.00

Real estate broker105.00

Real estate broker—Branch office105.00

Real estate listing bureau105.00

Real estate salesperson52.50

Stock bond or mutual fund—Dealer (multiple), each105.00

Stock, bond &/or mutual fund—Dealer105.00

Stock, bond &/or mutual fund—Sales99.75

ZONING GROUP IX—SERVICES

Abstracts of title210.00

Advertising matter—Distributor105.00

Advertising—Agency105.00

Advertising—Graphics/art layouts78.75

Advertising—Motor vehicles105.00

Advertising—Outdoor signs & billboards105.00

Advertising—Sound amplifying vehicles26.25

Advertising—Trade inducement105.00

Agency105.00

Agency—Claims & collections105.00

Agency—Credit reporting105.00

Agency—Display/stock not for sale105.00

Agency—Employment105.00

Agency—Equipment105.00

Agency—Manufacturer's representative105.00

Agency—Marketing105.00

Agency—Private detective/investigative105.00

Agency—Private investigative:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Agency—Temp. services (originally Serv. For Pub.)105.00

Amusement park/permanently located525.00

Animal Care—Boarding52.50

Animal care—Grooming52.50

Animal care—Hospital without vet105.00

Apartment, condominium, etc. rental:

—0—4 unitsNo charge

—5 units52.50

—Over five units, each additional unit1.05

—Maximum525.00

Armored car service105.00

Auction shop210.00

Auctioneer105.00

Auto—Body painting, upholstery & top shop:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Auto-car cleaning, waxing, detailing:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Auto—car wash/mechanical:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Automobile repair:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

ZONING GROUP IX—SERVICES

Auto recovery service:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Auto—Rental of trailers to be towed105.00

Auto—Stall rental for repair:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Auto—U Drive It leasing:

—First vehicle105.00

—Each additional vehicle10.50

—Maximum525.00

Auto—Vehicle repair garage (incl. motorcycle)52.50

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Auto—Wrecker service:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Automobile association52.50

Banquet hall105.00

Barbershop/beauty parlor:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Billiards, bagatelle or pool:

—Each machine26.25

—Maximum525.00

Bookkeeping or income tax service105.00

Bowling alley:

—First lane105.00

—Each additional lane10.50

—Maximum525.00

Burglar alarm—Rental/leasing of equip52.50

Business office—Not otherwise taxed:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Child care52.50

Coin-op/amusement machine:

—Each machine26.25

—Maximum525.00

Coin-op/music machine:

—Each machine26.25

—Maximum525.00

Coin-op/per or dist of amuse/vend mach210.00

Coin-op/weighing machine:

—Each machine26.25

—Maximum525.00

Contest company315.00

Copy business:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Counselor/advisor (non-professional):

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Counselor/advisor—Hearing aid:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Dance hall210.00

Data processing service:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Dental hygienist/assistant105.00

Divine healer131.25

Dry clean plant210.00

Dry clean—Pick up station26.25

Dry clean—Pick up station/no local plant52.50

Dry clean—self service or automatic:

—1—3 machines52.50

—Each additional machine5.25

—Maximum525.00

Electronics—Computer analyst, each105.00

Maximum525.00

Electronics—Computer programmers:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Exterminator—Termites/other insects210.00

Fortuneteller—Required fingerprinting:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Funeral home210.00

Go-karts & like amusement devices210.00

Golf—Driving range only105.00

Golf—Miniature course105.00

Golf—Regular course, 9 or 18 holes210.00

Gymnasium, athletic club or health salon131.25

Hospital315.00

Hotel, rooming house, motel, tourist, ct.:

—0—4 Rooms0.00

—5 Rooms52.50

—Over five rooms, each additional room2.63

—Maximum525.00

Interior decorator/designer105.00

Janitorial & allied serv.—Interior clean:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Janitorial & allied ser.—Exterior clean:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Janitorial & allied serv.—Park lot sweep:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Kennel—Dog & other animals131.25

Laboratory105.00

Laboratory—Dental105.00

Laundry—Carpet/drape—off customer site105.00

Laundry—Diaper service only105.00

Laundry—Facility210.00

Laundry—Self service or automatic:

—1—3 machines52.50

—Each additional machine5.25

—Maximum525.00

Lawn/yard maintenance:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Linen, uniform & towel service only105.00

Masseur/masseuse105.00

Microfilming/not lic. as photographer105.00

Mobile home serv, repair, awn. Inst.:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Museum105.00

Newspaper—Local office for o/c paper105.00

Newspaper/less than six times a week105.00

Newspaper/6 or more times a week446.25

Notary public:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Photo or film dev./not otherwise lic105.00

Photographer105.00

Physical/speech therapy105.00

Piano/organ tuner52.50

Professional105.00

Professional (multiple), each105.00

Maximum per firm/company525.00

Professional—Accountant/auditor105.00

Professional—Acupuncture105.00

Professional—Architect105.00

Professional—Artist105.00

Professional—Artist/tattoo105.00

Professional—Athletic trainer105.00

Professional—Attorney/lawyer105.00

Professional—Branch office105.00

Professional—Chemist105.00

Professional—Chiropractor105.00

Professional—Clinical social worker105.00

Professional—Consultant105.00

Professional—Dentist105.00

Professional—Direct disposer (cremation)105.00

Professional—Engineer/civil, consulting105.00

Professional—Land surveyor105.00

Professional—Landscape architect105.00

Professional—Marriage & family therapist105.00

Professional—Mental health counselor105.00

Professional—Occupational therapist105.00

Professional—Optician filling prescrip.105.00

Professional—Optician/prescrip & lenses105.00

Professional—Optometrist105.00

Professional—Osteopathic physician105.00

Professional—Physician/surgeon (MD)105.00

Professional—Podiatrist105.00

Professional—Psychiatrist105.00

Professional—Psychologist105.00

Professional—Veterinarian105.00

Professional—Writer105.00

Promoter105.00

Publisher including graphics, etc105.00

Publisher—Agent105.00

Recording studio:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Recreational vehicle/motor homes, trucks210.00

Recreational vehicle/trvl. trailers, etc210.00

Recycling company:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Rental/portable buildings131.25

Rentals/leasing business:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Rentals/leasing—Heavy equipment210.00

Rentals/leasing—Other52.50

Rentals/leasing—Portable toilets210.00

Rentals/leasing—Sanitary containers210.00

Rides/ferris wheels, etc.:

1—3 days, each device52.50

Each additional day, each device15.75

Rinks—bicycles, skating, etc105.00

Sanitarium, nursing home, etc210.00

School52.50

School—Aircraft105.00

School—Animal care—Obedience105.00

School—Art studio52.50

School—Automobile driving52.50

School—Business52.50

School—Cosmetology52.50

School—Crafts52.50

School—Dancing52.50

School—Dramatic52.50

School—Exercise52.50

School—Karate/judo52.50

School—Model or charm52.50

School—Music (piano, voice, instrument)52.50

School—Private52.50

School—Real estate52.50

School—Riding or academy52.50

Service for the public:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Service for the public—Repair:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Service for the public—Sewer cleaning:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Shooting gallery210.00

Show—Small animals/dog, pony, etc105.00

Show—Wrestling, boxing, musicals, etc210.00

Show/carnival, per day315.00

Maximum per event1,575.00

Show/circus, per day315.00

Maximum per event1,575.00

Show/exhibit (freaks, curiosities, etc.)131.25

Stenographer, typist, court reporter:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Swimming pool (not municipally owned)105.00

Tailor52.50

Taxidermist52.50

Telephone answering service105.00

Theater seating 1000 or more525.00

Theater seating 500 or less315.00

Theater seating 501 to 999420.00

Theater/drive-in315.00

Ticket office not otherwise taxed105.00

Trailer/mobile home camps or parks:

—0—4 spaces0.00

—5 spaces52.50

—Over five spaces, each additional space1.05

—Maximum525.00

Upholstery shop:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

Watchman, guard or patrol agency:

—1—6 workers52.50

—7—13 workers105.00

—14—20 workers157.50

—21—50 workers210.00

—Over 50 workers525.00

ZONING GROUP X—PUBLIC ADMINISTRATION

Fair—certified county (per event)525.00

Fair—County (per event)525.00

ZONING GROUP XI—NONCLASSIFIABLE ESTABLISHMENTS UNCLASSIFIED—Maximum525.00

Fees for unclassified will be set based on reasonable assumptions with a maximum of $525.00.

(Code 1960, § 16-8; Ord. No. 3217, § 1, 4-28-86; Ord. No. 3258, § 1, 9-22-86; Ord. No. 3296, 1, 11-3-86; Ord. No. 3323, § 1, 2-16-87; Ord. No. 3613, § 2, 4-2-90; Ord. No. 3647, § 1, 8-20-90; Ord. No. 3919, §§ 1—3, 11-15-93; Ord. No. 3975, § 7, 6-13-94; Ord. No. 950188, § 1, 7-10-95; Ord. No. 000191, § 1, 8-28-00; Ord. No. 070022, § 10, 6-25-07)

Cross reference(s)—Schedule of fees, rates and charges, App. A.

Sec. 25-52. Violations; penalty.

Any person convicted of violating any of the terms of this article shall, upon such conviction, be punished as provided by section 1-9.

(Code 1960, § 16-11)

Secs. 25-53—25-60. Reserved.

ARTICLE IV. TAX EXEMPTION FOR HISTORIC PROPERTIES

Sec. 25-61. Tax exemptions for historic properties.

The City of Gainesville hereby authorizes ad valorem tax exemptions for historic properties, pursuant to F.S. §§ 196.1977 and 196.1998.

(Ord. No. 950480, § 1, 8-28-95)

Sec. 25-62. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

Contributing property shall mean a building, site, structure, or object which adds to the historical architectural qualities, historic associations, or archaeological values for which a district is significant because

(a) It was present during the period of significance of the district and possesses historic integrity reflecting its character at that time;

(b) It is capable of yielding important information about the period; or

(c) It independently meets the National Register of Historic Places criteria for evaluation set forth in 36 CFR part 60.4 or in Section 30-112 of the Land Development Code for the City of Gainesville Local Register of Historic Places.

Eligible improvement shall mean changes to the interior and/or exterior condition of real property brought about by the expenditure of labor or money for the restoration, renovation or rehabilitation of such property. Improvements include additions and accessory structures (i.e., a garage) necessary for efficient contemporary use.

Eligible property shall mean a site, building, structure or object that, at the time an exemption is granted, is, and is certified to the city commission by the Historic Preservation Division to be

(a) Individually designated on the National Register of Historic Places;

(b) A contributing property in a national register listed historic district;

(c) Designated as a historic property or landmark under the provisions of the City of Gainesville historic preservation ordinance; or

(d) A contributing property in a historic district designated under the City of Gainesville historic preservation ordinance.

Government or nonprofit purpose shall mean at least sixty-five (65) percent of the useable space of a historic building is occupied or used by an agency of the federal, state or local government or nonprofit corporation whose articles of incorporation have been filed by the Department of State in accordance with F.S. § 617.0125.

Preservation exemption covenant shall mean the historic preservation property tax exemption covenant paralleling Florida DOS Form No. HR3E111292 which indicates that the owner agrees to maintain and repair the historic property so as to preserve the architectural, historical, or archaeological integrity of the property during the exemption period.

Regularly and frequently open to the public shall mean public access to the property is provided not less than fifty-two (52) days a year on an equitably spaced basis, and at other times by appointment. The owner may charge a reasonable nondiscriminatory admission fee.

Renovation or *rehabilitation* shall mean the act or process of returning a historic property or portion thereof that is of historical or architectural significance to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural, cultural and archeological values. For historic properties or portions thereof that are of archaeological significance or are severely deteriorated, *renovation* or *rehabilitation* shall mean the act or process of applying measures designed to sustain and protect the existing form and integrity of a property, or reestablish the stability of an unsafe or deteriorated property while maintaining the essential form of the property as it presently exists.

Restoration shall mean the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time by means of the removal of later work or by the replacement of missing earlier work.

(Ord. No. 950480, § 1, 8-28-95)

Sec. 25-63. Scope and duration of tax exemptions.

(a) The city commission may grant an ad valorem tax exemption for eligible improvements to eligible properties made on or after September 1, 1995. The exemption will be for 100 percent of the assessed value of the eligible improvements, and will apply only to those taxes levied by the City of Gainesville that are not levied for the payment of bonds or authorized by a vote of the electors pursuant to section 9(b) or section 12, Article VII of the Florida Constitution.

(b) The amount of the exemption shall be determined by the Alachua County Property Appraiser based upon its usual process for post-construction inspection and appraisal of property following rehabilitation or renovation.

(c) Any exemption granted under this article to a particular property shall remain in effect for ten (10) years. The duration of the exemption shall continue regardless of any change in the authority of the City to grant such exemptions or any change in ownership of the property. In order to retain an exemption, however, the historic character of the property, and improvements which qualified the property for an exemption, must be maintained over the period for which the exemption was granted.

(Ord. No. 950480, § 1, 8-28-95)

Sec. 25-64. Exemption for government or nonprofit purpose.

(a) If an improvement qualifies an eligible property for an exemption and the property is used for a government or nonprofit purpose and is regularly and frequently open to the public, the owner is eligible for an exemption from ad valorem taxation of one hundred (100) percent of the assessed value of the property, provided

(1) The assessed value of the improvement is equal to at least fifty (50) percent of the assessed value of the property as improved;

(2) The improvements are made by or for the use of the existing owner; and

(3) The improvements are made on or after the effective date of this ordinance.

(b) For an exemption granted under this section, the following conditions, as well as those indicated in section 25-62, shall justify removal of a property from eligibility for the exemption, as described in section 25-65:

(1) The property is sold or otherwise transferred from the owner who made application and was granted the exemption; or

(2) The property is no longer used for a government or nonprofit purpose, or is no longer regularly and frequently open to the public.

(Ord. No. 950480, § 1, 8-28-95)

Sec. 25-65. Procedure for obtaining tax exemption.

(a) *Application.* An applicant (owner of record or authorized agent) seeking an ad valorem tax exemption for historic properties must file with the city manager or designee the two-part Historic Preservation Property Tax Exemption Application with "Part 1: Preconstruction Application" (Part 1) completed. In addition, the applicant shall submit the following:

(1) A completed application for a Certificate of Appropriateness for the qualifying restoration, renovation, or rehabilitation.

(2) An application fee of not more than five hundred dollars ($500.00) to be determined by the city manager or designee based on the estimated cost of the work to be performed and the administrative costs to be incurred by the city in processing the application and monitoring compliance.

(b) *Review by property appraisers office.* Upon receipt of the preconstruction application, the city manager or designee will transmit the application to the Alachua County Property Appraiser's office, which will review and provide an estimate of the probable increase in the appraisal of the property to the applicant and the City. The applicant can withdraw the application within forty-five (45) days of receiving the estimate and be reimbursed for the filing fee.

(c) *Review by historic preservation board.*

(1) The City of Gainesville Historic Preservation Board (HPB) shall review Part 1 applications for exemptions. The HPB shall determine whether the property is an eligible property and whether the Part 1 proposed improvement is consistent with the Secretary of Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* and is therefore an eligible improvement.

(2) For improvements intended to protect or stabilize severely deteriorated historic properties or archaeological sites, the HPB shall apply the following additional standards:

a. Before applying protective measures that are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

b. Protective measures shall safeguard the physical condition or environment of a property or archaeological site from further deterioration or damage caused by weather or other natural, animal or human intrusions.

c. If any historic material or architectural features are removed, they shall be properly recorded and, is possible, stored for future study or reuse.

d. Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting material deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

e. Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as to not intrude upon or detract from the aesthetic and historical quality of the property, except where concealment would result in the alteration or destruction of historically significant material or spaces.

(3) For applications submitted under the provisions of section 25-64, the HPB shall also determine that the property meets the standards set forth in that section.

(4) The HPB shall notify the applicant and the city commission in writing of the results of its review and shall make recommendations for correction of any planned work deemed to be inconsistent with the requirements for an eligible improvement.

(5) When an applicant is applying jointly for the ad valorem tax exemption and for federal historic preservation tax credits, the applicant will complete the National Park Service's (NPS) federal tax credit application and Part 1 of the historic preservation property tax exemption application and submit both to the city manager or designee. The HPB shall defer action on the applications until the NPS has rendered a determination. In the event the NPS approves the federal tax credit application, the Part 1 application shall be amended to reflect any conditions issued by the NPS. The HPB shall then approve the tax exemption application and forward it to the city commission to be handled as part of the normal approval process set forth below. A denial by the NPS shall cause the HPB to deny the ad valorem tax exemption.

(d) *Request for review of completed work application.*

(1) Upon completion of work specified in the "Part 1" application, the applicant shall submit a "Part 2: Final Application for Review of Completed Work" (Part 2). The HPB shall conduct an inspection of the subject property to determine whether or not the completed improvements are in compliance with the work described and conditions imposed in the approved Part 1 application. Appropriate documentation may include paid contractor's bills and canceled checks, as well as an inspection request by the applicant within two (2) years following approval of the Part 1 application.

(2) On completion of review of the Part 2 application, the HPB shall recommend that the city commission grant or deny the exemption. The recommendation, and reasons therefor, shall be provided in writing to the applicant and to the city commission. The applicant shall be given at least ten (10) days notice of the date of the public hearing of the city commission on the requested exemption. If a denial is recommended, and the applicant submits elevations and plans which indicate that the applicant intends to undertake the work necessary to comply with the recommendations of the HPB, the denial of the application may be continued by the city manager or designee for a period of time not to exceed sixty (60) days, while the applicant makes a good faith effort to comply with the recommendations. The

applicant may resubmit documents indicating that the reasons for recommendation of denial of the application have been remedied and the city manager or designee will reinspect the work.

(e) *Approval by city commission.* A majority vote of the city commission shall be required to approve a Part 2 application and authorize the ad valorem tax exemption. The commission, in overturning or modifying the recommendation of the historic preservation board shall utilize the same standards as used by the historic preservation board in reaching its decision. If the exemption is granted, the city commission shall adopt an ordinance that includes the following:

(1) The name of the owner and the address of the historic property for which the exemptions granted.

(2) The date on which the ten-year exemption will expire.

(3) A finding that the historic property meets the requirements of this article.

(4) A copy of the historic preservation exemption covenant, as provided in section 25-66, signed by the applicant and the mayor-commissioner or designated successor.

(f) *Notice to property appraiser.* The property owner shall have the historic preservation exemption covenant recorded in the official records of Alachua County, and shall provide a certified copy of the recorded historic preservation exemption covenant to the city manager or designee. Within fifteen (15) days of receipt of the certified copy, the city manager designee shall transmit a copy of the approved "Part 2: Final Application", as well as the historic preservation exemption covenant to the Alachua County Property Appraiser with instructions that the property appraiser provide the ad valorem tax exemption to the applicant. Responsibility for paying the recording costs lie with the applicant.

(g) *Effective date of exemption.* The effective date of the ad valorem tax exemption shall be January 1 of the year following the year in which the application is approved by the city commission and a historic preservation exemption covenant has been transmitted to the Alachua County Appraiser.

(h) An applicant previously granted a historic rehabilitation tax exemption by the historic preservation board may undertake additional improvement projects during the exemption period, or following its expiration, and reapply for an additional historic rehabilitation tax exemption for such work. An additional ten-year exemption shall apply only to the additional improvement.

(Ord. No. 950480, § 1, 8-28-95)

Sec. 25-66. Required covenant.

(a) *Effect of covenant.* To qualify for an exemption, the property owner must enter into a covenant with the City of Gainesville for the term for which the exemption is granted. The form of the covenant shall be the "Historic Preservation Property Tax Exemption Covenant" (DOS Form No. HR3E111292). The covenant shall be binding on the current property owner, transferees, and their heirs, successors, or assigns.

(b) *Revocation of exemption.* Violation of the covenant or agreement will result in the property owner being subject to the payment of the differences between the total amount of taxes which would have been due in March in each of the previous years in which the covenant or agreement was in effect had the property not received the exemption and the total amount of taxes actually paid in those years, plus interest on the difference calculated as provided in F.S. § 212.12(3), as amended. In the event of a violation of the covenant, or damage to the historic property as detailed below, the HPB shall conduct a hearing, as provided in Section 30-112(d)(7)e of the Land Development Code, to allow the property owner to show cause why the exemption should not be revoked. Identification of the following conditions shall result in termination of the historic property tax exemption covenant, revocation of the exemption, and removal of a property from eligibility for the property tax exemption:

(1) The owner is in violation of the provisions of the historic preservation tax exemption covenant; or

(2) The property has been damaged by accidental or natural causes beyond the owner's control to the extent that the historic integrity of the features, materials, appearance, workmanship and environment or archaeological integrity which made the property eligible for listing in the Natural Register or designation under the provisions of the local preservation ordinance have been lost or so damaged that restoration is not feasible. Feasibility determinations will be made utilizing the economic hardship standards in Section 30-112 of the Land Development Code. Under this condition, the applicant is not required to pay back interest plus taxes.

(c) *Appeal of revocation.* The applicant can appeal a decision to revoke the exemption to the city commission. The procedure for appealing the decision, and the conduct of the hearing will be as specified in Section 30-112(d)(7)i of the Land Development Code.

(Ord. No. 950480, § 1, 8-28-95)

Secs. 25-67—25-80. Reserved.

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 F.S. Ch. 202. 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, 2002 through October 31, 2002, the local communications services tax rate shall be 5.62 percent, which percentage includes 0.6 percent allocated to Alachua County's local option sales tax in accordance with F.S. § 202.20(3).

(b) For taxable sales of communications services on bills dated November 1, 2002 through December 31, 2002, the local communications services tax rate shall be 6.22 percent, which percentage includes 0.6 percent allocated to Alachua County's local option sales tax in accordance with F.S. § 202.20(3).

(c) For taxable sales of communications services on bills dated January 1, 2003 through October 31, 2003, the local communications services tax rate shall be 5.62 percent.

(d) For taxable sales of communications services on bills dated November 1, 2003 through August 31, 2007, the local communications services tax rate shall be 5.32 percent.

(e) For taxable sales of communications services on bills dated September 1, 2007 through August 31, 2008, the local communications services tax rate shall be 7.0 percent.

(f) For taxable sales of communications services on bills dated on or after September 1, 2008, the local communications services tax rate shall be 5.57 percent.

(Ord. No. 001358, § 3, 6-25-01; Ord. No. 020154, § 1, 8-26-02; Ord. No. 070023, § 2, 6-25-07)

Secs. 25-82—25-89. Reserved.

ARTICLE VI. ADDITIONAL HOMESTEAD EXEMPTIONS FOR PERSONS 65 AND OLDER

Sec. 25-90. Ad valorem additional homestead exemption authorized.

Pursuant to Section 6(f), Article VII, of the Florida Constitution, and F.S. § 196.075, an additional homestead exemption in the amount of $20,000.00, effective January 1, 2004, increasing to the amount of $25,000.00, effective January 1, 2005, which exemption shall be limited to tax levies of the City of Gainesville, shall be available to any person who has the legal or equitable title to real estate and maintains therein the permanent residence of the owner, who has attained age 65 and whose household income does not exceed $20,000.00, adjusted as described below.

(Ord. No. 030491, § 1, 11-10-03)

Sec. 25-91. Definitions.

As used in this article, the term:

Household means a person or group of persons living together in a room or group of rooms as a housing unit, but the term does not include persons boarding in or renting a portion of the dwelling.

Household income means the adjusted gross income, as defined in § 62 of the United States Internal Revenue Code, of all members of a household.

(Ord. No. 030491, § 1, 11-10-03)

Sec. 25-92. Procedures.

Beginning January 1, 2004, every taxpayer claiming the additional homestead exemption provided herein must file an application with the Alachua County Property Appraiser not later than March 1 of each year for which such exemption is being claimed. Such application shall include a sworn statement of household income for all members of the household and shall be filed on the form prescribed by the Florida Department of Revenue. On or before June 1 of each year that an application is made, the taxpayer must provide the necessary supporting documentation to the Alachua County Property Appraiser. The necessary documentation includes copies of any federal income tax returns for the prior year, any wage and earnings statement (W-2 forms), and such other documentation as may be required by the department of revenue or the Alachua County Property Appraiser necessary to verify household income. Failure to provide the proper documentation may result in a loss of exemption for the requested year.

(Ord. No. 030491, § 1, 11-10-03)

Sec. 25-93. Household income adjustment.

The $20,000.00 income limitation referenced in section 25-90 shall be adjusted annually, commencing January 1, 2001, by the percentage change in the average cost-of-living index in the period January 1 through December 31 of the immediate prior year compared with the same period for the year prior to that. The index is

the average of monthly consumer-price index figures of the stated 12-month period, relative to the United States as a whole, issued by the United States Department of Labor.

(Ord. No. 030491, § 1, 11-10-03)

Sec. 25-94. Right of survivorship.

If title to the homestead property is held with a right of survivorship, the person residing on the property and otherwise qualifying may receive the entire amount of the additional homestead exemption.

(Ord. No. 030491, § 1, 11-10-03)

Sec. 25-95. Penalties.

Receipt of the additional homestead exemption provided by this article shall be subject to the penalties provided in F.S. § 196.131 (criminal) and § 196.161 (recovery, liens), as applicable.

(Ord. No. 030491, § 1, 11-10-03)

Chapter 27 UTILITIES[4]

ARTICLE I. IN GENERAL

Sec. 27-1. Permit required for all connections to electric, gas, water, sanitary sewerage system or telecommunications.

It shall be unlawful for any person either inside or outside the corporate limits of the city to tap, cut-in, connect to, or in anywise use any line, branch or part of either the electric, gas, water, sanitary sewer, or telecommunications systems of the city without a written permit issued by the general manager for utilities or his/her designee.

(Code 1960, § 28-70(a); Ord. No. 030278, § 1, 9-8-03)

Sec. 27-2. Violations.

Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter shall be subject to the penalties of section 1-9.

[4]Cross reference(s)—Administration, Ch. 2; energy advisory committee, § 2-356 et seq.; buildings and building regulations, Ch. 6; housing, Ch. 13; streets, sidewalks and other public places, Ch. 23; public service tax, § 25-16 et seq.; concurrency management, § 30-30 et seq.; subdivisions, § 30-180 et seq.; environmental management, § 30-250 et seq.; permitted utility uses, § 30-343.

State law reference(s)—Public utilities, F.S. Ch. 366; supervision and control of systems of water supply, sewerage, refuse and sewage treatment by the department of health and rehabilitative services, F.S. § 381.261.

Sec. 27-3. Use of city's name prohibited.

It shall be unlawful for any firm, person, business or organization to use the name of the city, of Gainesville Regional Utilities, or the city's fictitious names, logos, service marks or trademarks in the promotion, advertisement or guarantee of its business or activity of performing conservation audits or other utility related services without the permission of the general manager for utilities, or his/her designee.

(Ord. No. 3754, § 1, 1-27-92; Ord. No. 030278, § 2, 9-8-03)

Sec. 27-4. Franchise required for operation of public utility; granting or extending by majority vote of city commission.

(a) It shall be unlawful for any person to sell or offer for sale within the corporate limits of the city any water, electric current or power, any natural gas or compressed gas, or to operate any public service or public utility without first having obtained a franchise or permit for the same from the city. For purposes of this section, apportioning or allocating the costs of utility service among occupants of a master-metered structure which is the responsibility of a consumer of record shall not constitute a sale of utilities, so long as the apportionment or allocation of costs reimburses the consumer of record for no more than the consumer's actual cost of utility service.

(b) The city commission may by majority vote of the commission enter into agreements which grant a franchise to any utility, public or private, for the establishment or construction of facilities through, over, under, upon, or across any street, alley, or public easement of any kind whatsoever. Any existing franchise, whether or not approved by the voters at a municipal election, may be amended or extended by majority vote of the commission in the same manner as any other written agreement of the city.

(Ord. No. 3754, § 2, 1-27-92)

Sec. 27-5. Energy conservation policy.

(a) It is hereby declared to be the policy of the city to minimize the consumption of energy required to provide adequate, safe, economic, reliable and environmentally sound utility services. It is also policy of the city to develop and provide cost effective services, information, and incentives which will reduce the consumption of and demand on utility resources by utility customers.

(b) Copies of the energy conservation policy and its objectives, procedures, planning guidelines, program standards and future studies have been duly deposited with the city clerk and the general manager for utilities or designee and shall be kept in these offices for public use, inspection and examination.

(c) The general manager for utilities or designee may designate procedures for the provision of financial incentives and loans to utility customers for the installation of conservation and demand-side management measures, which are consistent with the energy conservation policies and objectives of the city. Financial incentives or loans may also be used to facilitate the implementation or acceptance of consistent conservation and demand-side management measures within the city's combined utility system service area. To receive the benefits of any such incentive or loan, the participating utility customer must enter into a written agreement with the city providing the terms and conditions thereof.

(Ord. No. 3754, § 3, 1-27-92; Ord. No. 951502, § 1, 6-10-96; Ord. No. 030278, § 3, 9-8-03; Ord. No. 210562 , § 23, 6-16-22)

Sec. 27-6. Utility service—Application; period of service; transfer of service; authority to determine type of service; withholding service for prior indebtedness 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 additional charge equal to the cost of collection, including collection agency or attorney's fees and court costs if this account is placed in the hands of an agency or attorney for collection or legal action because of default in payment of any amount due.

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

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

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

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

(Ord. No. 3754, § 5, 1-27-92; Ord. No. 970748, § 1, 2-23-98; Ord. No. 981083, § 1, 9-27-99; Ord. No. 030278, § 4, 9-8-03; Ord. No. 090288, § 1, 9-17-09)

Sec. 27-7. Deposits.

(a) *Deposits generally.* Prior to initiating utility service, the city shall, except as otherwise provided herein, require a deposit from all utility service customers as determined by the general manager for utilities or his/her designee. Application for service by whatever means (written, verbal, telephonic, electronic or otherwise) and the payment of the deposit by the customer constitute the customer's agreement that the deposit is advance payment for future utility services which may be applied as otherwise provided in this section. Residential and nonresidential customer service deposits shall be credited to the customer at the

end of a two-year period, provided that the customer has maintained a satisfactory payment record or upon closure of a customer's account and the issuance of the final utility bill.

(b) *Residential service deposits.*

(1) *No deposit required.* There shall be no deposit required from a customer who (i) has a satisfactory payment record for utility services with the city; (ii) provides a letter of satisfactory credit from another utility; (iii) enrolls in a payment plan approved by the general manager for utilities or his/her designee; or (iv) is deemed to have good credit as reported by the city's credit reporting agency.

(2) *Standard deposit required.* There shall be a standard deposit required from a, customer (i) with no available credit history; or (ii) deemed to have acceptable credit as reported by the city's credit reporting agency.

(3) *Either standard deposit or full deposit required.* A customer with an unsatisfactory payment history on a previous account with the city or who has been deemed to have unsatisfactory credit as reported by the city's credit reporting agency shall pay the higher amount of either a full deposit or standard deposit.

(c) *Nonresidential service deposits.*

(1) *Deposit required.* A full deposit may be required from a nonresidential customer. In the event a customer enrolls in a payment program plan approved by the general manager for utilities or his/her designee, a customer shall pay a deposit amount equal to one times the estimated average monthly combined utility bill for the location at which utility services will be provided.

(2) *No deposit required.* A deposit shall not be required from a nonresidential customer who a) has a satisfactory payment record for utility services with the city or b) provides other assurance of payment, including, but not limited to, surety bond, irrevocable letter of credit, or guarantee, in lieu of the deposit.

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

(e) *Interest; unclaimed deposits.* Except as provided above, the deposit shall be held by the city until final settlement of the customer's account, at which time the deposit shall be applied against any utility bill due the city for such services. Any unused balance shall be refunded when the account is settled and closed. All deposits which have remained with the city for at least six months shall earn simple interest, accrued from the date tendered and calculated to the nearest day. Interest shall accrue at a rate comparable to the utility's interest earnings for the period, as determined by the general manager for utilities or his/her designee, and shall be credited to the customer monthly. In the event any deposit is unclaimed for a period of 12 months after the service is discontinued, such unclaimed deposit and any accrued interest thereon shall be turned over to the state department of financial services in accordance with Florida law following 30 days' written notice to such customer mailed to the address shown on the application for service or as otherwise provided by the customer.

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

(g) *Bond in lieu of deposit.* If a customer required to make a deposit so elects, the customer may post a surety bond or other financial assurance in lieu of the cash deposit. Such bond or financial assurance shall be issued

by a surety authorized to do business in the State of Florida in an amount approved by the general manager for utilities or his/her designee. The bond in lieu of deposit shall be on a form approved by the city which shall fully protect the city against any loss as a result of any nonpayment of utility bills rendered by the city to the customer.

(Ord. No. 3754, § 5, 1-27-92; Ord. No. 3800, § 1, 11-16-92; Ord. No. 970748, § 2, 2-23-98; Ord. No. 030278, § 5, 9-8-03; Ord. No. 060613, § 1, 3-26-07; Ord. No. 090288, § 2, 9-17-09; Ord. No. 120883 , § 1, 8-20-15)

Sec. 27-8. Consumers to grant easements, etc.; access to premises by city employees.

(a) The consumer shall grant or cause to be granted to the city without cost all rights, easements, permits, and privileges which are necessary for the rendering of service. Employees of the city, agents and contractors of the city under the city's direction shall have safe access at all reasonable hours to the premises of the consumer for the purpose of reading meters, installing, inspecting, repairing or removing any of its properties, shutting off the flow of gas for reasons prescribed in this chapter, inspecting gas piping and appliances or for any purpose incidental to the rendering of the service. Access shall be granted at all times for emergency purposes. Safe access means physical access free from interference of any kind including but not limited to pets or other animals, fences or landscaping.

(b) If such access is precluded or denied due to locked gates or fences, animals, shrubbery, or the city is otherwise temporarily prevented access, the city may estimate the consumer's consumption on the basis of previous consumption or any other method in accordance with generally accepted utility practices which produces a reasonable estimate of consumption during the relevant period. Any difference between the estimated consumption and the actual consumption will be adjusted through subsequent readings. Where it has been necessary to estimate the consumer's consumption, the combined monthly statement shall carry appropriate notice to that effect.

(c) If the meter is inaccessible for two consecutive months the consumer will be notified that access must be made available to the city during the next regular meter reading cycle. If the meter is inaccessible to the meter reader at the time of the next regular meter reading, the consumer must call the city as specified in the notice to make special arrangements for a city representative to gain access to the meter for the purpose of reading and inspecting the meter. In addition to the special arrangements for access the city may require either 1) installation and use of a remote metering device, or 2) relocation of the meter to an accessible location. The cost of the remote metering device and its installation or meter relocation will be borne by the customer. Failure to arrange such access or to pay for the remote metering device and its installation or meter relocation will result in the initiation of termination of service. A charge in accordance with the schedule set out in Appendix A will be assessed for each specially arranged visit and/or the installation of a remote metering device. No additional charge will be assessed if the meter is made accessible for the regular meter reading cycle.

(d) Subsections (b) and (c) of this section shall not be applicable to any consumer's account if the meter is found to have been tampered with as prohibited in this chapter.

(Ord. No. 3754, § 6, 1-27-92; Ord. No. 970087, § 1, 8-11-97; Ord. No. 030278, § 6, 9-8-03)

Sec. 27-9. Protection of city property.

It shall be the consumer's responsibility to properly protect the city's property on the consumer's premises or easement. The consumer shall prohibit access to such city property except access by utilities personnel or other persons authorized by law. When service lines, meters, pipes or other equipment are damaged by contractors, construction companies, governmental agencies or others, such damage will be repaired by the utility and the cost of repair shall be charged to the party or parties causing the damage. In the event of any loss or damage to

property of the city caused by or arising out of carelessness, neglect or misuse by the consumer, the cost of replacing the property or repairing the damage shall be paid by the consumer.

(Ord. No. 3754, § 7, 1-27-92)

Sec. 27-10. City not liable for failure of service.

The city will at all times use reasonable diligence to provide continuous service and having used due diligence shall not be liable to the consumer for complete or partial failure or interruption of service, or for fluctuations in voltage or pressure, resulting from causes beyond its control, or through the ordinary negligence of its employees, servants, or agents, nor shall the city be liable for the direct or indirect consequences of interruptions or curtailments made in accordance with the provisions of any of its rate schedules. The city shall not be liable for any act or omission caused directly or indirectly by strikes, labor troubles, accidents, litigation, shutdowns or repairs or adjustments, interference by federal, state, or municipal governments, acts of God, for any damage resulting from the bursting of any main, service pipe or cock, from the shutting off for repairs, extensions or connections, or for the accidental failure of supply from any cause whatsoever. In case of emergency the city shall have the right to restrict the use of utilities in any reasonable manner for the protection of the public, the city and its utilities.

(Ord. No. 3754, § 8, 1-27-92; Ord. No. 990725, § 1, 12-13-99)

Sec. 27-11. Consumer to indemnify city against certain losses.

The consumer by applying for and receiving service from the city agrees to indemnify, hold harmless and defend the city from and against any and all liability or loss in any manner directly or indirectly growing out of the transmission and use of electrical energy, gas, water, wastewater or telecommunications service by the consumer at or on the consumer's side of the point of delivery or connection.

(Ord. No. 3754, § 9, 1-27-92; Ord. No. 970748, § 2, 2-23-98; Ord. No. 030278, § 7, 9-8-03)

Sec. 27-12. Service in unincorporated areas.

It is recognized that the issuance of building permits within the unincorporated areas of the county are within the jurisdiction of the county. The general manager for utilities or his/her designee, in cooperation with the county, will follow such ordinances or procedures that are adopted and effective within the unincorporated areas of the county, consistent with the intent of this article to make sure that proper fees and charges are made and collected prior to the rendering of utility services.

(Ord. No. 3754, § 10, 1-27-92)

Sec. 27-13. Receiving service without paying for same.

It shall be unlawful for any person or consumer to receive or attempt to receive, except in the manner expressly authorized, utility service from the city without paying the required rates and charges.

(Ord. No. 3754, § 11, 1-27-92)

Sec. 27-14. Combined statements—Rendering; date payable; penalties; delinquencies.

(a) A combined statement for all applicable utility services, including, but not limited to, electricity, gas, water, chilled water, reclaimed water, wastewater collection, stormwater maintenance, refuse/garbage collection,

telecommunications, backup generation, infrared scanning and rental security lighting, plus applicable taxes and surcharges, may be rendered each customer monthly for such service. The rendering of a combined statement is not an obligation on the part of the city and failure of the customer to receive the statement shall not release nor diminish the obligation of the customer with respect to payment thereof, or relieve the customer of any obligation under this article.

(b) Each combined statement shall specify at a minimum the applicable customer class, meter reading(s) and usage, billing and delinquent dates, days of service, and monthly service fees as well as provide information such as the applicable taxes, surcharges, and fuel and purchased power adjustment costs.

(c) Combined statements for service are due and payable when rendered.

(d) If approved by the general manager or his/her designee, payments may be deferred or made in installments.

(e) In addition to other rates and charges established by this chapter, a service charge in accordance with the schedule set out in Appendix A shall be assessed as a late fee on any combined statement not paid in full by the close of business 22 days after being rendered. The United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions, and instrumentalities thereof, are exempt from the payment of the late fee imposed and levied thereby.

(f) Any combined statement not paid in full by the close of business 29 days after being rendered shall be delinquent and reported to the general manager for utilities or his/her designee, who may thereupon discontinue any and/or all services. Combined statements may become delinquent at some time mutually agreed upon by the utility and the customer other than the period described herein. After disconnection, no services shall be restored until the customer makes arrangements satisfactory to the general manager for utilities or his/her designee to pay all required payments. A service charge in accordance with the schedule set out in Appendix A will be assessed upon issuance of a disconnection service order. Service will be restored the same day satisfactory payment and/or arrangements for satisfactory payment are made, provided that payment is made between 7:00 am to 6:00 p.m., Monday through Friday, excluding observed or federal holidays. There shall be additional reconnection charges set forth in Appendix A for payments made after 6:00 p.m. Monday through Friday, during weekends, or on observed and/or federal holidays.

(Ord. No. 3754, § 12, 1-27-92; Ord. No. 4033, § 1, 9-26-94; Ord. No. 950735, § 1, 10-9-95; Ord. No. 030278, § 8, 9-8-03; Ord. No. 060613, § 2, 3-26-07; Ord. No. 120883 , § 1, 8-20-15)

Sec. 27-14.1. Same—Separate services.

If the city is furnishing two or more of the same utility services under separate applications to the same premises, each customer involved shall be treated separately and billed accordingly.

(Ord. No. 3754, § 13, 1-27-92; Ord. No. 950735, § 1, 10-9-95)

Sec. 27-14.2. Same—Metered services; consumption determinations; estimate of consumption when meters fail to register, billings for other services.

(a) For metered services the city shall endeavor to have each customer's meter or meters read at approximately monthly intervals to determine the billed consumption.

(1) *Electric.* Electric meters measure the amount of energy used in kilowatts over predetermined intervals (15 minutes, 30 minutes, 60 minutes, etc.). The measurements are accumulated by the meter to indicate the amount of energy consumed over the billing period in kilowatt-hours and/or the billing demand in kilowatts. The meter reading(s) taken during the current billing period and the resulting measurement(s) shall be disclosed on the combined statement.

(2) *Gas.* Gas meters measure the amount of gas used in cubic feet. The volumetric reading taken during the previous billing period and the reading taken during the current billing period together with the volumetric measurement of gas consumed during the period shall be disclosed on the combined statement. Customers pay only for the amount of heat in each cubic foot of gas (CCF); therefore, CCF are converted to therms, or 100,000 British thermal units. The therm conversion factor shall also be disclosed on the combined statement.

(3) *Water/wastewater.* Water meters measure the water used in gallons. For billing purposes, water meter readings are rounded downward to whole thousand gallons and shall be disclosed on the combined statement. For billing purposes, readings on meters installed to measure wastewater returned to the city's wastewater system are rounded downward to whole thousand gallons and shall be disclosed on the combined statement.

(b) If the meter on the customer's premises is destroyed or otherwise fails to register, the customer may be billed for the period involved on the basis of previous consumption, consumption after repair or replacement of the meter, or any other method in accordance with generally accepted utility practices which produces a reasonable estimate of consumption during the relevant period. Where it has been necessary to estimate the customer's consumption, the combined statement shall carry appropriate notice to that effect.

(c) All other services shall be billed either as provided above in section 27-14, in combination with another service or separately on a recurring day of the month when promulgated by the general manager or his/her designee, a contract governing said services, or in accordance with any separate contract between the consumer and the city for such services.

(Ord. No. 3754, § 14, 1-27-92; Ord. No. 950735, § 1, 10-9-95; Ord. No. 030278, § 9, 9-8-03)

Sec. 27-14.3. Same—Dishonored payments; penalties.

(a) A service charge in accordance with the schedule set out in appendix A shall be made for each payment not honored by a financial institution.

(b) If a payment is not honored by a financial institution, including, but not limited to, payments by check, electronic funds transfer, or credit card the general manager for utilities or his/her designee may deny the payment of future utility charges by such means and require payment only in the form of cash, cashiers check or money order. The privilege of payment by such means may be reinstated at the customer's request once the customer has regained a satisfactory payment record as determined by the general manager for utilities or his/her designee.

(Ord. No. 3754, § 15, 1-27-92; Ord. No. 950735, § 1, 10-9-95; Ord. No. 030278, § 10, 9-8-03)

Sec. 27-14.4. Same—Billing adjustments.

Where, as the result of any meter test, a meter is found to be non-registering or incorrectly registering, the city may render an adjusted bill to the customer for the amount of any undercharge or overcharge as directed by the general manager or his/her designee consistent with generally accepted utility practices.

(Ord. No. 160253 , § 1, 9-15-16)

Sec. 27-15. Service charges.

(a) *Installation or turn-on of utility service.* A service charge in accordance with the schedule set out in Appendix A shall be paid to the city before any utility service, new or transferred from one service location to another,

is installed or turned on. Should installation or turn-on services be requested for the same workday, for any fully-scheduled workday requiring after-hours service, or for holidays or weekends, additional service charges in accordance with the schedule set out in Appendix A shall be assessed.

(b) *Field visit; service location.* A service charge in accordance with the schedule set out in appendix A shall be paid the city for a field visit made to the consumer's service location. This service charge shall not apply if the field visit results in a disconnection of utility service(s) or is a specially arranged visit by a meter reader as prescribed in section 27-8(c).

(c) *Field visit; disconnection of utility service.* If service is disconnected because of delinquent payments, unauthorized connection, or consumer request, a service charge in accordance with the schedule set out in Appendix A shall be assessed. If commercial gas service is disconnected, or electric service is disconnected at the point of service (electric pole or service drop), or water service is disconnected by removal of the water meter due to unauthorized connection or consumer request, an additional service charge in accordance with the schedule set out in Appendix A shall be assessed.

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

(Ord. No. 3754, § 16, 1-27-92; Ord. No. 970593, § 1, 12-8-97; Ord. No. 030278, § 11, 9-8-03; Ord. No. 060433, § 1, 10-9-06; Ord. No. 070429, § 1, 10-22-07; Ord. No. 070744, § 1, 6-9-08; Ord. No. 090288, § 3, 9-17-09)

Sec. 27-16. Responsibility for taxes or assessments.

The customer shall be liable for any taxes or assessments that are lawfully imposed by any governmental authority on any service. Exemptions from such taxes or assessments shall be granted only by the taxing or assessing authority having jurisdiction. It shall be the customer's responsibility to secure and document such exemption on a continuous basis to the satisfaction of the city. A failure by the city to levy or collect any such tax or assessment, does not relieve the customer of the responsibility for the payment of such tax or assessment.

(Ord. No. 4033, § 2, 9-26-94)

Sec. 27-17. Reserved.

Editor's note(s)—Ord. No. 090288, § 4, adopted Sept. 17, 2009, repealed § 27-17 which pertained to exception to the Alachua County electric utility privilege fee and findings and derived from Ord. No. 970219, § 1, adopted Sept. 8, 1997.

Sec. 27-18. Reserved.

Editor's note(s)—Ord. No. 090288, § 5, adopted Sept. 17, 2009, repealed § 27-18 which pertained to exception to the Alachua County electric utility privilege fee and findings and derived from Ord. No. 970219, § 2, adopted Sept. 8, 1997.

Secs. 27-19—27-20. Reserved.

ARTICLE II. ELECTRICITY[5]

Sec. 27-21. Definitions.

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

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

Avoided energy cost shall mean the electric system's total costs which the electric system avoided stated in dollars of fuel consumed in generation divided by the net generation stated in megawatt hours, which shall be expressed in $/net kilowatt hours as published in the most recent annual generation operation report by the energy supply division, which shall be updated each calendar year based on actual fuel costs, expenses and net generation of the electric system.

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

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

Customer shall mean any adult natural person or legal entity: (a) taking electric, natural gas, water, chilled water, reclaimed water, wastewater collection, telecommunications, back-up generation, rental security lighting, and/or any other utility service provided by the city; (b) in whose name a service account is listed; (c) who occupies a location, premise, or building structure; and/or (d) who is responsible for the payment of utility bills. Where two or more customers join in an application for utility services, such customers shall be jointly and severally liable and shall be billed by means of a single periodic bill mailed to the customer designated to receive such bill. Whether or not the city received a joint application, where two or more customers are occupying, using, benefiting from, and/or living in the same residence, each customer shall have joint and several liability for the utility services provided and the resulting utility bills.

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[5]Editor's note(s)—Ord. No. 3754, §§ 20—37, adopted Jan. 27, 1992, repealed various sections of Art. II, relative to electricity, and § 80 of said Ord. No. 3754 renumbered the remaining sections of this article to read as herein set out. The history notation has been retained in the renumbered sections for reference purposes. The repealed provisions of this article derived from Code 1960, §§ 28-2, 28-3, 28-5, 28-6, 28-8, 28-9, 28-14—28-21.1, 28-29; Ord. No. 3254, § 1, adopted Sept. 22, 1986; Ord. No. 3493, § 3, adopted Nov. 21, 1988; Ord. No. 3544, § 2, adopted July 10, 1989; Ord. No. 3644, § 1, adopted Aug. 20, 1990; Ord. No. 3665, adopted Sept. 24, 1990; Ord. No. 3695, §§ 2—4, adopted Feb. 18, 1991; Ord. No. 3696, §§ 1—5, 8, adopted Feb. 18, 1991. See the Code Comparative Table for a specific enumeration of repealed and renumbered sections.

Cross reference(s)—Electrical code, § 6-31 et seq.; minimum requirements for artificial lighting in housing code, § 13-126 et seq.

State law reference(s)—Electrical code, F.S. § 553.15 et seq.

Customer-owned renewable generation shall mean an electric generating system located on a customer's premises intended to offset part or all of the customer's electricity requirements with renewable energy under terms and conditions that do not include the retail purchase of electricity from the third party.

Curtailable 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 premises 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 intended to be interpreted as DC values.

Economic development incentive (EDI) rate rider program shall mean the rate rider program available to qualifying nonresidential electric customers for metered demand associated with new permanent service to a single point of delivery or for qualifying nonresidential electric customers with increased metered demand associated with an existing single point of delivery.

Electric system fuel and purchased power expense shall mean the cost or expense of fuel transported to and consumed in the generation of electricity in the city's generating plants and the identifiable costs incurred while having power delivered to the system to maintain adequate capacity reserve levels on the system, including, but not limited to, generation capacity charges, reservation charges, energy charges, adders, and/or any transmission or wheeling charges.

Extraordinary fuel related expenses shall mean the cost of lime, urea, and/or any other additive consumed during the combustion process for the production of power as well as any other fuel related costs or expenses posted to account 502 as defined under Federal Energy Regulatory Commission (FERC) rules of accounting. Additionally, any costs or expenses incurred in marketing or selling renewable energy credits (RECs) or any other environmental attributes are extraordinary fuel related expenses.

Feed-in-tariff shall mean the provision by which the utility may purchase renewable electric energy and the associated renewable energy credits or other environmental attributes from a customer or entity within the utility's electric service area pursuant to the standard offer contract.

Full deposit shall mean an amount equal to two times the estimated average monthly combined utility bill for the location at which utility services will be provided, as determined by the general manager for utilities or his/her designee.

General service shall mean:

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

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

Gross power rating shall mean the total manufacturer's DC nameplate generating capacity of the customer-owned renewable generation that will be interconnected to and operated in parallel with the city's electric distribution system.

Interruptible 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 interrupt 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 electric power demand at a single metering point that can be totally interrupted either automatically or manually at the discretion of the city.

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

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

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

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

Native load fuel expenses shall mean the total fuel and purchased power cost or expense to supply all retail and wholesale customers and shall not include the cost or expense to supply interchange sales.

Natural gas fuel expenses shall mean the total expense of purchased gas volumes, as received by the local distribution system for delivery to end use customers.

Net-metering shall mean a metering and billing methodology whereby customer-owned renewable generation is allowed to offset part or all of the customer's electricity consumption on site. In the event the customer-owned renewable generation creates any excess energy, it may be delivered to the city's electric distribution system.

Other fuel revenues shall mean revenues received from the sale of renewable energy credits (RECs), environmental attributes, contractual fuel recovery, other non-retail, and/or wholesale fuel as identified by the general manager or his/her designee.

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

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

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

Satisfactory payment record shall mean a 24 consecutive month period with no termination of utility services orders issued over the last consecutive 12-month period for either nonpayment, returned payments, and/or no more than three delinquent payments.

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

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

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

Standard deposit shall mean the current residential deposit amount prescribed in Appendix A of the Code of Ordinances.

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

(Code 1960, § 28-1; Ord. No. 3665, § 1, 9-24-90; Ord. No. 3695, § 1, 2-18-91; Ord. No. 960270, § 1, 9-23-96; Ord. No. 960498, § 1, 5-27-97; Ord. No. 970434, § 1, 10-13-97; Ord. No. 980557, § 1, 11-23-98; Ord. No. 030278, § 12, 9-8-03; Ord. No. 070374, § 1, 9-24-07; Ord. No. 080566, § 1, 2-5-09; Ord. No. 090288, § 6, 9-17-09; Ord. No. 100537,

§ 1, 1-20-11; Ord. No. 120516, § 1, 8-21-14; Ord. No. 130582, § 1, 8-21-14; Ord. No. 130576 , § 1, 11-6-14; Ord. No. 120883 , § 2, 8-20-15; Ord. No. 170580 , § 2, 1-4-18; Ord. No. 170722 , § 2, 2-1-18)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 27-22. Resale of electricity prohibited.

Electric energy received under either residential electric service, general electric service, or large power electric service shall be used for the consumers' direct use only. No resale of such electric energy shall be permitted.

(Code 1960, § 28-4; Ord. No. 3754, § 80, 1-27-92; Ord. No. 030278, § 13, 9-8-03)

Sec. 27-23. Approval of premises required.

No electric service shall be rendered by the city to any consumer at any premises until such time as the appropriate building official, or his/her designee, shall have approved the premises for services as follows:

(1) *Residential electric service.* Approval of a dwelling for residential electric service must be obtained before initial provision of electric service.

(2) *Other customer classes.* Approval of the premises for electric service must be obtained prior to initial provision of service and/or transfer of electric service.

(3) *Copy of approval.* Each applicant for service must submit a copy of the approval where required as part of the application for service.

(Code 1960, § 28-10; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-24. Delivery voltages.

All newly constructed or renovated structures shall be served at the utility's standard delivery voltages: 120/240 volt single phase, 120/208 volt three-phase wye, or 277/480 volt three-phase wye. For the purposes of this section, a building shall be considered renovated if existing electrical facilities are replaced, upgraded or reconstructed as a result of changed use of the building or increased electric load of an existing use. This requirement may be waived by the general manager for utilities or his designee when 120/240 volt three phase delta is the only voltage available or in cases of extreme hardship.

(Ord. No. 3136, § 1, 6-10-85; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980557, § 1, 11-23-98)

Sec. 27-25. Temporary electric service.

Temporary electric service may be provided for construction activities, fairs, exhibits and other similar temporary purposes under the general service electric rate schedule. A prepaid fee shall be required for each temporary service in accordance with the schedule in appendix A. However, if additional electrical distribution facilities must be constructed, removed, or adjusted for the sole purpose of establishing temporary service(s), the estimated costs associated with the additional work shall also be due and payable in advance. The term of temporary service shall not exceed one year.

(Code 1960, §§ 28-7, 28-7.01; Ord. No. 3294, § 1, 10-13-86; Ord. No. 3493, §§ 1, 4, 11-21-88; Ord. No. 3695, § 5, 2-18-91; Ord. No. 3696, § 6, 2-18-91; Ord. No. 3754, §§ 17, 80, 1-27-92; Ord. No. 980557, § 2, 11-23-98)

Sec. 27-26. Metering requirements.

The customer (or developer) will provide and install meter socket(s) and related service entrance equipment in accordance with the Energy Delivery Service Guide referenced in section 27-36. All customer installed socket(s) and related service entrance equipment shall be properly maintained at the customer's expense. All meters, wires and other appliances furnished by the city shall remain the property of the city and the consumer shall properly protect the city's property on the consumer's premises. In the event of any loss or damage to property of the city caused by or arising out of carelessness, neglect or misuse by the consumer, the customer, or other unauthorized parties, the cost of making good the loss or repairing the damage shall be paid by the customer.

(Code 1960, § 28-11; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980557, § 2, 11-23-98)

Sec. 27-26.1. Same—Testing.

Upon written notice, a meter will be tested by the city and if the meter when tested is found to be not more than two percent fast, the expense of the test shall be paid by the consumer in accordance with the schedule set out in appendix A, otherwise the expense of the test will be borne by the city.

(Code 1960, § 28-13; Ord. No. 3695, § 6, 2-18-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 030278, § 14, 9-8-03)

Sec. 27-26.2. Same—Tampering with; altering.

(a) *Prohibited.* It shall be unlawful for any person to meddle, tamper with, alter or change the wiring system on any premises or to interfere in an way with a meter or meter connection. Should it appear that electric energy has been stolen by altering the wires, reversing the meter or otherwise, the general manager for utilities or his/her designee shall have the right to discontinue the service until the defect is corrected and the service approved by the city's electrical inspector.

(b) *Diversion cut-back charge.* When an electric meter is found to have been tampered with service shall be subject to immediate disconnection. Before service may be restored, the estimated consumption as defined in subsection (c) of this section shall be paid by cash, postal money order or cashier's check or equivalent or satisfactory arrangements for payment shall be made. Upon payment of the estimated consumption, service shall be restored. If the customer's deposit has been previously refunded, a new deposit may be required.

(c) *Estimated consumption and billing.* When an electric meter is found to have been tampered with or current has been otherwise diverted, the consumer shall be billed for the estimated energy consumed based on the rate in effect at the time of such billing. The consumption shall be estimated on the basis of previous consumption, consumption after replacement of the meter, or any other method in accordance with generally accepted utility practices which produces a reasonable estimate. In addition, the consumer shall be billed for the actual cost of the investigation of the meter tampering, including cost associated with the estimation of consumption and the labor, supplies, materials and equipment used in connection with such investigation. The consumer shall also be liable to the city for the cost of collection, including agency, attorneys' fees and court costs if the account is placed in the hands of an agency or attorney for collection or legal action because of the customer's failure to pay any amount due.

(d) *Prima facie evidence.* The presence, on property in the actual possession of the consumer where the meter tampering has occurred, of any connection, wire, conductor, meter alteration, or device whatsoever which affects the diversion or use of electricity so as to avoid the registration of such use by or on a meter installed or provided by the city shall be prima facie evidence of an intent to violate this section if:

    (1) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

(2) The customer charged with the violation of this section has received the direct benefit of the reduction of the cost of such utility service; and

(3) The customer or recipient of the utility service has received the direct benefit of such utility service for at least one full billing cycle.

(e) *Breaking of meter-pan seal.* When it is necessary to break a meter or meter-pan seal, the electrician performing such work shall notify the designated city official. A service fee in accordance with the schedule set out in Appendix A shall be charged to the electrician when notice is not provided. Where a meter-pan seal is discovered broken, the meter shall be inspected to determine if it has been tampered with. If it has not been tampered with, the pan shall be resealed and the customer advised in writing that it is unlawful to break a meter-pan seal without notifying the appropriate city official.

(Code 1960, §§ 28-12, 28-13.1; Ord. No. 3122, § 1, 4-15-85; Ord. No. 3695, § 7, 2-18-91; Ord. No. 3696, § 7, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-27. Base rates for retail service.

(a) *Rates.* The rates to be charged and collected for electric energy furnished by the city to retail consumers shall be in accordance with the schedule set out in Appendix A.

(b) *Taxes.* An amount equal to all applicable taxes imposed against the sale or consumption of electric energy shall be added to the rates hereinabove set forth. The United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions, and instrumentalities thereof, and all recognized places of religious assembly of the State of Florida are exempt from the city's utility tax.

(c) *Surcharge for consumers outside city limits.* The rates to be charged and collected by the city for electric energy furnished by the city outside of its corporate limits to consumers of retail electric service shall be the base rates as set forth above, plus a surcharge equal the amount of the city utility tax charged consumers inside the city limits; provided, however, that the United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions, and instrumentalities thereof and all recognized places of religious assembly of the State of Florida are exempt from the payment of the surcharge imposed and levied thereby.

(d) *Availability.* This service is available to consumers both within and outside the corporate limits of the city.

(Code 1960, §§ 28-3.1—28-3.4; Ord. No. 3162, §§ 1—4, 9-23-85; Ord. No. 3469, § 1, 9-26-88; Ord. No. 3567, § 1, 9-25-89; Ord. No. 3695, § 8, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-28. Electric system fuel and purchased power adjustment.

(a) An electric system fuel and purchased power adjustment shall be added to the base rate for electric service to all customer rate classifications as specified in the schedule set out in Appendix A. The electric system fuel and purchased power adjustment shall be computed to the nearest whole mill ($0.001) per kilowatt hour (kWh) of energy consumed in accordance with the formula specified in subsection (c) of this section. The purposes of the electric system fuel and purchased power adjustment calculation are to allocate the appropriate amount of system fuel cost(s) associated with the electric service to each kWh sold; to specify the amount of such costs that have resulted from increases in the cost of fuel subsequent to October 1, 1973; and, to segregate the remaining fuel recovery that is exempt from utility tax and surcharge.

(b) The electric system fuel and purchased power adjustment for each billing month shall be based on fuel cost and energy sales which are estimated by the general manager for utilities or his/her designee. When applicable, a fuel levelization fund amount and a true-up correction factor, which shall be based on the

actual system performance in the second month preceding the billing month, as certified by independent certified public accountants, shall be added to the electric system fuel and purchased power adjustment before applying to customer(s) bills.

(c) The following formula shall be used in computing the monthly electric system fuel and purchased power adjustment:

(1) Projected electric system fuel and purchased power expense for billing month[1] _____

(2) Projected wholesale fuel revenue for billing month[1] _____

(3) Projected other fuel revenue for billing month[1] _____

(4) Projected fuel costs to be recovered by retail sales for billing month _____

Item 1 - Item 2 - Item 3

(5) "True-up" calculation from second month preceding the billing month _____

a. Native load fuel expense for sales from the second preceding month _____

1. System generation fuel[3] _____

2. Purchases from interchange and purchased power agreements[4] _____

3. Fuel portion of interchange sales[4] _____

4. Native load fuel expense _____

Item 5a1 + Item 5a2 - Item 5a3

b. Total fuel revenue from the second preceding month _____

1. Electric system fuel and purchased power adjustment revenue[2] _____

2. Embedded fuel[2, 6] _____

3. Wholesale fuel revenue[2] _____

4. Total fuel revenue _____

Item 5b1 + Item 5b2 + Item 5b3

c. True-up from second preceding month _____

d. Fuel levelization amount from second preceding month _____

e. True-up for billing month _____

Item 5a4 - Item 5b4 + Item 5c + Item 5d

(6) Calculation of electric system fuel and purchased power adjustment for billing month _____

a. Projected retail sales MWh _____

b. Projected fuel costs to be recovered by retail sales _____

1. Projected fuel costs[1] _____

Item 4

2. True-up for billing month _____

Item 5e

3. Embedded fuel[6] projected for billing month _____

4. Fuel levelization amount used or added for billing month[5] _____

5. Total fuel adjustment revenue requirement for retail sales _____

Item 6b1 + Item 6b2 - Item 6b3 + Item 6b4

c. Fuel adjustment for billing month (mills, $/MWh) _____

Item 6b5/Item 6a

Footnotes:

[1] Electric system fuel and purchased power adjustment expenses, costs, retail sales, and wholesale sales, and other revenues are to be estimated for the billing month by the general manager for utilities or his/her designee. For the purposes of this section, wholesale sales are total requirements sales for resale that are not interchange sales.

[2] Fuel and purchased power adjustment revenues, other fuel revenues, retail, and/or wholesale sales from the second month preceding the billing month shall be actual data as billed to the city's electric customers.

[3] System fuel costs for the second month preceding the billing month shall be based on actual system fuel costs.

[4] The fuel cost portion of interchange sales for the second month preceding the billing month shall be the cost of fuel applicable to such sales as determined by the general manager for utilities or his/her designee. The fuel cost portion of interchange purchases for the second month preceding the billing month is determined from invoice(s) received for such purchases. In the case of interchange purchases, the entire cost including transmission charges, if any, will be included in the fuel cost for such transactions.

[5] The fuel levelization fund balance may be used each month to levelize the monthly electric system fuel and purchased power adjustment. At any given point in time, the fuel levelization fund balance shall be no greater than ten percent of the annual fuel budget and no less than negative five percent of the annual fuel budget. In the event that the fuel levelization fund balance varies from the above-identified range, the general manager or his/her delegate will present an information item to the city commission as soon as practicable.

[6] Six and one-half mills ($0.0065) per kWh was the cost of fuel, imbedded within base rates for retail service, on October 1, 1973, making it subject to taxation.

(Code 1960, § 28-3.5; Ord. No. 3112, § 1, 2-25-85; Ord. No. 3429, § 1, 4-4-88; Ord. No. 3453, § 1, 8-8-88; Ord. No. 3640, § 1, 7-16-90; Ord. No. 3750, § 1, 11-18-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950731, § 1, 10-9-95; Ord. No. 130582, § 2, 8-21-14)

Sec. 27-29. Public streetlights—Generally.

(a) *Definition.* For purposes of this section, public streetlights are defined as lights installed along public thoroughfares.

(b) *Service within corporate limits.* A request for installation of public streetlights shall be addressed to the city manager or his/her designee, who shall determine, based upon considerations of public city welfare and availability of funds, if the installation should be made. If the city manager or his/her designee determines that such installation shall be made, the city manager or his/her designee shall authorize, by written instruction, the general manager for utilities or his/her designee to make such installation. All costs of installing, operating and maintaining the public streetlight system within the corporate limits shall be paid by the city's general government department. Ownership of the public streetlight system shall reside with the city's utilities department. The city's utilities department shall be reimbursed by the appropriate governmental agency for costs incurred according to the schedule set out in Appendix A.

(c) *Service outside corporate limits.* A request for installation of public streetlights outside the corporate limits of the city shall be addressed to the county engineer or other designated government official, who shall

determine, based upon consideration of public safety, welfare and availability of funds, if the installation should be made. If the county engineer determines that such installation shall be made, the county engineer shall authorize, by written instruction, the general manager for utilities or his/her designee to make such installation. All such installations shall be within the service area of the electric utilities system. All costs in installing, operating and maintaining the public streetlight system outside the corporate limits shall be paid by the local government which has authorized the provision of such public streetlight services. Ownership of the public streetlighting system shall reside with the city's utilities department.

(Code 1960, §§ 28-5.2, 28-7.1(b); Ord. No. 3162, § 5, 9-23-85; Ord. No. 3495, § 1, 12-12-88; Ord. No. 3567, §§ 3, 4, 9-25-89; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-29.1. Same—Rates.

The city's utilities department shall be reimbursed by the appropriate governmental agency for streetlights and poles in accordance with the schedule set out in Appendix A.

(Ord. No. 3695, § 9, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-30. Rental outdoor lights—Application for service.

Application for rental outdoor light service shall be on forms furnished by the city and shall constitute an agreement by the consumer with the city to abide by the rules of the city in regard to its rental outdoor light service. The agreement shall specify the billable units (fixtures and poles) to be furnished and shall allow the city reasonable access across private property for the purposes of maintaining the facilities supplied.

Application for service by firms, partnerships, associations and corporations shall be submitted only by their duly authorized agents, and the official title of the party shall be included in the application.

(Code 1960, § 28-5.1; Ord. No. 3567, § 2, 9-25-89; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-30.1. Same—Rates.

Charges for rental outdoor light fixtures and poles shall be in accordance with the schedule set out in Appendix A.

(Code 1960, § 28-7.2; Ord. No. 3162, § 6, 9-23-85; Ord. No. 3567, § 5, 9-25-89; Ord. No. 3695, § 10, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-31. Electric system fuel and purchased power adjustment added to public streetlight and rental outdoor light services.

The electric system fuel and purchased power adjustment in section 27-28 shall be applied to public streetlight and rental outdoor light services based on the estimated average energy usage per fixture according to the following schedule:

Non-LED Fixtures by Fixture Wattage	Average Monthly Kilowatt-Hours (kWh)
100W	41
150W	62
175W	72

200W	82
250W	103
400W	164

LED Fixtures by Fixture Type	*Average Monthly kWh*
Type 78, 83, 85	13
Type 38, 61	15
Type 56, 73	16
Type 55, 72	18
Type 52, 69, 80, 84, 87, 90, 95	20
Type 76, 77, 86, 88, 96, 98, 99	25
Type 94	26
Type 39, 42, 47, 48, 62, 65, 74, 75	32
Type 53, 54, 70, 71	39
Type 40, 43, 60, 63, 66, 79, 81, 82, 91, 92, 93	45
Type 97	50
Type 89	58
Type 45, 46	70
Type 41, 44, 64, 67	79
Type 51, 68	82
Type 57	7
Type 58	36
Type 59	65

(Code 1960, § 28-7.3; Ord. No. 3567, § 9, 9-25-89; Ord. No. 3754, § 80, 1-27-92; Ord. No. 150246 , § 1, 9-17-15; Ord. No. 160253 , § 2, 9-15-16; Ord. No. 170257 , § 1, 9-21-17; Ord. No. 180282 , § 1, 9-20-18; Ord. No. 190210 , § 1, 9-26-19; Ord. No. 2022-381 , § 1, 9-22-22)

Sec. 27-32. Availability of public streetlight and rental outdoor light service.

The city will provide public streetlight and rental outdoor light service to any customer requesting such service pursuant to section 27-29 and section 27-30 of the city Code of Ordinances at the rates set forth in Appendix A; except that facilities provided at such rates shall include the fixture, the usual and customary fixture bracket and one span of secondary conductor. If noncustomary facilities or installations are initiated by the utility, the utility shall pay the actual cost of such facilities or installations. If the customer requests or requires noncustomary facilities or installations, the customer shall pay the actual cost of such facilities or installations.

(Ord. No. 3665, § 6, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 3786, § 1, 9-21-92)

Sec. 27-33. Relocation, modification or removal of existing facilities.

If the city is required to relocate, modify or remove existing overhead and/or underground distribution facilities because of either a utility customer's request, or because changes in the customer's facilities and/or operations necessitate relocation, modification or removal of distribution facilities in order to comply with either the National Electrical Code, the National Electrical Safety Code or city policy, all costs of any such relocation,

modification or removal shall be borne exclusively by such customer. All costs of relocating, modifying or removing utility facilities that are attributable to city initiated renewal or reconstruction projects shall be borne exclusively by the city.

(Ord. No. 3665, § 3, 9-24-90; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-34. Availability of service.

The city will supply electric service to any prospective customer within the corporate limits of the City of Gainesville and in the unincorporated areas of Alachua County, subject to the following conditions:

(a) Should the extension, installation, improvement or modification of facilities be required, either on-site or off-site, the City will pay the cost of such facilities if in the opinion of the general manager for utilities or his/her designee, the immediate or potential revenues justify the full cost of the facilities.

(b) In those cases where estimated revenues are inadequate to cover the full cost of the extension, installation, improvement or modification, the customer shall make a contribution in aid of construction (CIAC). Revenue adequacy of the extension, installation, improvement or modification shall be evaluated based upon the internal rate of return (IRR). CIAC is required unless the IRR is 14 percent or greater. Where multiple customers are involved, contributions in aid of construction may be shared on a pro-rata basis.

(Ord. No. 3665, § 4, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980557, § 3, 11-23-98)

Sec. 27-35. Installation of underground electrical facilities.

When underground electrical facilities are to be installed, whether required by governmental authority, or at the request of a customer (or developer), the city will, at its expense and in the exercise of its engineering judgment, design the facilities. The cost of including that design in the construction plans and documents of the customer (or developer) shall be borne by the customer (or developer). The customer (or developer), shall then provide and install (or cause to have installed), at their sole expense, all conduit, concrete equipment foundations, and related civil infrastructure required for the installation of the electrical facilities including, but not limited to: primary and secondary voltage electrical systems, services, and lighting systems in accordance with the Energy Delivery Service Guide referenced in section 27-36. Ownership of all customer or developer installed facilities shall be transferred to the city upon acceptance by the city. In addition, the customer (or developer) will pay any "Contribution in Aid of Construction" which the city may require pursuant to section 27-34. Except as provided for by ordinance, the costs associated with utility initiated underground electrical system construction or reconstruction shall be borne exclusively by the utility.

(Ord. No. 3665, § 5, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980557, § 3, 11-23-98)

Sec. 27-36. Energy delivery service guide.

All electrical facilities and related civil infrastructure shall be installed, replaced or maintained in accordance with the Energy Delivery Service Guide promulgated by the Energy Delivery Department of GRU dated November 1, 1998, or the latest revision thereof.

Notwithstanding the provisions of sections 27-26 and 27-35, the provisions of the New Electrical Service Installation Guide dated October 28, 1996 shall remain in effect for a period of 180 days following the adoption of the ordinance from which this section derives. Thereafter the provisions of the Energy Delivery Service Guide dated November 1, 1998 (or the latest revision thereof), shall take effect.

The only exception to section 27-35 shall be a housing subdivision or similar development that is approved by GRU within 180 days of the adoption of the ordinance from which this section derives, provided that substantial construction is begun on said development within 180 days of the date of GRU approval. This exception does not apply to the conduit for the secondary service of a single family detached home. The customer (or developer) may elect to comply with the provisions of the Energy Delivery Service Guide dated November 1, 1998, at any time prior to the effective date above.

(Ord. No. 980557, § 3, 11-23-98)

Sec. 27-37. Net-metering.

(a) *Intent.* It is the intent of this section to promote the use of customer-owned renewable generation to offset part or all of the customer's electric consumption.

(b) *Net-metering program availability.* The net-metering program is only available to the city's electric customers who have constructed or are willing to construct customer-owned renewable generation, at no cost to the city, and are willing to execute an interconnection agreement in form and substance as provided by the city.

(c) *Methodology for net-metering calculation.* The net of the kilowatt hours used by the customer (residential or nonresidential) less the kilowatt hours exported to the city's electric distribution system from the customer-owned renewable generation shall be the number of kilowatt hours that the customer is billed at the applicable retail rate. In the event that excess kilowatt hours are exported to the city's electric distribution system beyond the kilowatt hours used by the customer during the billing cycle, such kilowatt hour balance will carry forward to be netted against kilowatt hours used by the customer during future billing cycles. If, at the end of each calendar year, the customer's account contains a kilowatt hour credit balance, the customer shall be paid the credit at the then-current avoided energy cost. When a net-metering customer leaves the city's electric system, the net-metering customer's credit balance shall be paid at the then-current avoided energy cost.

(d) *Customer charge.* Regardless of whether excess energy is delivered to the city's electric distribution system, the customer shall pay the applicable customer charge and/or the applicable demand charge for the maximum measured demand during each billing period pursuant to the applicable rate schedules.

(e) *Inspection.* All customer-owned renewable generation equipment must be inspected and approved by the city prior to its operation and connection to the city's electric distribution system. City approval of the customer-owned renewable generation is not done for the benefit of the customer and is not a warranty or guarantee, express or implied, of any sort as to the customer-owned renewable generation. The customer is responsible for ensuring that their customer-owned renewable generation is inspected, maintained, and tested regularly pursuant to any manufacturer's recommendations to ensure proper and safe operation of the customer-owned renewable generation equipment.

(f) *Gross power rating.* Customer-owned renewable generation gross power rating shall not exceed 90 percent of the customer's electric distribution service rating. In no event shall customer-owned renewable generation greater than two megawatts, at any one customer-owned renewable generation site, be allowed to interconnect to the city's electric distribution system under the net-metering program.

(g) *Customer-owned renewable generation liability.* The customer is responsible for protecting all customer-owned renewable generation equipment, inverters, protective devices, and any other system components from damage from the normal and abnormal conditions and/or operations that may occur on the city's electric distribution system in delivering and restoring power.

(h) *Insurance.* The customer is responsible for maintaining the appropriate levels of general liability insurance for personal and property damage related to customer-owned renewable generation.

(i) *Indemnification.* The customer shall hold harmless and indemnify the city, its elected officials, employees, and/or any third-party city hired contractors for any and all losses resulting from the customer-owned renewable generation.

(j) *Islanding.* Customer-owned renewable generation shall not energize the city's electric distribution system when the city's electric distribution system is de-energized at the customer's service point. There shall be no intentional islanding, as described in the Institute of Electric and Electronic Engineers (IEEE) Standard 1547, between the customer-owned renewable generation and the city's electric distribution system.

(k) *Renewable energy credits.* The customer shall retain any renewable energy credits or certificates associated with the electricity produced by its customer-owned renewable generation.

(Ord. No. 120516, § 2, 8-21-14)

Sec. 27-38. Economic development incentive rate rider program.

(a) *Intent.* It is the intent of the city to make an economic development incentive (EDI) rate rider program available to qualifying nonresidential electric customers.

(b) *Program application.* Customers must submit an application to participate in the program on the form provided by the city. The application shall be reviewed by the general manager for utilities or his/her designee. Upon approval of the EDI rate rider program application and once the qualifying metered demand is met, the discount shall commence upon the next billing cycle.

(c) *Program qualifications for a new nonresidential customer.* The EDI rate rider program is available to new customer applicants for initial permanent service with minimum electric metered demand of 100,000 kWh per month at a single point of delivery.

(d) *Program qualifications for an existing nonresidential customer.* The EDI rate rider program is available to existing customer applicants with a 20 percent net incremental metered demand increase above the customer's baseline usage prior to application for participation in the EDI rate rider program. The city shall establish baseline usage for each existing customer applicant based on the average billed kWh for the previous 12-month period at a single point of delivery. The metered demand, including the baseline usage and the net incremental metered demand increase above the customer's baseline usage, shall be a minimum of 100,000 kWh per month at a single point of delivery.

(e) *Load shifting.* The EDI rate rider program is not available for load shifted from one single delivery point in the city's system to another single delivery point in the city's system.

(f) *Program discount.* A discount based on the below-described percentages shall be applied to the customer charge, demand (kW) charge, and energy (kWh) charge according to the following schedule:

Customer Type	Discount
New electric customer	20%
Existing electric customer	15%

The rate rider discount shall not apply to fuel adjustment charges, Gross Receipts Tax, Municipal Public Service Tax, Municipal Surcharge, Alachua County Public Service Tax, late fees, environmental fees, franchise fees, or any other applicable taxes, fees, rates or charges. All other terms and conditions under the otherwise applicable rate schedules shall apply, except as otherwise modified by this EDI rate rider program.

(g) *Program duration.* Participation in the EDI rate rider program shall terminate at the end of the fifth year of participation. The EDI rate rider program is not available for renewal and/or extension beyond the five-year term per location.

(h) *Termination by city.* The city may terminate the discount for failure to meet the qualifications of the EDI rate rider program. In the event that an EDI rate rider program participant fails to purchase the qualifying electric metered demand in any given billing cycle of at least 28 days, the city shall provide customer with notice of program termination. After the first notice of program termination, customer may apply for participation in the EDI rate rider program provided that customer has subsequently met the qualifying electric metered demand for three consecutive billing cycles. Upon the city's approval, the EDI rate rider program discount shall resume for the remainder of the original five-year term. Upon any second notice of program termination, the EDI rate rider program discount shall not be reinstated and shall be discontinued effective immediately.

(i) *Termination by customer.* Customer may elect to voluntarily terminate participation in the EDI rate rider program by providing the city with written notice of such termination. Upon the city's receipt of such notice, the customer is no longer entitled to any discounts provided pursuant to the EDI rate rider program.

(j) *District cooling provisions.* If a customer that is currently connected to the city's district cooling network would have met the requirements for participation in the EDI rate rider program, but for such customer's connection to the city's district cooling network, the customer shall be eligible for participation in the EDI rate rider program. The electric account for the city's district cooling network associated with the qualifying electric metered demand will receive the same applicable EDI rate rider program discount. For purposes of calculating eligibility, the customer's total metered demand will be determined by adding such customer's monthly electric kWh metered demand to their monthly chilled water ton per hour multiplied by 0.9 kW per ton.

(Ord. No. 130576 , § 2, 11-6-14)

Secs. 27-39—27-70. Reserved.

ARTICLE III. SOLID WASTE DISPOSAL[6]

DIVISION 1. GENERALLY

Sec. 27-71. Purpose.

This article is adopted to promote and protect the public health, safety and general welfare of the residents and visitors of the city. The regulations, authority and rates established in this article are for the purpose of providing a solid waste collection and disposal program at a reasonable cost and promoting recycling by both residential and commercial customers.

(Ord. No. 210129 , § 1, 6-2-22)

[6]Ord. No. 210129 , § 1, adopted June 2, 2022, amended Art. III in its entirety to read as herein set out. Former Art. III, §§ 27-71—27-88, 27-92—27-95, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Cross reference(s)—Code enforcement board, § 2-376 et seq.; health and sanitation, Ch. 11.5; recycling centers, § 30-106 et seq.

Sec. 27-72. Definitions.

For the purpose of this article, the following words and terms are herewith defined:

Applicant shall mean:

(a) A person applying to the city for a franchise required to provide commercial service or collect construction and demolition debris within the city for hire, remuneration or other consideration; or

(b) A person applying to the city for a registration certificate required to collect, process, convey or transport recovered materials within the city for hire, remuneration or other consideration; or

(c) A person applying to the city for a registration certificate required to collect, process. convey, or transport food waste within the city for hire, remuneration, or other consideration.

Appropriate disposal and/or recycling site shall mean a place that is properly zoned, permitted, registered or licensed in accordance with all applicable local and state laws for the disposal of solid waste and/or the processing of e recovered materials that have been collected by commercial franchisees or registrants.

Cart shall mean a serial-numbered, two-wheeled container with attached lid and handle, available in approximately 20-, 35-, 65-, and 95-gallon sizes, supplied and distributed by the solid waste collector.

Certified recovered materials dealer shall mean a dealer certified as provided in F.S. § 403.7046.

Commercial customer shall mean any person who receives commercial service.

Commercial establishment shall mean any space used primarily for business activities. Commercial establishment does not include residential properties, even if such residential properties are managed or owned by a commercial entity.

Commercial franchisee shall mean a person who has filed an application with, and received a franchise from, the city to provide one or more of the following services:

(a) Commercial service;

(b) Collection of construction and demolition debris.

Commercial generator shall mean a person who is eligible to receive commercial service under this article and who is the point of origination of solid waste or recovered materials.

Commercial service shall mean pickup of garbage and trash, but excluding hazardous waste, biomedical waste and yard waste, provided by a commercial franchisee to one of the following:

(1) A licensed mobile home park with five or more dwelling units;

(2) Multi-family residences with five or more dwelling units under one common roof;

(3) Any residential property that has opted-out of residential service under the terms of this article and is eligible to receive commercially-collected residential service, or residential property that is required to receive commercially-collected residential services;

(4) Business, commercial or industrial enterprises of all types licensed to do business in the city.

Commercial service container shall mean an industry-standard container constructed of non-absorbent material, with or without a cover, made for mechanized pickup. It includes dumpsters and carts.

Commercially-collected residential service shall mean the collection of solid waste, other than hazardous waste and bio-medical waste, provided to persons occupying residential dwelling units in a development where one or more of the following criteria exists:

(1) The development has at least one building with five or more dwelling units;

(2) The development has a building with two to four dwelling units which has been allowed by the city to opt-out of curbside residential service;

(3) Separate developments that share common infrastructure (such as a shared parking lot). ownership, property management or home owner association but have four or less units per building when the city manager or designee has determined commercially-collected residential service will improve aesthetics or efficiency of collection.

Compactor shall mean any container that has a compaction mechanism.

Construction and demolition debris shall mean materials generally considered to be not water soluble nonhazardous in nature, including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from renovation of a structure, and including rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project, including such debris from construction of structures at a site remote from the construction or demolition project site. Mixing of construction and demolition debris with other types of solid waste, including material from a construction or demolition site which is not from the actual construction or destruction of a structure will cause it to be classified as other than construction and demolition debris.

Contractor shall mean the firm with whom the city has contracted to provide residential service.

Curbside shall mean the designated physical location for the placement of solid waste accumulations intended for residential service collection and disposal. This designated location shall be as near as possible to the traveled streets or alley normally serviced by the contractor's collection vehicles, but in no case upon such street or alley. The intention of a curbside designation is to allow collection by waste control personnel in a rapid manner with walking or reaching minimized. In all cases, the city manager or designee shall have the authority to approve or specify the precise location for such curbside placement.

Customer shall mean the person, organization or corporation responsible for payment of all residential, commercial or commercially-collected residential services used at a specific location, and further defined as that person, organization or corporation who signed the utility application or commercial service contract requesting that services be made available at the specific location and thereby agreeing to pay for all usage of such services occurring at the location.

De minimus quantity shall mean:

(a) No more than 15 percent by volume of total designated recyclable materials, regardless of type, in a solid waste load delivered to a city facility or a facility under contract with the city or in a solid waste container at point of generation; or

(b) No more than ten percent by volume of non-recovered materials in a recovered material container at the point of generation; or

(c) No more than 15 percent by volume of food waste in a solid waste load delivered to a city facility or a facility under contract with the city or in a solid waste container at point of generation.

Designated recyclable materials shall mean those recyclable materials that are designated by the city manager or designee as potential recovered materials.

Dumpster shall mean a large container for waste which is one cubic yard in size or greater designed for mechanized pickup into a specially equipped truck for collection.

Dwelling unit shall mean a living unit, house, mobile home, apartment or building used primarily for human habitation.

Food shall mean nutritious substances eaten or consumed to sustain human or animal growth and repair vital processes and to furnish energy.

Food service establishment means any place where food is prepared and intended for individual portion service, and includes the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. The term includes delicatessens that offer prepared food in individual service portions. The term does not include schools, institutions, fraternal organizations, private homes where food is prepared or served for individual family consumption, retail food stores, the location of food vending machines, cottage food operations, and supply vehicles, nor does the term include a research and development test kitchen limited to the use of employees and which is not open to the general public.

Food waste shall mean food that is no longer edible or fit for human or animal consumption, nonedible parts of food, or food soiled paper, resulting from food production. preparation, and consumption activities of animals and humans that consists of, but not limited to, vegetables, grains, animal products and byproducts, that have known compostable potential and can be separated from the solid waste stream. Food waste does not include food as that term is defined in this article.

Garbage shall mean all putrescible waste, which generally includes, but is not limited to, kitchen and table food waste, animal, vegetable, food or any organic materials that are attendant with, or results from, the storage, preparation, cooking or handling of food materials whether attributed to residential or commercial activities.

Living unit shall mean a place where people reside on a non-transient basis, containing a room or rooms comprising the essential elements of a single housekeeping unit. Each separate facility for the preparation, storage and keeping of food for consumption within the premises shall be considered a separate living unit.

Organic materials shall mean yard waste, vegetative waste, food waste, non-recyclable paper, or other materials that have known compostable potential, can be feasibly composted and can be diverted and source separated or removed from the solid waste stream, whether or not the materials require subsequent processing or separation.

Pre-paid garbage disposal bag shall mean a plastic bag, approximately 30 gallons in size, sold by the contractor solid waste collector or by a distributor approved by the city, for use in disposing of solid waste.

Person shall mean an individual, group of persons, firm, corporation, association, organization, syndicate or business trust.

Rates shall mean those charges and fees adopted by the city commission by resolution, ordinance or contract for the management of solid waste and recovered materials, including those charges and fees collected by commercial franchisees, except those charged by registrants to commercial generators and generators of construction and demolition debris.

Receptacle shall mean a container, which is smaller than a 95-gallon cart, intended for the disposal of garbage, recovered materials, or food waste prior to being placed in a cart or dumpster.

Recovered materials shall mean metal, paper, glass, plastic, textile or rubber materials that have known recycling potential, can be feasibly recycled and have been diverted and source separated or removed from the solid waste stream for sale, use or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. Recovered materials as described above are not solid waste.

Registrant shall mean:

(a) A person who has made application with the city to collect, transport, convey or process recovered materials in the city and has subsequently received a registration certificate from the city; or

(b) A person who has made application with the city to collect, transport, convey or process food waste in the city and has subsequently received a registration certificate from the city.

Residential service shall mean the solid waste collection service provided to persons occupying residential dwelling units in buildings with four or fewer dwelling units within the city.

Solid waste shall mean sludge unregulated under the federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage, rubbish, refuse, special waste, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural or governmental operations. Recovered materials as defined in this article are not solid waste.

Solid waste regulations shall mean those regulations prescribed by this article along with any administrative rules, procedures and contracts as may be established for the purpose of carrying out the provisions of this article.

Source separated shall describe those recovered materials separated from solid waste where the recovered materials and solid waste are generated.

Trash shall mean nonputrescible debris that is generated by households, businesses, and institutions.

Yard waste shall mean all accumulations of grass, leaves, shrubbery, vines, tree branches and trimmings which are normally associated with the care and maintenance of landscaping.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-73. Prohibited acts.

It shall be unlawful for any person to do any of the following:

(1) To place or cause to be placed any garbage, trash, recovered materials, or food waste upon the property of another.

(2) To collect or transport solid waste for hire or for remuneration or any other form of consideration without first being granted a commercial franchise except as follows:

   a. Commercial generators transporting their own solid waste; and

   b. Persons transporting their own solid waste generated by their own dwelling unit or establishment to an appropriate disposal site.

(3) To collect or transport construction and demolition debris for hire or for remuneration or any other form of consideration without first being granted a construction and demolition debris franchise except as follows:

   a. Commercial generators transporting their own debris;

   b. Persons secondarily providing removal of debris created as a result of other primary services performed by those persons as described in subsection (11) below. Subcontractors who provide primarily collection or transport services shall not qualify for this exemption.

(4) To collect, process, convey or transport recovered materials in the city without having registered with the city, except as follows:

   a. Persons whose primary business is freight transport that may involve the intermittent transport of recovered materials;

   b. Commercial generators transporting their own recovered materials; and

   c. Persons transporting their own recovered materials generated by their own dwelling unit or establishment to an appropriate recycling site.

(5) To collect recovered materials from a solid waste container used by a consumer or commercial customer receiving service from a franchisee, franchise or registrant, after the consumer or commercial customer places the container and recovered materials at the curb or designated area for collection, except as permitted by the city on an emergency interim basis as part of the city's recycling program when the city manager or designee determines that it is necessary to protect public health, safety or welfare.

(6) To allow solid waste, recovered materials, or food waste to spill, blow or drop from any vehicle on any road or to transport any solid waste, recovered material, or food waste over any public road unless the solid waste, recovered material, or food waste is securely tied or covered so as to prevent leakage or spillage onto the road.

(7) To place or store solid waste, recovered materials, or food waste on any property for a period in excess of one week, unless it is securely contained or covered.

(8) To deposit or dispose of any garbage, trash, or recovered materials on the paved or traveled portion of any public street, or any alleyway, sidewalk, bike path, stream, ditch, river, pond, bay, creek, park, other right-of-way or public place in the city except at areas as may be designated by the city.

(9) To deposit, dump or dispose of any garbage or trash at, upon or in any incinerator or landfill within the city without first obtaining the permission of the custodian thereof.

(10) To burn any garbage or trash within the city, except at designated incinerators or landfills, without first obtaining a permit from the city.

(11) To produce or accumulate any construction and demolition debris, tree branches or similar debris while acting in the capacity of a contractor (such as a tree surgeon, landscaper or building contractor), without removal of the same to a designated disposal area.

(12) To allow any scattered garbage, trash, recovered materials, or food waste to remain at or near the curbside, or to fail to remove any windblown or animal scattered garbage, trash, recovered materials, or food waste from a public area and right-of-way which have blown or otherwise scattered from the person's dwelling unit curbside collection point.

(13) To place any solid waste, recovered materials, or food waste out for collection by any alley service drive, easement or right-of-way not serviced by collection trucks.

(14) To place any solid waste, recovered materials, or food waste out for collection adjacent to the street if collection trucks service the area from an established alley.

(15) To place any solid waste, recovered materials, or food waste in an underground container for pickup.

(16) To do any act prohibited or to fail to do any act required by the solid waste regulations of the city.

(17) To deposit any hazardous waste as defined in F.S. § 403.703, in any cart or commercial service container.

(18) To place or cause to be placed any garbage, trash, recovered materials, food waste, or other solid waste in the cart or commercial service container belonging to another without proper authority.

(19) To remove any materials, without proper authority, from any container belonging to another which contains materials set out for recycling.

(20) To mix yard waste with normal solid waste loads, whether for residential or commercial service.

(21) To leave uncovered a garbage, recovered material, or food waste container that has a lid or fitted cover.

(22) To collect garbage, trash, recovered material, or food waste in a container without a properly sized or fitted cover, except for residential curbside recycling bins designed to be open-topped containers.

(23) To collect, process, convey or transport food waste in the city without having registered with the city, except as follows:

a. Commercial generators transporting their own food waste; and

b. Persons transporting their own food waste generated by their own dwelling unit or establishment to a food waste processing site that meets the permitting requirements of the State of Florida.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-74. City manager to make regulations; enforce article.

(a) The city manager or designee shall have the authority to make regulations concerning the days of collection, type and location of collection containers and other such matters pertaining to the storage, collection, conveyance and disposal as necessary and to change or modify the same after reasonable notice to affected persons.

(b) Except as provided otherwise, provisions of this division may be enforced by civil citation if specifically provided for by section 2-339, enforced as provided by section 1-9, enforced by code enforcement proceedings, or the city may seek injunctive relief.

(c) The city manager or designee may enforce regulations regarding storage, collection, conveyance and disposal of all solid waste, recovered materials, and food waste generated within the city, including accumulations of same that may be in violation of this article or other solid waste regulations.

(d) If a notification of violation was provided and correction of the violation was not made in the time specified by the notice, the city is hereby authorized to collect and dispose of the material causing the violation and to bill the customer or owner of record of the property for the cost of providing this additional collection and disposal service.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-75. Commercial service and commercially-collected residential service.

(a) *Provided.* Commercial service shall be provided by collectors authorized to provide such service under a franchise with the city to persons that do not qualify to receive residential service. Collection of designated recyclable materials shall be provided by registrants, including franchisees who are registrants.

(b) *Collection frequency and method.* Each commercial generators or commercially-collected residential service customers shall enter into an agreement with a franchisee of the city for the frequency and method of garbage collection except where: 1) landlords provide service through a franchisee, or 2) commercial generators reach a dumpster sharing arrangement with an adjacent generator or a generator whose shared dumpster is within 500 feet (or further if approved by the city manager or designee) of each commercial generator's service door and one of the generators has an agreement with a franchisee. If a commercial generator has a dumpster sharing arrangement, proof of such an arrangement shall be submitted to the city upon request. Except as specifically provided below, such service shall be received no less than one time per week with no exception for holidays, except that collection service scheduled to occur on a holiday may be rescheduled with written notice to the customer as long as minimum frequency is met. Collection service provided to compactors is exempt from this minimum frequency. Commercially-collected residential service not serviced by a compacting dumpster shall receive a minimum of twice per week service. The following

commercial establishments not serviced by a compacting dumpster shall not let food waste remain in a commercial service container for more than two consecutive working days: 1) any establishment licensed to sell alcohol, beer, or wine for consumption on premises; 2) grocery stores selling fresh produce, raw meat, and packaged food primarily for consumption off premises; and 3) food service establishments. When necessary to protect the public health or to enforce the purpose of this article, the city manager or designee shall have the authority to stipulate the frequency of collection or require the implementation of a plan to eliminate the hazard caused by excess accumulation of waste. Service shall consist of the mechanical dumping of commercial containers capable of being unloaded by proper equipment; or a manual hand service dumping of containers located at agreed upon sites upon the property; or other levels of service as may be required or agreed to. If the franchisee fails to perform collection according to the contract, the customer shall have 30 days from the first such failure to enter into an agreement with another franchisee before being cited for violation of this subsection.

(c) *Preparation and storage.* Collection containers shall be drained of free liquids prior to accumulation for collection. Storage areas and areas adjacent to the storage area shall be maintained by the customer in a neat, sanitary and sightly manner. Customers are responsible for maintaining the accessibility to collection containers or areas. If pickups are missed due to customer's failure to maintain accessibility, and unsanitary or unsightly conditions result, the customer shall be in violation of this article. All collection containers that are to be picked up by collection trucks must be approved by the city as meeting acceptable standards established by the city. Readily apparent damage to storage areas or container enclosures, normal wear and tear excepted, caused by the collector driver shall be reported by the driver to the customer prior to leaving the collection area if the business or management office is open and if not, by radio to the contractor's office, and personnel from the office will then contact the customer at the earliest possible time.

(d) *Commercial service containers.* The following commercial service container standards are guidelines under which the owners of containers, as well as the lessees of containers, will conform in order to ensure a healthy and aesthetically pleasing environment for the residents and visitors of the city:

(1) Each container shall be kept painted in good condition at all times, unless the container is made of aluminum, stainless steel, plastic or other similar materials that do not readily accept painting.

(2) Every commercial service container shall be clearly marked with the following information and comply with the following standards:

a. A serial or property control number on the front or side of the commercial service container;

b. By October 1, 2023, every commercial service container, except for construction and demolition debris collection containers, shall follow the city's approved color and educational labeling format as set forth in ordinance and regulations maintained on file with the solid waste division.

(3) Every recovered materials commercial service container shall be clearly and conspicuously labeled across the front of a dumpster or the lid of a cart, as applicable, with the following information:

a. "RECYCLING" "RECYCLING ONLY" or "RECYCLE HERE".

b. "NO GARBAGE".

c. List of designated recyclable materials accepted in that container, such as "CARDBOARD ONLY," that is texted-based. image-based or a combination of text and images.

d. Educational labeling shall be:

1. Clearly and conspicuously placed on and consist of at least 25 percent of the area of the front loading side of dumpsters or cart lids;

2. Printed in both the English and Spanish language.

(4) Every organic materials commercial service container shall be clearly and conspicuously labeled across the front of a dumpster or the lid of a cart, as applicable, with the following information:

a. "YARD WASTE ONLY", "COMPOST ONLY" or "FOOD WASTE ONLY".

b. "NO GARBAGE".

c. List of organic materials accepted in that container that is texted-based, image-based or a combination of text and images.

d. Educational labeling shall be:

1. Clearly and conspicuously placed on and consist of at least 25 percent of the area of the front loading side of dumpsters or cart lids;

2. Printed in both the English and Spanish language.

(5) Each container shall be free of rust holes, broken hinges or broken door fasteners and will have solid substantial bottoms with at least one drain hole for purposes of cleanout.

(6) All necessary containers shall have properly fitting lids and/or side door(s) in place that close automatically when lifted and that will prevent the entry of rodents, snakes and other animals, and allow for opening and closing action during the emptying cycle. Containers used for storage of materials other than garbage must meet the same criteria. Lids or covers may not be required if the city manager or designee determines that it does not pose a threat to the health, welfare or safety of the residents and visitors, or cleanliness of the container site or adjacent community.

(7) Containers at commercial locations are not to be filled to a height exceeding the level of the highest portion of the container body or rim. This limitation applies to dumpsters, carts, or any other method employed for storage. Customers must arrange for items such as furniture, appliances, construction and demolition debris or any material not considered a part of the customer's normal collection service to be picked up within seven days of being placed for collection. If these items are not picked up within seven days of being placed for collection, the city manager or designee may provide notice to the customer by hand delivery or certified mail, return receipt requested. If the customer has not removed the refuse within 24 hours after notification by the city, the city manager or designee may order such removal and all costs incurred shall be placed against the customer's utility account. At no time will any solid waste or storage containers be placed on the travel portions of any walk, street or alley within the city without prior authorization from the city manager or designee.

(e) *Receptacles for public use.* Garbage and recycling receptacles available for public, customer, or employee use at commercial establishments must integrate labeling consisting of text and images on the body or adjacent to the opening of the container that is consistent with city provided samples provided by the solid waste division.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-76. Residential service.

(a) *Provided.* Residential service shall consist of curbside collection of all garbage, trash, designed recyclable materials, and an optional service of backyard collection of garbage, trash, and designated recyclable materials.

(b) *Preparation, storage, placement for collection.*

(1) *Garbage:*

a. Each dwelling unit qualifying for residential service in the city shall be assigned a serial-numbered cart of the size requested by the occupant of the unit, or, if no size request is received, of the size determined by the city manager or designee. The occupant may exchange the cart for another of different size upon paying the fee as listed in Appendix A. Damaged and stolen carts will be replaced on request.

b. All garbage shall be drained of free liquids and stored for collection in the assigned cart, or in pre-paid garbage disposal bags, as accumulated. The cart shall not be filled above a height allowing the attached lid to be completely closed, nor shall the prepaid garbage disposal bags be filled such that the bags cannot be securely fastened shut or weigh over 40 pounds. The bags may be placed inside non-disposable containers. The assigned cart and the pre-paid garbage disposal bags shall be placed at the curb or roadside no earlier than 5:00 p.m. on the day preceding the scheduled collection day, and the emptied carts and non-disposable containers shall be removed from the curbside location not later than 9:00 p.m. of the day of collection. The carts and non-disposable containers shall be removed and kept, except during the hours permitted by this section for the placement of them for collection, at a location where they are not clearly visible from any public street. It shall be unlawful and punishable as provided for any owner or occupant to place, permit the placing of or allow the continued location of collection containers in any location or at any times not provided for in this subsection. Garbage and trash placed in containers other than the assigned cart or pre-paid approved garbage disposal bags will not be collected. Non-disposable or reusable containers intended not to be picked up by the collectors shall be clearly and appropriately identified. Anyone placing garbage or trash in containers other than the assigned cart or pre-paid garbage disposal bags will be in violation of this article.

c. Any container, other than the assigned cart, that is allowed to remain at curbside or roadside at times other than those permitted by this section, and any container, other than the assigned cart, that has become damaged or deteriorated, may be impounded by the city. The owner of any such container so impounded shall be notified immediately in writing by the city by mail to the address where picked up or by placing a notice thereof in a conspicuous place on such premises, or both. The owner may redeem such impounded containers within 30 days after the same are impounded by the city by paying the charges in accordance with the schedule set out in Appendix A. Any container not redeemed within the 30-day period may be used by the city in any manner as the city may determine in furtherance of the waste control program or may be sold to the highest bidder at a noticed public sale for each, which cash shall be deposited in the general fund of the city.

(2) *Yard waste.* Yard waste that is properly bundled or containerized in such manner to enable one person to lift the yard waste in a single lifting movement to place same in the compaction truck, and which bundles or containers do not exceed 40 pounds in weight and five feet in length, will be collected at curb or roadside. If tree or shrubbery trimmings are not containerized they may be placed at curbside in a compact pile not containing any items exceeding 40 pounds in weight and five feet in length and will be picked up. Grass, leaves and pine straw must be containerized by either using disposable or reusable containers, and will be collected if properly placed for collection at curb or roadside. Non-disposable or reusable containers intended not to be picked up by the collectors shall be clearly and appropriately identified. Concrete, dirt, bricks, appliances, furniture or similar items are not considered yard waste, and will not be collected except by special service as described in section 27-77.

(3) *Recycling containers.* Each dwelling unit shall be provided a container for the purpose of storage and disposal of designated recyclable materials. Designated recyclable materials that meet the requirements set forth by the city manager or designee shall be collected from curb or roadside. Designated recyclable materials not fitting in the bin may be placed in non-disposable containers or paper bags and will be collected at curb or roadside.

(c) *Responsibility for scattered garbage or trash.* Customers are responsible for the cleanup from bags torn or cans spilled by animals, or otherwise spilled through no fault of the collectors. Collectors are not required to sweep, fork, shovel or otherwise clean up trash or garbage that has become scattered or is otherwise not readily picked up and placed in the compaction truck, including spillage resulting from overloaded containers.

(d) *Backyard option and service fee exception.* The residential service program will allow customers the option of requesting backyard collection. (This does not include yard waste.) Such requests must be made in writing to the city manager or designee 30 days in advance of the start of service and once requested, such service and associated fees shall remain in effect for a minimum of six months. Service charges for backyard service as specified in the schedule set out in Appendix A may be waived and the uniform curbside service charge applied where all occupants of the dwelling unit are physically unable to transport their cart and bin to the curb. Customers desiring backyard service at the curbside rate must be certified as to the necessity for this service by the city manager or designee who may impose such reasonable conditions as may be required for such service and certification.

(e) *Service charges.* In order to cover the direct cost, including but not limited to inspecting, billing, collecting, handling, hauling and disposal of solid waste, yard waste and designated recyclable materials, and indirect cost, including but not limited to administration, accounting, personnel, purchasing, legal and other staff or departmental services, service charges in accordance with the schedule set out in Appendix A shall be paid monthly to the city, which charge shall be included on the regular monthly statement for utility service.

(f) *Residential service exclusion.*

(1) Owners of buildings containing two to four residential dwelling units may petition the city to be excluded from residential service and allowed to contract for commercially-collected residential service.

(2) Petitions for exclusion shall be made to the city manager or designee.

(3) Petitions shall be made on city-provided forms, and shall contain the following information:

a. Applicant's name.

b. Address of the property proposed to be excluded and number of dwelling units.

c. A copy of the proposed service agreement between the applicant and a franchised commercial provider, including the level and type of services to be provided and the number of dwelling units to be served.

(4) Upon receipt of a properly executed application and verification of the supporting documentation, the city manager or designee shall decide whether to grant the exclusion based on the following criteria:

a. Collection history (whether commercial or residential).

b. Accessibility of collection vehicles to property.

c. Available space for placement of carts.

d. Predominant use of property.

e. Safety.

f. Level of service requested by residents.

(5) The city manager or designee shall notify the applicant in writing of the decision.

(6) If the exclusion is approved, it shall be effective until terminated. An exclusion may be terminated by the city manager or designee or designee, or at the request of the property owner, due to changes in

the contract between the city and its solid waste collector or change in circumstances concerning the property.

(7) Regardless of whether owners of a building petition the city for a residential service exclusion, the city manager or designee may require separate developments that share common infrastructure (such as a shared parking lot), ownership, property management, or home owner association but have four or less units per building to have commercially-collected residential service consisting of a dumpster when the city manager or designee has determined collection by dumpster will improve aesthetics of the neighborhood or efficiency of collection.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-77. Special service.

(a) *Described.* Any waste which, by reason of its bulk, shape or weight, cannot be placed in a container or bundled, or which exceeds the size and weight limitations of any section of this article, will be collected and disposed of by the contractor on an on-call basis.

(b) *Scheduling and rates.* Special collection will be scheduled at the earliest reasonable time by the contractor. The fee for special service collection and disposal will be arranged between the customer and the contractor. The contractor will bill directly for such services and collect a reasonable fee agreed to jointly by the contractor and the customer prior to the work being performed.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-78. Reserved.

DIVISION 2. COMMERCIAL SERVICE AND CONSTRUCTION AND DEMOLITION DEBRIS FRANCHISE

Sec. 27-79. General provisions.

(a) It shall be unlawful to commence or engage in the business of providing containers for commercial service or providing commercial service or construction and demolition debris collection and disposal to properties in the city without a franchise issued by the city in accordance with this article.

(b) No franchise shall be awarded until the city determines that the franchisee is capable of complying with the requirements of this article.

(c) Each franchise shall be subject to the charter of the city and this Code of Ordinances. Each franchise shall be subject to, and franchisees shall abide by, all present and future laws, regulations, orders of regulatory bodies, city code provisions and administrative rules applicable to the performance of the collection services hereunder. Each franchise shall obtain all licenses and permits presently required by federal, state and local governments, and as required from time to time.

(d) All commercial franchises issued on or after October 1, 1996, may be by contract, which may include, among other things, agreement on the disposal site for solid waste collected by the franchisee.

(e) Collection times shall be as follows:

(1) Each commercial franchisee shall make available daily collection of solid waste. Collection shall begin no earlier than 6:00 a.m. and shall cease no later than 9:00 p.m., Monday through Saturday, except

that in areas of mixed residential and commercial occupancy collections shall begin no earlier than 7:00 a.m. and cease no later than 9:00 p.m., Monday through Saturday. Sunday service shall not begin before 8:00 a.m. and shall cease no later than 9:00 p.m.

(2) In the event of an emergency, a franchisee may collect at times not allowed by this section, provided the city manager grants prior approval, to be later evidenced by a written memorandum. If no written memorandum is obtained, there shall be a presumption that the franchisee had not obtained prior approval. All written memoranda issued shall be retained on file by the solid waste division and made available to the public for inspection.

(f) Franchisee shall not be relieved of the obligation to promptly comply with any provision of the franchise by failure of the city to enforce compliance with the franchise.

(g) The franchise granted hereunder may be exclusive. Any exclusive franchise granted by the city shall be selected through a competitive procurement process. The city reserves the right to grant similar rights or franchises to more than one person or corporation as well as the right in its own name to use its streets for purposes similar to or different from those allowed to franchisees hereunder.

(h) If a franchisee fails to perform its contract with any customer for longer than two weeks, the city may perform the work using its own equipment or assign the work to another franchisee, who shall be entitled to receive the revenue from the customer for work performed that would have gone to the defaulting franchisee.

(i) The franchisee shall submit to any load inspection program that the city may reasonably devise.

(j) Yard waste from a commercial generator or customer shall be collected separately from other solid waste. Each commercial franchisee shall inform all of its commercial customers of this requirement.

(k) A commercial franchisee shall respond to and, if feasible, resolve all complaints received by 12:00 noon on any business day by 5:00 p.m. of the same day and shall respond to and, if feasible, resolve all complaints received after 12:00 noon on any business day by 12:00 noon the next day. An emergency telephone number where the commercial franchisee can be reached shall be given to the city manager or designee.

(l) A commercial franchisee shall handle commercial service containers with reasonable care and return them to the approximate location from which they were collected. A commercial franchisee shall clean up all solid waste spilled during the collection operation.

(m) A commercial franchisee shall not be required to provide collection services when all appropriate disposal sites are closed or an emergency or imminent emergency exists, as determined by the city manager or designee. Collections shall resume on the instruction of the city manager or designee.

(n) A commercial franchisee shall not be deemed to be an agent of the city and shall be responsible for any losses or damages of any kind arising from its performance or nonperformance under its franchise. The franchisee shall defend at its own expense or reimburse the city for its defense, at the city's option, on any and all claims and suits brought against the city, its elected or appointed officers, employees, and agents resulting from the franchisee's performance or nonperformance of service pursuant to the franchise.

(o) Each commercial franchisee shall report to the city by December 15 of each year the percentage participation of its clients in commercial recycling and the amount of recovered material collected as a percentage of total solid waste collected from its customers for the year ending September 30.

(p) Each franchisee must provide the city with the location of the disposal site it uses for construction and demolition debris.

(q) In order to ensure that the franchisee provides a quality level of solid waste and recycling collection services, the following standards and fines are set:

(1) All complaints received by the city and reported to the franchisee shall be promptly resolved. Any complaint received by the franchisee shall be entered on a form approved by the city. All complaints received during the business day shall be transmitted on the approved form by 5:00 p.m. each business day. Any complaint received before noon shall be resolved the same business day. All other complaints shall be resolved by the end of the next business day.

(2) In the event legitimate complaints shall exceed two percent of the total customers served by the franchisee during any city fiscal year, or 0.5 percent of the total customers serviced by the franchisee during any calendar month, the city may seek fines for the following violation of this article, on a per incident basis, when committed by the franchisee:

a. Commingling solid waste with yard waste and/or designated recyclable materials.

b. Failure to replace damaged container within seven days of notification (48 hours for commercially-collected residential customers).

c. Throwing of garbage cans or recycling containers.

d. Failure to transmit commercial complaint forms as specified in this subsection.

e. Failure to repair damage to customer's property.

(3) The city may seek fines for the following violations of the article, on a per day basis, when committed by the franchisee:

a. Failure to provide clean, safe, sanitary equipment.

b. Failure to maintain required office hours.

c. Failure to maintain proper licenses.

d. Failure to display franchisee name and phone number on equipment or containers.

e. Failure to collect solid waste upon notification by city. Franchisee will also be charged the cost incurred by the city if city personnel are required to collect the solid waste due to such failure.

f. Using improper truck to service commercial or commercially-collected residential customer solid waste.

g. Failure to provide monthly recycling reports by the 30th day after each month in the format specified by the city.

h. Collection outside hours specified in section 27-79.

i. Failure to clean up spillage of any substance required to be cleaned up pursuant to federal, state or local laws, rules or ordinance.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-79.1. Term of franchise.

Any non-exclusive-franchise issued shall be by application. The term of any nonexclusive franchise shall extend until 11:59 p.m. on September 30 of each year unless forfeited or revoked sooner, or be held month to month, as provided herein. In any year in which the city is transitioning from non-exclusive franchises to an exclusive franchise system, the term of non-exclusive franchises will be month to month instead of one year. If the city issues an exclusive franchise, the term of the exclusive franchise agreement shall be as set forth in the agreement.

(Ord. No. 200413 , § 2, 1-20-22; Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-80. Franchise fees.

(a) *Amount of fee.*

(1) The commercial franchisee providing commercial service shall pay as compensation to the city, for the rights and benefits granted hereunder, a monthly fee as described in Appendix A. For purposes of the calculation stated as Appendix A, gross revenues shall consist of all revenues from the sale or lease of containers, all revenues from garbage and trash collection services, all disposal billed, late fees, bad debt recoveries and other fees collected from customers, with no deductions except for bad debts actually written off.

(2) The commercial franchisee providing construction and demolition debris collection service shall pay as compensation to the city, for the rights and benefits granted hereunder, an annual fee calculated based on all vehicles owned, leased, or otherwise used in construction and demolition debris collection service as described in Appendix A.

(3) Commercial franchisees providing both commercial service and construction and demolition debris collection service shall pay both fees described in subsections (1) and (2) above, but shall not be required to pay the fees in Appendix A deriving from subsection (2) above for vehicles which are not intended and shall never be used to haul construction and demolition debris.

(b) Compensation payments for commercial service shall be due 20 days after the end of each month, accompanied by statements of gross revenues as prescribed by the city's finance department, and shall be paid directly to the city's finance department. Statements and remittances shall be accepted as timely if postmarked on or before the 20th day of the month; if the 20th day falls upon a Saturday, Sunday or federal or state holiday, statements and remittances shall be accepted as timely if postmarked on the next succeeding workday. Compensation payments for construction and demolition debris collection service shall be due on October 15 of each year, and will be accepted as timely if postmarked on or before October 15, or the next succeeding workday if October 15 falls upon a Saturday or Sunday or state or federal holiday. Payments not received by the due date shall be assessed interest at the rate of one percent per month compounded monthly from the due date.

(c) All amounts paid shall be subject to confirmation and recomputation by the city. An acceptance of payment shall not be construed as an accord that the amount paid is, in fact, the correct amount, nor shall acceptance of payment be construed as a release of any claim the city may have for further or additional sums payable.

(d) Billing maneuvers that have the effect of reducing or avoiding the payment of franchise fees are expressly prohibited and will be cause for termination of the franchise, as well as punishment as provided by section 1-9.

(e) Payment of this franchise fee shall not exempt the commercial franchisee from the payment of any other license fee, tax or charge on the business, occupation, property or income of the franchisee that may be imposed by the city.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-81. Books, records and reporting requirements.

(a) The city shall have the right to review all records maintained by a franchise providing commercial service concerning its franchise on 30 days' written notice.

(b) Each commercial franchisee providing commercial service shall file written monthly reports within 30 days after the end of each month with the city manager or designee. The report shall contain an accurate

statement of all receipts under the franchise from all sources, the number of accounts by service level, the quantities of garbage and trash collected and the number of routes for garbage and trash collection.

(c) Each commercial franchisee providing commercial service shall file an annual report including a schedule of total gross revenues as defined in section 27-80(a). This annual report shall be examined by an independent certified public accountant ("auditor") to certify that the computation of gross revenue used to calculate franchise fees remitted is in accordance with the terms of the franchise. The auditor's report shall state that the examination was performed in accordance with professional standards established by the AICPA and shall be filed with the city manager or designee within 120 days of the franchisee's year end.

(d) Each commercial franchisee shall submit by September 1 of each year an updated list of the type, number and complete description of all equipment to be used for providing service pursuant to this division. Vehicles placed into service since the preceding September 1 shall have the in-service dates noted, and vehicles no longer in service shall have the retirement dates noted. Commercial and demolition debris collection service franchisees will be invoiced for all net increases in vehicles operating during the prior year on a prorated basis, as well as invoiced for vehicles intended to be operated during the coming year.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-82. Application requirements.

(a) Applications for a franchise shall be made to public works director or designee on such forms and in such manner as prescribed by the city. Application may be made for one or both of the following types of franchise:

(1) Commercial limited to collection of garbage and trash from commercially-collected residential dwellings and collection or processing of garbage and trash from commercial generators.

(2) Construction and demolition limited to collection and disposal of construction and demolition debris.

(b) Application forms will require, at a minimum, the following information and supporting documents:

(1) If the applicant is a partnership or corporation, the name(s) and business address(es) of the principal officers and stockholders and other persons having financial or controlling interest in the partnership or corporation; provided, however, that if the corporation is a publicly owned corporation having more than 25 shareholders, then only the names and business addresses of the local managing officers shall be required.

(2) Criminal convictions, including withheld adjudication and plea of nolo contendere for any felonies of the applicant if an individual, or any person having any controlling interest in a firm, corporation, partnership, association or organization making application, if requested by the public works director or designee.

(3) A statement of whether such applicant operates or has operated a solid waste collection business in this or any other state or territory under a franchise, permit or license; and if so, where, and whether such franchise, permit or license has ever been revoked or suspended and the reasons therefor.

(4) Proof that corporation is in good standing in the state of corporation, if applicant is a corporation, and, if not a Florida corporation, that applicant is qualified to do business in the State of Florida. If applicant is other than a corporation and is operating under a fictitious name, applicant shall be required to submit information that such fictitious name is registered and held by applicant.

(5) A list of the type, number and complete description of all equipment to be used by the applicant for providing service pursuant to this division. The public works director or designee may conduct an

inspection of all equipment utilized in providing the services as outlined in the franchise to determine that the franchise possesses equipment capable of providing safe and efficient services.

(6) The applicant shall maintain in full force and effect insurance as specified herein and shall furnish a comprehensive general liability policy to the city manager or designee or designee and also file with the city manager or designee or designee a certificate of insurance for all policies written in the applicant's name. The applicant shall carry in its own name a policy covering its operations in an amount not less than $200,000.00 per occurrence for bodily injury and $200,000.00 per occurrence for property damage regarding comprehensive general liability. The applicant shall carry in its own name a policy covering its operation in an amount not less than $100,000.00 per person, $200,000.00 per occurrence for bodily injury, and $50,000.00 per occurrence for property damage liability regarding automobile liability insurance. The applicant shall maintain workers compensation as required by F.S. Ch. 440.

(7) The insurance policies shall be filed in the office of city manager or designee or designee and shall remain on file so long as the franchisee operates a franchise.

(8) The applicant shall pay the city a nonrefundable application fee, as specified in Appendix A, at the time application is filed.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-83. Denial of application; suspension or revocation of franchise; right of appeal.

(a) Upon a finding of just cause, the public works director or designee shall deny a franchise in the case of application for new or renewed franchises, and suspend or revoke a franchise for a specified period of time in the case of previously issued franchises. Just cause shall include but not be limited to a failure to meet the requirements of this article, violation of any of the provisions of this article or any of the ordinances of the city, or the laws of the United States or the State of Florida, the violations of which reflect unfavorably on the fitness of the holder to offer solid waste collection services to the public.

(b) Prior to denial, suspension or revocation, the applicant or holder shall be given reasonable notice of the proposed action to be taken and shall have an opportunity to present to the public works director or designee written and oral evidence at a hearing as to why the franchise should not be denied, revoked or suspended. The notice of the proposed action shall be served upon the applicant or franchisee by registered mail or personal service. The hearing shall be held no earlier than ten days after notice is received by the applicant or registrant. Notice of the final decision of the public works director or designee shall be sent in writing to the applicant or registrant.

(c) Any applicant or franchisee whose franchise is denied, suspended or revoked by the public works director or designee may appeal the decision to the city manager. The appeal shall be taken by filing written notice thereof, in duplicate, with the city clerk within ten days after the decision of the public works director or designee. The city clerk shall notify the public works director of the appeal and the public works director or designee shall forthwith transmit to the clerk copies of all papers constituting the record upon which the action appealed is based. No later than 15 days after the date of filing the appeal, the city manager or designee shall review the record and decide whether the decision of the public works director was based on competent, substantial evidence. If the city manager finds competent, substantial evidence for the public works director's decision, the city manager will uphold the public works director's decision; otherwise, the city manager will reverse the public works director's decision. The decision of the city manager shall constitute final administrative action.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-84. Penalties for violation.

Except as otherwise provided, violations of this division may be enforced by civil citation if specifically provided for by section 2-339, as provided by section 1-9, by code enforcement proceedings, or the city may seek injunctive relief.

(Ord. No. 210129 , § 1, 6-2-22)

DIVISION 3. COMMERCIAL RECYCLING

Sec. 27-85. Mandatory commercial recycling established.

(a) *Commercial generators.* All commercial generators shall separate designated recycling materials and make them available for recycling. The commercial generator shall either self-transport the designated recyclable materials or utilize a registrant to collect and transport the designated recyclable materials to a recovered materials processing facility. Failure to separate the designated recyclable materials, except for de minimus amounts as determined by the city manager or designee, from solid waste loads delivered to a city facility, a facility under contract with the city or a solid waste container at point of generation will subject the commercial generator to civil citation as provided in sections 2-336 through 2-339 of this Code and may, in addition, result in a surcharge as provided in subsection (c) below.

(b) *Notice of noncompliant status.* Before a civil citation is issued, or a surcharge can be imposed, the commercial generator must be issued a notice advising of its noncompliant status. The notice shall provide a compliance date. If upon subsequent inspection the commercial generator is still not in compliance a civil citation will may be issued.

(c) *Separation and collection or special pick-up by city.* If the city undertakes the separation and collection of the designated recycled materials or otherwise performs a special pick-up of garbage or trash because a commercial generator fails to separate the designated recyclable materials, except for de minimus amounts as determined by the city manager or designee, from solid waste loads delivered to a city facility, a facility under contract with the city or a solid waste container at point of generation, the city may have it removed and any expenses incurred will be included as a surcharge in the utility bill of the commercial generator.

(d) *Appeal.* A commercial establishment may appeal the imposition of a surcharge to the city manager or designee within 15 calendar days of such imposition. The notice of appeal shall include all information and grounds the commercial generator wants to be considered by the city manager or designee as to why the surcharge should not be imposed. The city manager or designee shall have 15 calendar days to affirm or abate the surcharge. The determination of the city manager or designee shall be final.

(e) *Location of containers.*

(1) All recovered materials shall be placed in an appropriate industry standard container. Where carts are used, they shall be placed at such collection point(s) as may be agreed to between the registrant and the customer, subject to approval by the city manager. All containers shall be kept in a safe, accessible location as designated or approved by the city and agreed to by the registrant and customer.

(2) Any commercial establishment providing receptacles for collecting and disposing of garbage to the public shall place an equal number of receptacles for collection of designated recyclable materials next to the garbage receptacle. If the commercial establishment is unable to meet the above requirement, the commercial establishment shall cooperate with the city to develop an acceptable alternative plan for the placement of receptacles for designated recyclable materials on the premises, with the city

making the final determination based upon volume of recycling materials produced and space for receptacle placement at the commercial establishment.

(3) Property owners shall provide commercial establishment tenants with space for commercial service containers for garbage and recycling collection or make reasonable accommodations for shared commercial service containers for garbage and recycling collection in a convenient and nearby location. The commercial service containers should be located such that collection equipment can safely collect waste within the commercial service containers and such that the location of the commercial service containers does not create a health or litter hazard due to the distance from the tenant's commercial establishment. If the property owner is unable to meet the above requirement, the property owner shall cooperate with the city to develop an acceptable alternative plan for the collection of waste from the tenant, with the city making the final determination as to the location of the commercial service container.

(f) *Maintenance of containers.* If a registrant provides recovered material containers to its customers, the registrant will be responsible for the proper maintenance of the container. Customers that acquire their own containers from any other source are responsible for the proper maintenance of the container, except that damage done by the registrant shall be the responsibility of the registrant; and for ensuring that the container can be serviced by the registrant's equipment.

(g) *Proof of participation in recycling program.* A commercial generator, generator of construction and demolition debris or owner of a commercially-collected residential property shall produce proof of a valid and current contract with a registrant or receipts for delivery of recovered materials to an approved site, upon request of the city manager or designee.

(h) *Requirement for a take back program for prescription drugs.* Beginning June 1, 2023, all commercial generators distributing or providing prescription medicines or drugs at a retail level shall provide on-site publicly accessible containers for the collection and disposal of prescription medicines or drugs and shall collect, and dispose of or destroy. such drugs in accordance with state and federal law.

(i) *Commercially-collected residential recycling.* All commercially-collected residential serviced property owners/developers and their affiliated entities, including but not limited to landlords, management companies, condominium associations, and home owner associations shall establish a recycling program that:

(1) Includes recycling of all designated recyclable materials;

(2) Provides an industry standard recovered materials container in a common area on the property that is as convenient and accessible to the residents as garbage collection containers. If the city manager or designee determines the location of recovered materials containers fails to meet this requirement, the city manager shall determine an appropriate location on the property for recycling containers;

(3) Provides an adequate level of service and capacity of designated recyclable collection containers based on the number of residents units, or generation at the property. If the city manager or designee determines the level of service and capacity of recycling containers is inadequate, the city manager shall determine an appropriate level of service and capacity of recycling containers:

(4) Prominently posts and maintains one or more signs in common areas where designated recyclable materials are collected that specify the materials accepted for recycling;

(5) Distributes recycling information in printed or electronic form to each occupant or unit on the property: a) upon commencement of the tenant's lease or unit sale, b) at least once annually, and c) within 14 days after any changes to recycling services on the property; and

(6) By October 1, 2023, provides at least one indoor recycling storage container per unit of a type and design approved by the city for unit occupants to easily transport desimated recyclable materials to the

collection area on the property. If the occupant owns the unit, the owner of the unit shall supply their own indoor recycling storage container.

(j) *Commercially-collected residential property lease transition plan.*

(1) Beginning June 1, 2023, commercially-collected residential properties with at least 200 leased units that are located within the designated area shall submit to the public works department a plan to divert from the landfill waste stream usable and functioning household goods, furnishings, and electronics, and recyclable cardboard resulting from the high volume move-in and move-out periods that occur April 20—May 15 and July 20—August 25 of each year. Beginning January 1, 2025, commercially-collected residential properties with at least 50 leased units that are located within the designated area shall submit to the public works department a plan to divert from the landfill waste stream usable and functioning household goods, furnishings, and electronics, and recyclable cardboard resulting from the high volume move-in and move-out periods that occur April 20—May 15 and July 20—August 25 of each year. The designated area will be described in a map on file in the public works department, and may be revised from time to time by the public works director. The plan shall be submitted on a form prepared by the city. At a minimum the plan must contain:

a. An affirmation that the commercially-collected property will provide notice to tenants at least one month in advance of the move-out period that encourages the sale or donation of goods, the location of the donation collection site, and the availability of free goods at the donation collection site;

b. The location of the donation collection site;

c. A plan for protection of the collected goods from adverse weather conditions (including rain); and

d. Identify the local reuse organization(s) that will accept the donated goods.

(2) The city shall approve or disapprove the plan within 15 business days of the plan being submitted and send written notice of the decision to the commercially-collected residential property. If approved, the proposed plan shall be implemented no later than 60 days after approval. If the plan is disapproved, the commercially-collected residential property shall re-submit the plan no later than 30 days after the date of its disapproval.

(k) *Exemptions.* A commercial generator may request an exemption from the requirements within section 27-85(e)(2). The city manager or designee shall grant a request for an exemption if the commercial generator demonstrates to the satisfaction of the city manager or designee that the volume of designated recyclable materials generated is de minimus or space is not available at a given property for additional container placement. Each exemption request must be completed and submitted using the standardized forms provided by the city. Commercial generators shall be notified in writing within 60 days of whether their exemption request is granted or denied.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-86. Registration of recovered materials collectors.

(a) *Registration required.* No person, including a commercial franchisee, shall collect, transport, convey or process recovered materials in the city without a registration certificate from the city. Each commercial franchise holder who desires to collect recovered materials as part of the commercial recycling program shall be granted a registration certificate upon completing an application and providing the necessary documentation. No application fee will be required until such time as the commercial franchise would have terminated had it not been extended by subsection 27-79.1. This subsection does not prohibit the city from

entering into an exclusive franchise agreement or issuing exclusive certificates of registration for the collection of recovered materials from residential properties or commercially-collected residential properties.

(b) *Application for a recovered material certificate.*

(1) Applications for registration shall be obtained from and returned to the department of solid waste.

(2) The applicant shall state whether it is a processor, a transporter, or both.

(3) Requested information on the application shall be limited to that information required by F.S. § 403.7046.

(4) The application must be accompanied by:

a. A copy of state certification as required by F.S. § 403.7046;

b. Disclosure of ownership as set forth below; and

c. Proof of insurance as set forth below.

(c) *Renewal of registration.* The certificate of registration may be valid for five years, and may be renewed up to two times upon:

(1) Disclosure of ownership as set forth below;

(2) Proof of insurance as set forth below as of the time of renewal; and

(3) Proof that the registrant is still providing service to customers.

(d) *Operating requirements for registrants.* Persons collecting, transporting, conveying or processing recovered materials in the city shall comply with the following operating requirements:

(1) *Disclosure of ownership.* Each registrant shall annually provide two copies of a notarized statement disclosing the names of its owners, general and limited partners, or corporate or registered name under which it will conduct its business as authorized by this article.

(2) *Response to complaint.* Each registrant shall be responsible for responding to any and all complaints which involve registrant's actions that create a nuisance or have the potential to create a nuisance. Response shall be within 24 hours of the complaint, or by 5:00 p.m. Monday if the complaint was received during a weekend.

(3) *Clean-up.* A registrant shall handle recovered materials containers with reasonable care and return them to the approximate location from which they were collected. A registrant shall clean up all materials spilled during its collection operation.

(4) *Emergencies.* A registrant shall not be required to provide collection services when all appropriate recycling sites are closed or a city emergency or imminent emergency exists, as determined by the city manager or designee. Collections shall resume on the instruction of the city manager or designee.

(5) *Non-agency.* A registrant shall not be deemed an agent of the city and shall be responsible for any losses or damages of any kind arising from its performance or nonperformance under its registration. The registrant shall defend at its own expense or reimburse the city for its defense, at the city's option, of any and all claims and suits brought against the city, its elected or appointed officers, employees, and agents resulting from the registrant's performance or nonperformance of service pursuant to the registration.

(6) *Trucks.* A registrant shall use trucks that are capable of preventing spillage or accidental release of recovered material during transport.

(7) *Insurance.* A registrant shall purchase and maintain the types and amounts of insurance set forth below from companies authorized to do business in the State of Florida. The city shall be named as an additional insured on the general liability insurance if the registrant utilizes city facilities. Failure to maintain insurance shall result in revocation of registration.

a. General liability insurance - $500,000.00 per occurrence if the registrant utilizes city facilities.

b. Commercial motor vehicle insurance as required by F.S. Ch. 627.

c. Workers compensation as required by F.S. Ch. 440.

(8) *Other laws, rules and regulations.* A registrant shall procure at its own expense all local, state and federal franchises, certificates, permits or other authorizations necessary for the conduct of its operations. A registrant and its employees, officers and agents shall comply with all relevant local, state, and federal laws, rules and regulations, orders and mandatory guidelines applying to the collection or processing services being rendered.

(9) *Effect of certificate.* Issuance of a registration certificate by the city shall not be deemed to be a waiver of any applicable local, state or federal law or regulation, including but not limited to zoning or planning regulations, with respect to a recycling operation of any kind, nor shall it create any vested right to own or operate any type of recycling operation.

(10) *Hours of operation.* A registrant shall make available daily collection of designated recyclable materials. Collection shall begin no earlier than 6:00 a.m. and shall cease no later than 9:00 p.m. Monday through Saturday, except in areas of mixed residential and commercial occupancy where collections shall begin no earlier than 7:00 a.m. and shall cease no later than 9:00 p.m. Monday through Saturday. Sunday service shall not begin before 8:00 a.m. and shall cease no later than 9:00 p.m.

(e) *Separation of residential and commercial materials.* Curbside collection of designated recyclable materials from commercial generators shall be allowed only with prior approval of the city manager or designee, when considering a request to provide curbside collection, the city manager or designee shall consider the following factors:

(1) Accessibility of collection vehicles to property.

(2) Available space for placement of containers.

(3) Predominant use of property.

(4) Safety.

(f) *Delivery of materials.* All recovered materials shall be delivered to a recovered materials dealer that has been certified by the Florida Department of Environmental Protection or subsequent responsible agency, and the city.

(g) *Reports.*

(1) The recovered materials registrant shall submit to the city manager or designee reports as authorized by F.S. § 403.7046, and the regulations promulgated pursuant to the authority stated in statute.

(2) Within 15 days of changing facilities where recovered materials is being delivered, recovered materials registrants shall provide the name and location of the new facilities to the city manager or designee.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-87. Revocation of registration.

(a) Upon a finding of just cause, the public works director or designee shall deny a registration in the case of application for a new or renewed registration, and suspend or revoke a registration for a specified period of time in the case of previously issued registration. Just cause shall be consistent and repeated violation of state or local laws, ordinances, rules, and regulations relating to the applicant's or registrant's operation; or loss of state certification as a recovered materials dealer.

(b) Prior to denial, suspension or revocation, the applicant or registrant shall be given reasonable notice of the proposed action to be taken and shall have an opportunity to present to the public works director or designee written and oral evidence at a hearing as to why the registration should not be denied, revoked or suspended. The notice of the proposed action shall be served upon the applicant or registrant by registered mail or personal service. The hearing shall be held no earlier than ten days after notice is received by the applicant or registrant. Notice of the final decision of the public works director or designee shall be sent in writing to the applicant or registrant.

(c) Any applicant or registrant whose registration is denied, suspended or revoked by the public works director or designee may appeal the decision to the city manager. The appeal shall be taken by filing written notice thereof, in duplicate, with the city clerk within ten days after the decision of the public works director or designee. The city clerk shall inform the public works director of the appeal, and the public works director or designee shall forthwith transmit to the city clerk copies of all papers constituting the record upon which the action appealed is based. No later than 15 days after the date of filing the appeal, the city manager shall review the record and decide whether the decision of the public works director was based on competent, substantial evidence. If the city manager finds competent, substantial evidence for the public works director's decision, the city manager will uphold the public works director's decision; otherwise, the city manager will reverse the public works director's decision. The decision of the city manager shall constitute final administrative action.

(Ord. No. 210129 , § 1, 6-2-22)

Sec. 27-88. Penalties for violation.

Except as otherwise provided, violations of this division may be enforced by civil citation if specifically provided for by section 2-339, as provided by section 1-9 of this Code of Ordinances, by code enforcement proceedings, or the city may seek injunctive relief.

(Ord. No. 210129 , § 1, 6-2-22)

DIVISION 4. SINGLE-USE PLASTIC AND POLYSTYRENE PRODUCTS

Sec. 27-89. Definitions.

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

Expanded polystyrene container means any plate, bowl, cup, container, lid, tray, cooler, ice chest, and similar items that are made of blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and manufactured by fusion of polymer spheres (expandable bead foam), injection molding, foam molding and extrusion-blown molding (extruded foam polystyrene) or any other technique.

Prepared food provider means a person or entity that provides food (including beverages) directly to the consumer, that is ready for immediate consumption without any further cooking, mixing, preparation, alteration or repackaging regardless of whether such food is provided free of charge or sold, or whether consumption occurs on or off premises, or whether the food is provided from a building, pushcart, stand or vehicle. Prepared food providers include, but are not limited to, bars, restaurants, cafes, sidewalk cafes, delicatessens, coffee shops, grocery stores, markets, supermarkets, drug stores, pharmacies, bakeries, caterers, gas stations, vending or food trucks or carts and cafeterias.

Single-use plastic food accessory means any item which is made predominantly of plastic derived from petroleum polymer or a biologically-based polymer and is provided for one-time use with prepared food (including beverages), such as utensils, chopsticks, portion cups, condiment packets, and other similar accessories. This definition excludes items that are provided to prevent spills and injuries, such as spill plugs, splash sticks, cup lids, cup sleeves and cup trays.

Single-use plastic straw means a disposable tube used for the purpose of consuming beverages and intended for one-time use, which is made predominantly of plastic derived from petroleum polymer or a biologically-based polymer.

Single-use plastic stirrer means a device that is used to mix beverages and intended for one-time use, and made predominantly of plastic derived from a petroleum polymer or a biologically based polymer.

(Ord. No. 210129 , § 2, 6-2-22)

Sec. 27-90. Prohibition on single-use plastic straws and single-use plastic stirrers.

(a) Prepared food providers shall not sell, use, offer for sale or use, or provide to any person a single-use plastic straw or single-use plastic stirrer.

(1) *Exceptions:* Although the discontinuation of the use of single-use plastic straws and single-use plastic stirrers is strongly encouraged, this article shall not apply to the sale or use of single-use plastic straws or single-use plastic stirrers as follows:

a. Pre-packaged beverages with a single-use plastic straw or single-use plastic stirrer that are prepared and packaged outside the city and are not altered, packaged or repackaged within the city.

b. Boxes of pre-packaged single-use plastic straws or single-use plastic stirrers that are offered for retail sale to a consumer for personal use, that are prepared and packaged outside the city and are not altered, packaged or repackaged within the city.

c. By medical or dental facilities.

d. By hospitals.

e. By nursing homes or assisted living facilities.

f. By any disabled person that requires or relies on same to consume beverages and/or food supplements.

(Ord. No. 210129 , § 2, 6-2-22)

Sec. 27-91. Single-use plastic food accessories available upon request.

Prepared food providers shall not provide single-use plastic food accessories for dine-in, take-out or delivery, unless the single-use food accessory is specifically requested by the customer or is provided at a customer self-serve station.

(Ord. No. 210129 , § 2, 6-2-22)

Sec. 27-92. Prohibition on use of expanded polystyrene containers on city property or city right-of-way.

Any person or entity that is required to obtain a permit, use agreement. or other authorization or approval to use city property or city right-of-way pursuant to chapter 18, article II, park regulations; chapter 19, peddlers, solicitors and canvassers; and chapter 30, article V, Use standards after the effective date of this article is prohibited from using expanded polystyrene containers for the permitted activity on city property or city right-of-way. This prohibition excludes the distribution of any prepackaged food that is filled and sealed in an expanded polystyrene container prior to receipt by the person or entity and it excludes raw meat or seafood that is stored in an expanded polystyrene container and sold from a refrigerated display or storage case.

(Ord. No. 210129 , § 2, 6-2-22)

Sec. 27-93. Prohibition on intentional release outdoors of plastic confetti, glitter and balloons.

All persons are prohibited from intentionally releasing outdoors any plastic confetti, glitter or balloons. Consistent with F.S. § 379.233, the following balloon releases are exempt from the above prohibition: (a) balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes; (b) hot air balloons that are recovered after launching; or (c) balloons that are either biodegradable or photodegradable, as determined by rule of the fish and wildlife conservation commission, and which are closed by a hand-tied knot in the stem of the balloon without string, ribbon, or other attachments. The party responsible for the release shall make available evidence of the biodegradability or photodegradability of said balloons in the form of a certificate executed by the manufacturer. Failure to provide said evidence shall be prima facie, evidence of a violation of this act.

(Ord. No. 210129 , § 2, 6-2-22)

Sec. 27-94. Enforcement; penalties; injunctive relief.

The city may enforce this division by civil citation in accordance with chapter 2, article V, division 6. In addition, persons who are not in conformity with these requirements shall be subject to appropriate civil action in the court of appropriate jurisdiction for injunctive relief.

(Ord. No. 210129 , § 2, 6-2-22)

DIVISION 6. FOOD WASTE

Sec. 27-95. Registration of food waste collectors.

(a) *Registration required.* No person, including a commercial franchisee, shall collect, transport, convey or process food waste intended for industrial uses or composting in the city for hire, remuneration, or other consideration without a registration certificate from the city. Each commercial franchise holder who desires to collect food waste in the city intended for industrial uses or composting shall be granted a food waste registration certificate upon completing an application and providing the necessary documentation. No application fee will be required for renewals of existing registration certificates. This subsection does not prohibit the city from entering into an exclusive franchise agreement or issuing exclusive certificates of registration for the collection of food waste materials from residential or commercially serviced properties.

(b) *Application for a food waste collector registration.*

(1) Applications for registration shall be obtained from and returned to the solid waste division.

(2) The applicant shall:

a. State whether it is a processor, a transporter, or both;

b. Provide a list of facilities that meet permitting requirements of the State of Florida where material will be delivered;

c. Provide disclosure of ownership as set forth below; and

d. Provide proof of insurance as set forth below.

(c) *Renewal of registration.* The certificate of registration shall be valid for one year.

(d) *Operating requirements for food waste registrants.* Persons collecting, transporting. conveying food waste in the city shall comply with the following operating requirements:

(1) *Delivery to food waste processing facility.* All food waste shall be delivered to a food waste processing facility that meets permitting requirements of the State of Florida. Within 15 days of changing facilities where food waste is being delivered, food waste registrants shall provide the name and location of the new facilities to the city manager or designee.

(2) *Disclosure of ownership.* Each registrant shall annually provide two copies of a notarized statement disclosing the names of its owners, general and limited partners, and corporate or registered name under which it will conduct its business as authorized by this article.

(3) *Response to complaints.* Each registrant shall be responsible for responding to any and all complaints which involve registrant's actions that create a nuisance or have the potential to create a nuisance. Response shall be within 24 hours of the complaint, or by 5:00 p.m. Monday if the complaint was received during a weekend.

(4) *Clean-up.* A registrant shall handle food waste containers with reasonable care and return them to the approximate location from which they were collected. A registrant shall clean up all materials spilled during its collection operation.

(5) *Emergencies.* A registrant shall not be required to provide collection services when all appropriate food waste collection sites are closed or a city emergency or imminent emergency exists, as determined by the city manager or designee. Collections shall resume on the instruction of the city manager or designee.

(6) *Non-agency.* A registrant shall not be deemed an agent of the city and shall be responsible for any losses or damages of any kind arising from its performance or nonperformance under its registration. The registrant shall defend at its own expense or reimburse the city for its defense, at the city's option, of any and all claims and suits brought against the city, its elected or appointed officers, employees,

and agents resulting, from the registrant's performance or nonperformance of service pursuant to the registration.

(7) *Trucks.* A registrant shall use trucks that are capable of preventing spillage or accidental release of food waste during transport.

(8) *Insurance.* A registrant shall purchase and maintain the types and amounts of insurance set forth below from companies authorized to do business in the State of Florida. Failure to maintain insurance shall result in revocation of registration.

a. General liability insurance—$500,000.00 per occurrence if the registrant utilizes city facilities.

b. Commercial motor vehicle insurance as required by F.S. Ch. 627.

c. Workers compensation as required by F.S. Ch. 440.

(9) *Other laws, rules and regulations.* A registrant shall procure at its own expense all local, state and federal franchises, certificates, permits or other authorizations necessary for the conduct of its food waste operations. A registrant and its employees, officers and agents shall comply with all relevant local, state, and federal laws rules and regulations, orders and mandatory guidelines applying to the collection or processing services being rendered.

(10) *Effect of certificate.* Issuance of a registration certificate by the city shall not be deemed to be a waiver of any applicable local, state or federal law or regulation, including but not limited to zoning or planning regulations, with respect to a food waste operation of any kind, nor shall it create any vested right to own or operate any type of food waste operation.

(11) *Hours of operation.* A registrant shall make available daily collection of food waste. Collection shall begin no earlier than 6:00 a.m. and shall cease no later than 9:00 p.m. Monday through Saturday, except in areas of mixed residential and commercial occupancy where collections shall begin no earlier than 7:00 a.m. and shall cease no later than 9:00 p.m. Monday through Saturday. Sunday service shall not begin before 8:00 a.m. and shall cease no later than 9:00 p.m.

(e) *Separation of residential and commercial materials.* Curbside collection of food waste from commercial generators shall be allowed only with prior approval of the city manager or designee. When considering a request to provide curbside collection, the city manager or designee shall consider the following factors:

(1) Accessibility of collection vehicles to property.

(2) Available space for placement of containers.

(3) Predominant use of property.

(4) Safety.

(f) *Reports.* The food waste registrants shall submit to the city manager or designee reports, which shall include data as to number of customers, volume of food waste collected, food waste processing facilities to which food waste is delivered, and volume of food waste delivered to food waste processing facilities.

(Ord. No. 200381 , § 1, 6-2-22)

Sec. 27-95.1. Revocation of food waste collector registration.

(a) Upon a finding of just cause, the public works director or designee shall deny a food waste collector registration in the case of application for a new or renewed registration, or suspend or revoke a registration for a specified period of time in the case of previously issued registration. Just cause shall include but not be limited to a failure to meet the requirements of this division, violation of any of the provisions of this division or any of the ordinances of the city, or the laws of the United States or the State of Florida, the violations of

which reflect unfavorably on the fitness of the holder to offer food waste collection services to the public, or loss of an required state permit as a food waste collector, transporter, or processor.

(b) Prior to denial, suspension or revocation, the applicant or registrant shall be given reasonable notice of the proposed action to be taken and shall have an opportunity to present to the public works director or designee written and oral evidence at a hearing as to why the registration should not be denied, revoked or suspended. The notice of the proposed action shall be served upon the applicant or registrant by registered mail or personal service. The hearing shall be held no earlier than ten days after notice is received by the applicant or registrant. Notice of the final decision of the public works director or designee shall be sent in writing to the applicant or registrant.

(c) Any applicant or registrant whose registration is denied, suspended or revoked by the public works director or designee may appeal the decision to the city manager. The appeal shall be taken by filing written notice thereof, in duplicate, with the city clerk within ten days after the decision of the public works director or designee. The city clerk shall inform the public works director of the appeal, and the public works director or designee shall forthwith transmit to the city clerk copies of all papers constituting the record upon which the action appealed is based. No later than 15 days after filing the appeal, the city manager or designee shall review the record and decide whether the decision of the public works director was based on competent, substantial evidence. If the city manager finds competent, substantial evidence for the public works director's decision, the city manager will uphold the public works director's decision; otherwise, the city manager will reverse the public works director's decision. The decision of the city manager shall constitute final administrative action.

(Ord. No. 200381 , § 1, 6-2-22)

Sec. 27-95.2. Mandatory commercial food waste collection established.

(a) *Commercially-collected residential property food waste collection.*

(1) All commercially-collected residential serviced property owners/developers and their affiliated entities, including but not limited to landlords, management companies, condominium associations, and home owner associations shall, by June 1, 2024, establish a food waste collection program that:

a. Includes collection and diversion of food waste from the wastestream. A commercially-collected residential property shall, upon request of the city manager director or designee, produce proof of a valid and current contract with a food waste registrant or receipts for collection and delivery of food waste materials to a food waste processing facility that meets permitting requirements of the State of Florida, unless the commercially-collected residential property is granted an exemption;

b. Provides an industry standard food waste container in a common area on the property that is as convenient and accessible to the residents as garbage and recovered materials collection containers. If the city manager or designee determines the location of food waste containers fails to meet this requirement, the city manager or designee shall determine an appropriate location on the property for the food waste containers;

c. Provides an adequate level of service and capacity of food waste collection containers based on the number of residents, units, or generation at the property. If the city manager or designee determines the level of service and capacity of food waste containers is inadequate, the city manager or designee shall determine an appropriate level of service and capacity of food waste containers;

d. Prominently posts and maintains one or more signs in common areas where food waste is collected that specify the materials accepted as food waste;

e. Distributes food waste collection information in printed or electronic form to each occupant or unit on the property: a) upon commencement of the tenant's lease or unit sale, b) at least once annually, and c) within 14 days after any changes to food waste services on the property; and

f. At such time when food waste services are made available at property, provides at least one indoor food waste storage container per unit of a type and design approved by the city for occupants to easily transport food waste to the collection area on the property. If the occupant owns the unit, the owner of the unit shall supply their own indoor food waste storage container.

(2) *Exemptions.* A commercially-collected residential property may request an exemption from the requirements of subsection (1). The city manager or designee shall grant a request for an exemption if the commercially-collected residential property demonstrates to the satisfaction of the city manager or designee that space is not available at a given property for additional container placement or provides proof that the commercially-collected residential property is unable to comply due to lack of available service providers. An exemption request must be completed and submitted every six months using forms provided by the city. The commercially-collected residential property shall be notified in writing within 60 days of whether its exemption request is granted or denied.

(b) *Requirement for commercial establishments to collect food waste.* By June 1, 2023 commercial establishments that generate one cubic yard of food waste or more per week shall separate food waste from the waste stream and collect food waste in containers that are separate from garbage and recovered materials. By June 1, 2026. all commercial establishments shall separate food waste from the waste stream and collect food waste in containers that are separate from garbage and recovered materials, unless the amount of food waste generated by the establishment is both de minimus and is less than one cubic yard of food waste per week. The commercial establishment shall make food waste in the receptacles available for processing. A commercial establishment shall, upon request of the city manager director or designee, either provide receipts for delivery of food waste to a food waste processing facility that meets permitting requirements of the State of Florida or produce proof of a valid and current contract with a food waste registrant.

(c) *Maintenance of containers.* If a registrant provides food waste containers to its customers, the registrant will be responsible for the proper maintenance of the container. Customers that acquire their own containers from any other source are responsible for the proper maintenance of the container, except that damage done by the registrant shall be the responsibility of the registrant; and for ensuring that the container can be serviced by the registrant's equipment.

(d) *Location of containers.* All food waste shall be placed in an appropriate industry standard container. Where carts are used, they shall be placed at such collection point(s) as may be agreed to between the registrant and the customer, subject to approval by the city manager. All containers shall be kept in a safe, accessible location as designated or approved by the city and agreed to by the registrant and customer.

(1) Any commercial establishment providing receptacles for collecting and disposing of garbage and recycling to the public shall provide an equal number of receptacles for collection of food waste paired next to the garbage and recycling receptacles in areas of the establishment where food is consumed. If the commercial establishment is unable to meet the above requirement, the commercial establishment shall work with the city to develop an acceptable alternative plan for the placement of receptacles for food waste on the premises, with the city making the final determination based upon volume of food waste produced and space for receptacle placement at the commercial establishment.

(2) Property owners shall provide commercial establishment tenants with space for commercial service containers for food waste collection or make reasonable accommodations for shared commercial service containers for food waste collection in a convenient and nearby location. The commercial service containers should be located such that collection equipment can safely collect waste within the commercial service containers and such that the location of the commercial service containers does

not create a health or litter hazard due to the distance from the tenant's commercial establishment. If the property owner is unable to meet the above requirement, the property owner shall work with the city to develop an acceptable alternative plan for the collection of food waste from the tenant, with the city making the final determination as to the location of the commercial service container.

(Ord. No. 200381 , § 1, 6-2-22)

Sec. 27-95.3. Penalties for violation.

Unless specifically stated otherwise, the city shall enforce violations of sections 27-95, 27-95.1, and 27-95.2 by civil citation if specifically provided for by section 2-339, through code enforcement proceedings by section 1-9 of this Code of Ordinances, or seek injunctive relief in a court of competent jurisdiction.

(Ord. No. 200381 , § 1, 6-2-22)

DIVISION 7. FOOD DIVERSION

Sec. 27-95.4. Mandatory commercial food waste diversion established.

(a) Beginning on the dates listed below, the following commercial generators shall divert food or food waste from the waste stream unless they are granted an exemption:

(1) By January 1, 2023, food retailers that occupy at least 25,000 square feet, including but not limited to grocery stores, convenience stores, meat markets, poultry markets, fish and related aquatic food markets, and produce markets.

(2) By January 1, 2024, food service establishments that occupy at least 4,500 square feet, businesses with a commercial kitchen(s) where the kitchen(s) occupies at least 1,000 square feet, businesses engaged in selling food to other businesses, food manufacturers (excluding food service establishments) engaged in processing or fabricating food products from raw materials for sale directly to the public retailers, or wholesalers.

Commercial generators which are required to divert food or food waste under this subsection shall divert food or food waste in accordance with the following hierarchy. listed in order of priority:

(1) Feeding hungry people;

(2) Feeding animals;

(3) Providing for industrial uses;

(4) Composting.

(b) *Proof of participation in food waste diversion program.* Upon request of the city manager or designee a commercial generator required to divert food or food waste shall provide the following as proof of compliance: 1) receipts for delivery of food to a food bank or other facility that provides food to hungry people or animals, or 2) receipts for delivery of food waste to a food waste processing facility that meets permitting requirements of the State of Florida, or produce proof of a valid and current contract with a food waste registrant.

(c) *Exemptions.* A commercial generator may request an exemption from the requirements of this section. The city manager or designee shall grant a request for an exemption if the commercial generator demonstrates that it is unable to comply due to lack of available service providers or facilities that accept food or food waste. An exemption request must be completed every six months and submitted using forms provided by

the city. Commercial generators shall be notified in writing within 60 days of whether their exemption request is granted or denied.

(Ord. No 210626, § 1, 6-2-22)

Sec. 27-95.5. Penalties for violation.

Unless specifically stated otherwise, the city shall enforce violations of section 27-95.4 code enforcement proceedings, by section 1-9 of this Code of Ordinances, or seek injunctive relief in a court of competent jurisdiction.

(Ord. No 210626, § 1, 6-2-22)

ARTICLE IV. WATER AND SEWERAGE[7]

DIVISION 1. GENERALLY[8]

Sec. 27-96. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Abutting shall mean adjacent to or contiguous to or located immediately across any road, street, right-of-way or easement from the relevant water line, wastewater line or other relevant property.

Additional facilities or structures shall mean any additional construction of buildings or real property appurtenances at a specific location that would create or tend to create additional demand for water or wastewater service.

Apartment shall mean two or more buildings constructed on a single parcel of property where each building contains at least two living units or one building constructed on a single parcel of property containing two or more living units.

Applicant shall mean the person, organization or corporation who signs an application form requesting electric, water or wastewater services be made available at a specific location and thereby agrees to pay for all such services at that location. (Also see "Customer").

Authorized representative of industrial user shall mean:

[7]Cross reference(s)—Plumbing code, § 6-91 et seq.; health and sanitation, Ch. 11.5; centralized water and wastewater facilities, § 30-271; package wastewater plants, § 30-272; industrial pretreatment plants, § 30-273.

[8]Editor's note(s)—Ord. No. 3754, §§ 39—41, adopted Jan. 27, 1992, repealed various sections of Div. 1, relative to general water and sewerage regulations, and § 80 of said Ord. No. 3754 renumbered the remaining sections of this division to read as herein set out. The history notation has been retained in the renumbered sections for reference purposes. The repealed provisions of this division derived from Code 1960, §§ 28-31.2, 28-32.1 and 28-32.2 and Ord. No. 3696, § 9, adopted Feb. 18, 1991. See the Code Comparative Table for a specific enumeration of repealed and renumbered sections.

(1) A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

(2) A general partner or proprietor, if the industrial user is a partnership or proprietorship, respectively;

(3) A duly authorized representative of the individual designated above, if such representative is responsible for the overall operation of the facilities from which the industrial waste originates.

Backflow preventer shall mean a mechanical device operated by the reduced pressure principle that is installed in conjunction with a water meter to prevent a flow of water from the customer's side of the meter into the city's distribution system under conditions where water pressure on the customer's side of the meter exceeds the pressure in the city distribution system. The installation and design of this device will be determined by the water and wastewater engineering division of the city.

Base system shall mean the city's water transmission and distribution system or wastewater collection system which is in existence at the time an application is made for an extension of service.

Best management practices or *BMPs* shall mean schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in section 27-180.1. BMPs include but are not limited to treatment requirements, operating procedures, and practices to control runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical oxygen demand (BOD) shall mean the amount of oxygen expressed in parts per million necessary to satisfy the oxygen requirements of a sample of wastewater incubated for five days at 20 degrees Celsius and tested in accordance with standards of testing in the latest edition of "Standard Methods" published jointly by the American Public Health Association, the American Water Works Association and the Water Pollution Control Foundation.

Biosolids shall mean the solid, semisolid, or liquid residue generated during the treatment of domestic wastewater in a domestic wastewater treatment facility not including solids removed from pump stations, lift stations, and screenings, grit, sand, and inorganic material removed from the preliminary treatment components of domestic wastewater treatment facilities.

Building shall mean any structure, either temporary or permanent, having a roof and used or built for the shelter or enclosure of persons, animals, vehicles, goods, merchandise, equipment, materials or property of any kind. This definition shall include, but is not limited to, tents, lunch wagons, dining cars, trailers, mobile homes, sheds, garages, carports, animal kennels, store rooms or vehicles serving in any way the function of a building as described herein.

Categorical pretreatment standard or *categorical standard* shall mean any regulation containing pollutant discharge limits promulgated in accordance with Section 307 of the Clean Water Act which may apply to a specific industrial user and which appears in 40 CFR Chapter I Subpart N, incorporated by reference in Chapter 62-660, F.A.C.

Central wastewater system shall mean the pipe, pumps, tanks, treatment plants, collection mains and other appurtenances either connected directly to or isolated from the city's base system which serves two or more lots or which serves any multiple family, commercial, industrial, institutional or other use where the total wastewater flow exceeds 2,000 gallons per day. All central wastewater systems shall meet the design and construction requirements of the city.

Central water system shall mean the water source, pumps, treatment plants, distribution mains, fire protection mains and other appurtenances either connected directly to or isolated from the city's base system which serves two or more lots or which serves any multiple family, commercial, industrial, institutional or other use where the total wastewater flow exceeds 2,000 gallons per day. All central water systems shall meet the design and construction requirements of the city.

Chemical oxygen demand (COD) shall mean the amount of oxygen expressed in parts per million required for the chemical oxidation of organics in wastewater.

City shall mean the City of Gainesville, doing business as Gainesville Regional Utilities.

Connection charges shall mean a general term referring to the specific development charges that must be satisfied in order to receive water and/or wastewater service. For the purposes of this article, the following shall constitute water connection charges: transmission and distribution, meter installation, water treatment plant, standby fire line, fire hydrant installation, inspection service fees, crossing charges and tapping fees. For the purposes of this article, the following shall constitute wastewater connection charges: collection system, wastewater treatment plant, pumping station (primary and relay), force main (base system) charges, inspection service fees, crossing charges, and tapping fees.

Consumer shall mean the person or persons who actually receive and utilize water service at a specific location, and/or who contribute, cause or permit the contribution of, wastewater into the city's wastewater system.

Contribution in aid of construction (CIAC) shall mean a charge paid by an applicant desiring service from the city for a portion of the capital cost for additional facilities which must be constructed to provide water or wastewater service to the applicant.

Customer shall mean the person responsible for payment for all electric, water or wastewater services used at a specific location, and further defined as that person who signed the application requesting that services be made available at the specific location and thereby agreeing to pay for all usage of such services occurring at the location. (See "Applicant").

Customer's installation shall mean all pipes, shutoffs, valves, fixtures, pretreatment equipment and appliances or apparatus of every kind and nature used in connection with or forming a part of an installation for utilizing water or wastewater service. Customer's installations are located on the customer's side of the "point of delivery," whether such installation is owned outright by the customer or is used by the customer under lease or otherwise.

Deposit shall mean the amount of money placed with the city by each customer as security for payment of the water or wastewater bill.

Detector check value shall mean a device which detects leakage or unauthorized use of water from fire line services.

Developer shall mean any person or legal entity engaged in developing or subdividing land to which water and/or wastewater service is to be rendered by the city. Also where applicable, any individual or legal entity that applied for the provision of water mains or wastewater facilities in order to serve a certain property.

Development shall mean a subdivision or any other parcel of land which consists of two or more lots. In addition, parcels of land for commercial projects or multiple-family dwellings shall be considered as developments.

Discharge shall mean the introduction of sewage or industrial waste, or any other flow into the wastewater system.

Dwelling shall mean a living unit, house, mobile home, apartment or building used primarily for human habitation. The word "dwelling" shall not include hotels, motels, tourist courts or other accommodations for transients, nor shall it include dormitories, fraternities, sororities, rooming houses, businesses or industrial facilities. Facilities for the preparation, storage and keeping of food for consumption within the premises shall cause a unit to be construed as a single dwelling unit. Each area with separate facilities for the preparation, storage and keeping of food for consumption within the premises shall be considered as a separate dwelling unit.

(1) *Single-family* shall mean a building containing not more than one dwelling unit on a single lot or a [dwelling] unit of a multiple-family dwelling where each dwelling unit is constructed on a separate lot and served by a single domestic water meter. Mobile homes containing one dwelling unit not in approved mobile home parks and served by a single domestic water meter are considered single-family dwellings.

(2) *Multiple-family* shall mean a building which contains two or more dwelling units served by a single domestic water meter.

Engineering estimate shall mean a calculation of the cost of a project based on the city's current contracts for material and labor plus overhead for engineering, contingency and general and administrative costs. If there is no contract for the project or a part of the project, the best available data as determined by the city will be used.

Excess strength wastewater shall mean wastewater containing constituents whose parameters are in excess of those specified for normal strength wastewater.

Extension shall mean a water or wastewater facility constructed to enable the provision of water, fire protection or wastewater service.

Force main shall mean a wastewater line which carries wastewater under pressure from a lift station.

Frontage shall mean a unit of measurement expressed in linear feet which is determined from one or more lengths of a property's boundaries. The method of determination of frontage shall be specified in the city's current "Water and Wastewater Policies." The method of determination of frontage shall take into consideration location of water or wastewater lines which are adjacent to the property being served, irrespective of whether such line is located in a public or private right-of-way, an easement, or on public or private property.

Grab sample shall mean a sample taken without regard to flowrate and over a period of time not to exceed 15 minutes.

Grease interceptor shall mean a device, usually located underground and outside of a food service facility, designed to collect, contain, and remove food wastes and grease from the wastestream while allowing the remaining wastewater to be discharged to the wastewater collection system by gravity.

Grease trap shall mean a device, usually located inside the building and under a sink of a food service facility designed to collect, contain, and remove food wastes and grease from the wastestream while allowing the remaining wastewater to be discharged to the wastewater collection system by gravity.

Identifiable internal water service lines shall mean a water line, owned and installed by the customer on the customer's side of the point of delivery whose purpose is to provide water service to any new or additional facility or structure.

Individual or person shall mean any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or other legal entity, or their legal representatives, agents, or assigns. This definition includes all federal, state, and local government entities.

Industrial use or user shall mean any use or user of the water or wastewater system that produces industrial waste.

Industrial wastes shall mean solid or liquid wastes from any manufacturing or processing plant or other industrial undertaking and solid or liquid wastes discharged from any other source including but not limited to dwellings, and commercial establishments, which contain pollutants that exceed or have the potential to exceed normal strength wastewater limits or any other discharge limit established in this division, or which are wastes discharged from any source containing toxic pollutants as defined in this section, or which are wastes discharged at a flow rate of 25,000 gallons or more per average workday.

Instantaneous discharge limit or instantaneous limit shall mean the maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample as specified by the general manager for utilities or his/her designee, independent of the industrial flow rate and the duration of the sampling event.

Interceptor shall mean a large size gravity wastewater line which has been designed to receive wastewater from two or more collecting wastewater lines.

Interference shall mean the inhibition or disruption of the wastewater collection system, treatment process or any wastewater system operations. This term includes disruption of wastewater sludge use or disposal.

Lift station (also pump station) shall mean a facility which receives wastewater from gravity wastewater collection lines and/or other lift stations and pumps the wastewater under pressure through a force main to another location.

Local discharge limit or local limit shall mean the maximum concentration or mass of a pollutant allowed to be discharged, determined from the analysis of a sample collected in a manner as specified by the general manager of utilities or his/her designee. Such limit may be an instantaneous discharge limit, daily discharge limit, or average discharge limit as determined by the general manager of utilities or his/her designee.

Lot shall mean a part of a subdivision or any other parcel of land intended as a unit for building development or transfer of ownership, or both. Parcels of and less than one acre for commercial projects or multiple-family dwellings and parcels of land for each single-family dwelling shall be considered lots.

Lot line shall mean the property line, abutting the right-of-way line or any line defining the exact location and boundary of the lot of property.

Meter (water) shall mean the measuring device owned and installed by the city on a service line for the purpose of accurately measuring water use by a customer.

Meter tampering shall mean when any person shall willfully alter, injure, or knowingly suffer to be injured any water meter or other apparatus or device belonging to the city in such a manner as to cause loss or damage or to prevent any such meter installed for registering water consumption, from registering the quantity which otherwise would pass through the same; or to alter any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device or make or cause to be made any connection of any appurtenance in such a manner as to use, without the consent of the city, any water without such water service being reported for payment or such water passing through a meter provided by the city and used for measuring and registering the quantity of water passing through the same.

Mobile home park (approved) shall mean a parcel of property zoned under provisions of the applicable city or county zoning regulations whose allowed and recognized use is the business of renting spaces or lots upon which mobile homes are placed and occupied as single-family dwellings and shall include any associated and allowed laundry and recreational and common facilities incidental thereto.

New industrial source shall mean any building, structure, facility, or installation which commenced construction after the publication of proposed pretreatment standards under Section 307(c) of the Clean Water Act as specified in 40 CFR 403.3(k)(1).

Noncontact cooling water shall mean water used for cooling which does not come into direct contact with a toxic pollutant, industrial waste or wastewater.

Non-significant categorical industrial user shall mean an industrial user which the general manager for utilities or his/her designee determines is not a significant industrial user based on a finding that the industrial user discharges 100 gallons per day or less of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and:

(1) The industrial user has consistently complied with all applicable categorical pretreatment standards and requirements; and

(2) The industrial user annually submits the certification statement as specified in 62-625.600(17), F.A.C. together with any information necessary to support the certification statement; and

(3) The industrial user never discharges any untreated concentrated wastewater.

Normal strength wastewater shall mean wastewater which does not exceed the concentration of any constituent for which a normal strength wastewater limit has been established by the general manager of utilities

or his/her designee. A copy of the established normal strength wastewater limits shall be kept on file in the office of the general manager for utilities or his/her designee and made available on request. Customers discharging wastewater containing any constituent exceeding a normal strength wastewater limit may be charged for excess strength wastewater according to Appendix A.

Off-site facilities shall mean water mains, wastewater lines, force mains and lift stations constructed to connect on-site facilities with the nearest point in the base system at which adequate capacity is available to meet the requirements of the new services.

Oil/water separator shall mean a device designed to remove oil (e.g. petroleum-based) from the wastestream while allowing the remaining wastewater to be discharged to the wastewater collection system by gravity.

On-site facilities shall mean the water mains, services, meters, fire hydrants, wastewater lines, force mains, lift stations and pretreatment equipment installed within a residential, commercial or industrial development. It includes those facilities in peripheral streets and easements constructed wholly or in part for use by that development.

Oversized facilities shall mean a facility designed in size and location by the city to be larger than that required to serve the applicant's project and greater than the following minimum criteria:

(1) Water main: eight inches;

(2) Gravity wastewater line: eight inches;

(3) Force mains: four inches.

In certain instances, oversizing may also refer to the routing or location of a water or wastewater facility by the city at a greater length than that required to serve the applicant's project.

Pass through shall mean a discharge from the city's wastewater treatment works into waters of the United States in quantities or concentrations which alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's NPDES permit or any federal or state law. This includes an increase in the magnitude or duration of a violation.

pH shall mean the measure of the acidity or alkalinity of a solution, expressed in standard units.

Point of delivery or connection:

(1) *Water service* shall mean the point where the city's water meter nipple is connected with the pipe of the customer, and where water service to the customer begins.

(2) *Wastewater service* shall mean the point where the service lateral crosses the customer's property line.

Pollutant shall mean any toxic pollutant, dredged, spoiled, solid waste (as defined in 40 CFR 261), incinerator residue, garbage, grease, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, dirt; any industrial, municipal or agricultural waste discharged into water; or any material designated by the general manager for utilities or his/her designee on the basis that the material has a reasonable potential for adversely affecting the city's wastewater system.

Pretreatment shall mean the reduction of the amount of pollutants, the elimination of pollutants or the alteration of the nature of pollutants in wastewater to a less harmful state prior to, or in lieu of, discharging or otherwise introducing such pollutants into the city wastewater system. The reduction or alteration can be obtained by physical, chemical or biological processes; process changes; or by facility process changes or other means, except by diluting the concentration of the pollutants.

Pretreatment standards or *standards* shall mean prohibited discharge standards, categorical pretreatment standards, and local discharge limits.

Prohibited discharge standards or *prohibited discharges* shall mean absolute prohibitions against the discharge of certain substances.

Residential service shall mean service to a single living unit located in a single-family or multiple-family dwelling or a living unit consisting of a sorority, fraternity, cooperative housing unit of a college or university or other nonprofit group living unit. A living unit shall be a place where people reside on a nontransient basis containing a room or rooms comprising the essential elements of single housekeeping unit. Each separate facility for the preparation, storage and keeping of food for consumption within the premises shall cause a housekeeping unit to be construed as a single living unit. All water supplied shall be through a single meter at a single point of delivery.

Rooming unit shall mean a room or rooms used as a place where sleeping or housekeeping accommodations are provided for pay to transient or permanent guests.

Septic tank waste shall mean any wastewater from holding tanks from vessels, chemical toilets, campers, trailers, and septic tanks.

Service shall mean the readiness and ability on the part of the city to furnish water or wastewater service to the customer on demand. Thus, the maintenance of water pressure at the point of delivery or presence of a wastewater service lateral shall constitute the rendering of service, irrespective of whether the customer makes any use thereof.

Significant industrial user shall mean:

(1) Any industrial user subject to categorical pretreatment standards, unless the general manager for utilities or his/her designee determines the industrial user to be a non-significant categorical industrial user.

(2) Any industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the city wastewater system or contributes five percent or more of the dry weather hydraulic or organic capacity of the city wastewater system, excluding sanitary and noncontact cooling and boiler blowdown wastewater.

(3) Any industrial user designated significant by the general manager for utilities or his/her designee on the basis that the industrial user has a reasonable potential for adversely affecting the city's wastewater collection system, treatment process, or any wastewater system operation or for violating any federal, state, or local discharge limit or standard.

Slug discharge shall mean any discharge of a nonroutine, episodic nature which could cause a violation of the prohibited discharge standards.

Standard Industrial Classification (SIC) Code shall mean a classification pursuant to the Standard Industrial Classification Manual issued by the United States Office of Management and Budget.

Standby fire line shall mean the pipe, isolating valve, detector check valves and fittings of the city which extend from the water main to the fire line pipes of the customer and which are used for supplying water exclusively for fire protection purposes. Point of service for standby fire lines shall be on the customer's side of the detector check valve vault.

Stormwater shall mean any flow occurring during or following any form of natural precipitation, and resulting from such precipitation, including snowmelt.

Subdivision shall mean a division of a lot, tract or parcel of land or water into two or more lots, plots, sites or other subdivisions of land or water for the purpose, whether immediate or future, of sale, rent, lease, building development or other use, and which further includes the term "subdivide," meaning to divide land by conveyance or improvement into lots, blocks, parcels, tracts or other portions.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in water, wastewater, or other liquid, and which is removable by filtering with a 1.2 micrometer pore diameter filter.

Toxic pollutant shall mean any pollutant listed as a priority pollutant in 40 CFR 401.15.

Wastewater shall mean the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions together with any groundwater, surface water and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the wastewater system.

Wastewater line shall mean a pipe which carries wastewater and to which storm and surface waters and groundwaters are not intentionally admitted.

Wastewater service lateral shall mean wastewater connection extending from the collecting wastewater line in the street to a customer's property line or from the collecting wastewater line in an easement to the easement line.

Wastewater system shall mean the entire wastewater utility system that services the needs of the customer which includes treatment facilities, collection lines, lift stations, force mains and all other related appurtenances incidental thereto.

Water system shall mean that entire water utility system that services the needs of the customer which includes treatment facilities, transmission, distribution and fire protection lines, meters and all other related appurtenances incidental thereto.

(Code 1960, § 28-31.1; Ord. No. 3345, § 1, 6-15-87; Ord. No. 3602, § 1, 3-5-90; Ord. No. 3697, §§ 1, 2, 2-18-91; Ord. No. 3735, § 1, 8-19-91; Ord. No. 3740, § 1, 9-30-91; Ord. No. 4034, § 1, 9-26-94; Ord. No. 980894, § 1, 6-14-99; Ord. No. 001622, § 1, 9-24-01; Ord. No. 030278, § 15, 9-8-03; Ord. No. 060457, § 1, 10-23-06; Ord. No. 120261, § 1, 9-20-12; Ord. No. 140171, § 1, 9-18-14)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 27-97. Increase in certain connection charges paid after March 10, 1975.

All connection charges paid after March 10, 1975, to the city for service to a particular location are subject to an increase in the amount owed when new rates have been established by the city subsequent to the payment of such charges and where no request to begin construction has been made within six months of the payment of the connection charges or where the city is unable to begin construction due to an inadequately prepared site.

(Code 1960, § 28-31.3; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-98. Restrictions on bill adjustments for certain leaks.

No allowance or adjustment to any water usage bill shall be made for leaks of any nature occurring on the customer's side of the point of delivery. No allowance or adjustment to any wastewater bill shall be made for water leaks occurring on the customer's side of the point of delivery which results in flow into the wastewater system.

(Code 1960, § 28-31.4; Ord. No. 3754, § 80, 1-27-92; Ord. No. 160253 , § 3, 9-15-16)

Sec. 27-99. Miscellaneous charges for work requested by customer.

Miscellaneous charges shall be made for any work done by the city at the customer's request. Customers shall be charged for such work at direct cost plus overhead. Payment in full for the estimated cost will be required prior to the city's initiation of the work. Refunds will be made at the completion of the work where appropriate.

(Code 1960, § 28-31.5; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-100. Return of payments prohibited.

Except for deposits required for initial utilities services, and except as otherwise specifically provided for in this article, no monies properly paid to the city under this article shall be refundable.

(Code 1960, § 28-32; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-101. System specifications inspection of premises.

As a condition of receiving or continuing to receive water or wastewater utility services from the city, the duly authorized representative of the city shall have the right to specify the size, type, routing/location and design of all lines as well as taps, meters, laterals, lift stations, pretreatment equipment, treatment plants and any other components being added to the water or wastewater system. In addition, the duly authorized representative of the city shall have the right to remove, test, seal or interfere with any of the components for such causes that are detrimental to the water or the wastewater systems or deemed necessary by the city. If after written notice delivered to the premises or mailed to the premises and to the owner, if not owner occupied, stating a reasonable time in which such inspection is needed to be made, the reasons therefor, and the effect of failure to allow the inspection, the city's duly authorized representative is then denied access to the premises for the inspection, the city may then discontinue all utility services to the premises until the inspection is permitted.

(Code 1960, § 28-32.3; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-102. Pump station rebates.

The general manager for utilities (general manager) is hereby authorized to adopt and administer a policy to rebate a portion of the developer paid costs of new pump stations and force mains. This policy will, at a minimum, provide for the recovery by the initiating developer from any subsequent developer that portion of the costs directly benefiting subsequent development. Payment of the apportioned share of the initial development costs (the rebate amount) by the subsequent developer shall be a condition to the provision of wastewater service to the subsequent development. The policy adopted by the general manager shall at a minimum include the following provisions:

1. The policy shall apply to those pump stations and force mains completed and accepted by the city after June 10, 1996;
2. The rebate amount shall be determined by the general manager or designee for each rebate pump station and force main based on the hydraulic capacity of the pump station and force main and the point at which a subsequent development connects to the force main;
3. A contract shall be executed between the city and the developer for each rebate pump station and force main stipulating at a minimum the rebate amount for the point or points of connection along the force main, the maximum rebate amount for that pump station and force main, and the period during

which rebates shall be paid. Such period shall not exceed ten years from acceptance of the pump station and force main by GRU; and

4. To facilitate transition to the pump station policy, a $67.00 deduction per equivalent residential unit shall be applied to the pump station connection charge for pump stations 148, 149, 151, 152, 153, 154, 155, 156 and 157. This deduction applies to the originating developer(s) on the listed pump station and shall be applied to the pump station connection charge for a period of eight years from June 10, 1996. There shall be no deduction applied to the force main connection charge.

(Ord. No. 951541, § 1, 6-10-96; Ord. No. 960742, § 1, 2-24-97)

Sec. 27-103. Reserved.

Ord. No. 211448 , § 1, adopted September 22, 2022, repealed § 27-103, which pertained to connection charge installment and derived from Ord. No. 960798, § 1, 6-23-97.

Secs. 27-104—27-115. Reserved.

DIVISION 2. WATER[9]

Sec. 27-116. Water management committee—Created, duties and responsibilities.

There is hereby created the water management committee for the purpose of advising the city commission regarding good water management practices and which shall have the following specific duties:

(1) To assess the quality and quantity of water resources available to the citizens of the city and to identify and assess potential threats that might degrade water quality, increase flooding, reduce potential supply, or otherwise adversely affect water sources;

(2) To investigate the details of water management, including wastewater treatment and disposal, potable water supply, stormwater runoff discharge, floodplain and wetlands management, water shortage planning, water conservation and recycling practices, erosion and sedimentation controls, both within the city and adjacent jurisdictions that affect the city;

(3) To assist in developing and implementing good water management practices;

(4) To assist in informing the citizens of the city, through their public deliberations and by regular reports to the city commission regarding water management practices; and

(5) To study other pertinent matters relating to water management.

[9]Editor's note(s)—Ord. No. 3754, §§ 42—52, adopted Jan. 27, 1992, repealed various sections of Div. 2, relative to water service, and § 80 of said Ord. No. 3754 renumbered the remaining sections of this division to read as herein set out. The history notation has been retained in the renumbered sections for reference purposes. The repealed provisions of this division derived from Code 1960, §§ 28-33, 28-34, 28-39—28-41, 28-43, 28-45—28-48, 28-49.1; Ord. No. 3254, § 2, adopted Sept. 22, 1986; Ord. No. 3294, § 2, adopted Oct. 13, 1986; Ord. No. 3428, § 1, adopted April 4, 1988; Ord. No. 3493, §§ 2—4, adopted Nov. 21, 1988; Ord. No. 3644, § 2, adopted Aug. 20, 1990; Ord. No. 3696, §§ 10, 12, adopted Feb. 18, 1991; Ord. No. 3697, § 3, adopted Feb. 18, 1991. See the Code Comparative Table for a specific enumeration of repealed and renumbered sections.

(Code 1960, § 2-164)

Sec. 27-116.1. Same—Composition; appointment; terms; officers; subcommittees; meetings.

(a) The water management committee shall consist of seven (7) members to be appointed by the city commission for terms of three (3) years each after the initial appointments. Vacancies shall be filled by the city commission for the unexpired term. The membership of the committee shall be made up of persons demonstrating an interest and willingness to represent the community-at-large relative to any and all issues regarding water management which impact the city as set forth in section 27-116.

(b) The committee shall select its own chairperson and vice-chairperson and such officers as it deems necessary. The chairperson may appoint various subcommittees from time to time as need dictates; provided, however, that a majority of the full committee concurs with this decision.

(c) The committee shall hold regular meetings at least once every three (3) months and may meet at any time as a majority of the committee may decide, or upon call of the chairperson.

(Code 1960, § 2-165; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-117. Supplying separately owned properties through one meter prohibited; multiple use of privately owned water systems prohibited.

(a) Separately owned properties shall not be supplied with water through one (1) meter.

(b) No person other than the owner of a water system located on his/her property shall be furnished with water from the water system for any purpose.

(c) This section shall not, however, prohibit single metering of property owned as a cooperative or condominium, as long as service is provided to and metered on common property and there is an association or corporation to apportion, collect and remit all fees and charges and accept notices. No such corporation or association shall charge or collect from unit owners more than the fees and charges billed, plus actual administrative costs.

(Code 1960, § 28-51; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-118. Interconnection of private water system to city water system or tampering with mains prohibited.

No person shall interconnect a privately owned water system to the city's water system or turn on any water service or tap or make any alteration to any main or distributing pipe of the city's water system or in any way interfere with or molest any of the wells, reservoirs, basins or water in the same, or permit any connection or tapping to be made to the city's water system on his/her premises or premises occupied by him/her or to knowingly use city water from unauthorized connections.

(Code 1960, § 28-50; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-119. Use of fluorine authorized.

Upon approval by the state board of health, there shall be introduced into the water supply furnished consumers though the municipal water plant approximately one (1) part of fluorine to every million parts of water.

(Code 1960, § 28-54; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-120. Effect of division on existing contracts.

Nothing in this division shall be deemed to change, impair or abrogate any special contract now existing between the city and any consumer served by the city with water.

(Code 1960, § 28-55; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-121. Deferred payment for residential water service.

Notwithstanding the provisions of sections 27-126.1 and 27-129, entitled respectively "(Water Meter) Installation Charges," and "Water Flow-based Connection Charges," if the criteria listed below are met, each applicant for residential water meter installation and/or water service shall have the option to defer payment of water meter installation charges, water transmission and distribution connection charges and water treatment plant connection charges during construction for a period of not more than six (6) months from the date of application. If payment is deferred, the city will install one (1) five-eighths-inch water meter for each single-family dwelling or residential building with multiple-dwelling units which ultimately will be individually metered. Only one (1) water meter will be installed at each building. The utility shall determine the meter location for residential buildings with multiple dwelling units. This section does not apply to applications for master water meters.

(1) *Criteria for deferring payment:*

   a. Applicant must request a five-eighths-inch residential meter for a single-family dwelling or a residential building with multiple dwelling units.

   b. All dwelling units to be served by the residential meter must be unoccupied at time of application and applicant must agree that no dwelling unit shall be occupied until all deferred charges have been paid.

   c. Inspection for permanent electrical service must not have been made.

   d. Permanent electric service must not have been installed.

   e. Applicant must present service location addresses for all buildings at the time of application.

   f. Application must be made pursuant to procedures established by the city and any required deposit must be paid.

   g. Applicant must request payment deferral.

(2) *Payment of deferred fees.* No permanent electric power will be provided by the city to any single-family dwelling or to any unit in a residential building with multiple-dwelling units until all water meter installation charges, water transmission and distribution connection charges and water treatment plant connection charges have been paid.

(3) *Nonpayment.* All fees and charges must be paid within six (6) months of the meter application date. If the fees and charges are not paid within such period, the water meter will be removed, a water meter installation and removal charge as set out in the schedule in Appendix A will be assessed and the account will be closed. Service shall not be restored at such location until all applicable fees and charges have been paid.

(Ord. No. 3428, § 2, 4-4-88; Ord. No. 3740, § 2, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-122. Approval of plumbing and connections required.

No water service shall be connected until the plumbing and connections incident thereto shall have been inspected and approved by the building official, or his/her designee, as follows:

(1) *Water service to a residence.* Approval of a dwelling for water service must be obtained prior to initial provision of service.

(2) *Water service to other buildings.* Approval of a building for water service must be obtained prior to initial provision of service or transfer of water service.

(3) *Copy of approval.* Each applicant for water service must submit a copy of such approval where required as part of the application for service.

(Code 1960, § 28-52; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-123. Liability of city; right to restrict use of water.

The city shall not be liable from any damage resulting from the bursting of any main, service pipe or cock, from the shutting off of water for repairs, extensions or connections or from the accidental failure of the water supply from any cause whatsoever. In case of emergency the city shall have the right to restrict the use of water in any reasonable manner for the protection of the city and its water supply.

(Code 1960, § 28-53; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-124. Plan review service fee and inspection service fee.

Applicants shall pay to the city a plan review service fee according to the schedule set forth in Appendix A, prior to submitting plans for review by the city. No on-site facilities constructed or purchased by the developer will be accepted by the city for connection to the city's water system unless the design and construction of such facilities meet all standards and specifications of the city. The facilities shall be inspected by the city prior to connection to the city's water system to ensure such compliance. For such inspection, the developer shall pay to the city an inspection service fee according to the schedule set out in Appendix A.

(Code 1960, § 28-37.1; Ord. No. 3114, § 1, 3-18-85; Ord. No. 3697, §§ 4, 5, 2-18-91; Ord. No. 3740, § 3, 9-30-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 150246 , § 2, 9-17-15)

Sec. 27-125. Main tapping charges.

A charge shall be made for tapping into the water main when required according to the schedule set out in Appendix A. If an existing tap is to be replaced, any additional cost associated with the removal of an existing tap shall be added to the appropriate tapping charge. All tap charges shall be paid prior to service being rendered.

(Code 1960, § 28-34.1; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-126. Meters—Furnished by city; change in size.

(a) *City to furnish.* All necessary water meters shall be furnished by the city and shall remain the property of the city.

(b) *Increase in size.* A customer desiring a water meter larger than the size of the water meter then in service shall pay to the city the engineering estimate for material, labor and equipment costs plus overhead for

installing the larger meter less the salvage value of the smaller water meter removed. In addition, the customer shall also pay the difference in the cost of the associated water and wastewater connection charges, if applicable, of the larger and smaller water meters.

(c) *Reduction in size.* A customer desiring a water meter smaller than the size of the meter then in service shall pay to the city the engineering estimate for material, labor and equipment costs plus overhead for installing this smaller size water meter less the salvage value of the larger water meter removed. If this water meter size reduction occurs within two years after the original meter was installed, the difference in the larger and smaller connection charges shall be refunded. The burden of proof of payment of the original connection charges shall be the customer's.

(Code 1960, § 28-38; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-126.1. Same—Installation charges.

(a) *Meter assembly and service lateral.* Upon filling out the appropriate application forms and payment to the city of the charges required, the city shall furnish all labor, material, and equipment necessary, in accordance with the "Water and Wastewater Construction Standards" of the city, to provide water service to the customer's property line. Each applicant shall pay to the city, prior to installation and/or initial use, a water meter installation charge based on the schedule set out in Appendix A.

(b) *Meter only.* For customers in developments which have approved engineering drawings and prior approval of the city, and in which the developer installed the service lateral, yoke, meter box and all fittings necessary for the installation of the water meter, the city shall furnish the water meter and labor for its installation in accordance with the schedule set out in Appendix A.

(c) *Water meter for water consumption not returned to the wastewater system.* Any water customer may have the city install a separate water meter for the measurement of water not returned to the wastewater system or for irrigation purposes. The water used through this separate meter will be billed as a separate service and under the same provisions applicable to any existing water service but will not be subject to a monthly wastewater consumptive use charge or initial wastewater connection charges.

(1) Customers using this method of metering will be charged the nonresidential wastewater rate for water metered through the water meter supplying general water service.

(2) Customers installing a separate five-eighths inch water meter for irrigation purposes where reclaimed water is not available shall not be assessed initial flow-based water or wastewater connection charges.

(3) New installation of water meters for irrigation purposes are prohibited if reclaimed water is available to the customer from the city.

(d) *Wastewater customers on private wells.* Customers on private wells who are discharging wastewater into the city's wastewater system may pay for the installation of a water meter on their well and be billed for wastewater according to that water consumption. The water meter installation charge for this type of service is in accordance with the schedule set out in Appendix A.

(Code 1960, § 28-37; Ord. No. 3087, §§ 2—4, 12-17-84; Ord. No. 3565, § 1, 9-18-89; Ord. No. 3754, § 80, 1-27-92; Ord. No. 3962, § 1, 2-28-94; Ord. No. 000867, § 1, 2-26-01; Ord. No. 001871, § 1, 10-8-01)

Sec. 27-126.2. Reserved.

Editor's note(s)—Ord. No. 160253 , § 4, adopted Sept. 15, 2016, repealed § 27-126.2 which pertained to meter testing and derived from § 28-42 of the 1960 Code; Ord. No. 3754, § 80, adopted Jan. 27, 1992; and Ord. No. 030278, § 16, adopted Sept. 8, 2003.

Sec. 27-126.3. Same—Tampering with, altering.

(a) *Prohibited.* It shall be unlawful for any person to meddle, tamper with, alter or change the piping system on any premises or to interfere in any way with a meter or meter connection. Should it appear that water has been stolen by altering the pipes, altering the meter or otherwise, the general manager for utilities or his/her designee shall have the right to discontinue the service until the defect is corrected and the service approved by the appropriate inspector.

(b) *Diversion cut-back charge.* When a water meter is found to have been tampered with, service shall be subject to immediate disconnection. Before service may be restored, the estimated consumption as defined in subsection (c) of this section shall be paid by cash, postal money order or cashier's check or equivalent, or satisfactory arrangements for payment shall be made. Upon payment of the diversion cut-back charge, service shall be restored. If the customer's deposit has been previously refunded, a new deposit may be required.

(c) *Estimated consumption and billing.* When a water meter is found to have been tampered with or water has been otherwise diverted, the consumer shall be billed for the estimated water consumed, based on the rate in effect at the time of such billing. The consumption shall be estimated on the basis of previous consumption, consumption after replacement of the meter, or any other method in accordance with generally accepted utility practices which produces a reasonable estimate. In addition, the consumer shall be billed for the actual cost of the investigation of the meter tampering, including cost associated with the estimation of consumption and the labor, supplies, materials and equipment used in connection with such investigation. The consumer shall also be liable to the city for the cost of collection, including agency, attorneys' fees and court costs if the account is placed in the hands of an agency or attorney for collection or legal action because of the customer's failure to pay any amount due.

(d) *Prima facie evidence.* The presence, on property in the actual possession of the consumer where the meter tampering has occurred, of any connection, pipe, meter alteration, or device whatsoever which affects the diversion or use of water so as to avoid the registration of such use by or on a meter installed or private provided by the city shall be prima facie evidence of an intent to violate this section if:

    (1) The presence of such a device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility services;

    (2) The customer charged with the violation of this section has received the direct benefit of the reduction of the cost of such utility service; and

    (3) The customer or recipient of the utility service has received the direct benefit of such utility service for at least one full billing cycle.

(Ord. No. 3696, § 13, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-127. Only city employees to make connections on supply side of meters.

No person shall tap the city's water mains or make any other connection to pipes on the supply side of any meter except those persons duly employed by the city for that purpose.

(Code 1960, § 28-35(a); Ord. No. 3697, § 7, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-128. Rates and charges.

(a) *Rates.* The rates to be charged and collected for water furnished by the city to consumers shall be in accordance with the schedule set out in Appendix A.

(b) *Surcharge for entities and consumers outside corporate limits.* A surcharge equal to 25 percent shall be applied to the following:

(1) Connection charges, as defined herein, associated with new service connecting to the city's water system outside the corporate limits of the city; and

(2) The rates charged to customers of water furnished by the city to customers outside the corporate limits of the city.

The United States of America, the State of Florida and all political subdivisions, agencies, boards, commissions and instrumentalities thereof and all recognized places of religious assembly of the State of Florida are hereby exempt from the payment of the surcharge imposed and levied hereby.

(Code 1960, § 28-44; Ord. No. 3468, § 1, 9-26-88; Ord. No. 3565, § 4, 9-18-89; Ord. No. 3697, § 8, 2-18-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 001622, § 1, 9-24-01; Ord. No. 140171, § 2, 9-18-14; Ord. No. 150246 , § 2, 9-17-15)

Sec. 27-129. Water connection charges.

(a) *Identification of water connection charges.* The water connection charges specified in this section shall consist of a transmission and distribution connection charge and a water treatment plant connection charge. The water connection charge shall be assessed prior to the meter installation. The following categories of applicants shall pay the minimum connection charge according to the schedule set out in Appendix A: single family connections without fire sprinkler system with three-quarters inch or smaller meter; single family residential connections with fire sprinkler system with one inch or smaller water meter; and/or nonresidential connections with an estimated annual average daily flow (ADF) of less than or equal to 280 gallons per day (GPD). All other applicants shall pay the flow based connection charges according to the schedule set out in Appendix A. Each applicant for water service shall pay to the city, prior to services being rendered, the applicable water connection charges in accordance with the schedule set out in Appendix A. The connection charges shall not be applicable to any property that has been duly designated by the general manager for utilities or the general manager's designee, as having had the city's relevant water connection costs recovered previously for such property, provided such property had an active water account with city within the past ten years from the date of application.

(b) *For water meters larger than one inches.* The applicant shall provide the city a detailed estimate of the expected ultimate demand in gallons per day annual average daily flow (GPD-ADF) to be served by the water meter to be installed. It is the applicant's responsibility to coordinate the preparation of this estimate with the city so as to ensure the provision of sufficient detail and proper documentation of estimated demand. Such detail shall include an ultimate site plan for all properties served by the subject water meters. The city reserves the right to perform its own estimate of service demand, which shall take precedence for the purpose of calculating the charge.

(c) *For nonresidential water meters one inch or smaller.* The applicant shall provide the city an ultimate site plan or other documentation to substantiate building size for all properties served by the subject water meter(s). The expected ultimate demand in gallons per day annual average daily flow (GPD-ADF) will be determined by the city based on the site plan and the anticipated use of the facilities being served by the subject meter(s). Alternatively, the applicant may provide the city a detailed estimate of the expected ultimate demand. However, the city reserves the right to perform its own estimate of expected service demand, which shall take precedence for the purpose of calculating the charge.

(d) *Meter sizing.* The city reserves the right to select the most appropriate sized meter to best serve the applicant.

(e) *Connection charge adjustment.* The purpose of this subsection is to provide for adjustment of water connection charges when major and significant changes of water consumption patterns associated with an

existing service occur. The purpose of this subsection is not to adjust for insignificant errors in estimates of annual average daily flow, flow changes due to weather variations, or other normal changes in consumptive use of water. The city may use building permits, water consumption records, and other reasonable information to enforce the provisions of this subsection. After meters are installed and whether or not any water connection charge were assessed at the time of installation, an adjustment in the water connection charges paid or a new charge may be assessed if one or more of the following conditions occur:

(1) *Additional water meter installed.* If an additional water meter is installed, the amount charged the applicant shall be calculated according to the schedule set forth in Appendix A.

(2) *Actual demand exceeds estimated demand or change in use of facility.* If the actual annual average daily flow (ADF) measured over a 12-month period should exceed the estimated demand on which a previous connection charge payment was based or if there is a change in use of the facility that is expected to result in a demand greater than the estimated demand on which a previous connection charge payment was based, the city reserves the right to review and revise the previous demand estimate and to assess an additional charge for the increased demand calculated according to the schedule set forth in Appendix A.

(3) *Actual demand less than estimated.* If within the 24-month period following meter installation, the applicant can demonstrate to the city's satisfaction that the applicant's average daily flow (ADF) has been and will continue to be less than the estimate, which estimate was used as a basis for assessing the connection charges, the applicant may request a refund. The request shall include the applicant's copy of the original service demand estimate which shall be annotated and accompanied by sufficient explanation of the lower than estimated demand. If the city approves the request, the city shall pay a refund to the applicant based on the difference between the original service demand estimate and the new service demand estimate, multiplied by the current charge(s) for that demand calculated according to the schedule set forth in Appendix A.

(4) *Construction of new structures or facilities.* If new structures or facilities are constructed causing additional demand for water services and these facilities were not included in or properly described in the applicant's original detailed service demand estimate and/or site plan of service demand, then additional water connection charges shall be assessed by the city based on the estimated additional demand calculated according to the schedule set forth in Appendix A.

(f) *Irrigation meters.* Connections used solely for irrigation purposes are exempt from paying water connection charges.

(Code 1960, § 28-37.2; Ord. No. 3565, § 2, 9-18-89; Ord. No. 3697, § 9, 2-18-91; Ord. No. 3740, § 4, 9-30-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 3962, § 2, 2-28-94; Ord. No. 150246 , § 2, 9-17-15; Ord. No. 211448 , § 2, 9-22-22)

Sec. 27-130. Requirement for additional CIAC.

In any instance where the city determines that the city's share of cost to construct new facilities prompted by an application for water service is greater than the city is willing and/or able to afford, the applicant may be allowed to pay a contribution in aid of construction (CIAC), which may be required by the city in order to reduce the city's share of cost to an amount acceptable to the city. The city shall determine the amount of CIAC which is necessary under this section. Water flow-based connection charges shall not be credited towards any required CIAC.

(Code 1960, § 28-37.4; Ord. No. 3740, § 6, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-131. Fire support and standby sprinkler line charges.

Fire support and standby sprinkler line charges shall be in accordance with the schedule set out in Appendix A.

(Code 1960, § 38-37.6; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-132. Refunds of prepaid charges.

Prepaid water meter installation charges, prepaid water transmission and distribution charges, prepaid water treatment plant connection charges, and prepaid standby fire sprinkler line connection charges which are paid prior to installation of the facilities at the site for which they are paid, may be refunded to the current owner of the property for which charges were prepaid upon application made, provided that the facilities for which payment was made have not been installed, and provided that all costs of the city incurred in connection therewith, including but not limited to administrative and engineering costs shall first be deducted prior to making any such refund. No interest shall be paid by the city on such refund for prepayments. The burden of proof of any such prepayments shall be the applicant's.

(Code 1960, § 28-37.7; Ord. No. 3740, § 7, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-133. Temporary service.

(a) Temporary service, such as service for circuses, fairs, carnivals, and construction projects that, when completed, will require a water line on the customer's side of the meter larger than one inch shall be rendered upon written application accompanied by a meter installation and removal charge and a deposit, in accordance with the schedule set out in Appendix A, which will be applied against the final bill. A five-eighths-inch by three-quarter-inch water meter shall be installed on all temporary construction meter installations.

(b) At the option of the city, temporary service, such as for circuses, fairs, carnivals, swimming pool filling and construction projects that, when completed, will require a water line on the customer's side of the meter larger than one inch may also be rendered by installing a meter on an existing fire hydrant at the site or very near to the site. Service may be rendered in this manner upon written application accompanied by a nonrefundable meter installation and removal charge and a deposit, in accordance with the schedule set out in Appendix A, which will be applied against the final bill, assuming the safe return of the meter. Water used through such a temporary meter shall be paid for at the prevailing general water service rate. This type of temporary connection shall be allowed for a maximum time period of 60 days, but may be extended at the discretion of the general manager for utilities or his/her designee. It shall be illegal to utilize or in any manner tamper with any fire hydrant except for employees of the fire department in performing their duties, or an employee of the city engaged in testing, installing or maintaining fire hydrants, or for connecting or disconnecting temporary fire hydrant service as defined in this section.

(Code 1960, § 28-36; Ord. No. 3696, § 14, 2-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-134. Oversized mains.

The city reserves the right to require oversized water lines to serve any development. The city shall pay the oversizing costs based on the difference between the city's engineering estimates of the cost for the oversized line and the cost of the size line which is normally required to serve the development or an eight-inch line whichever is greater.

(Code 1960, § 28-36.1; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-135. Cross-connection control program.

(a) The "Manual of Cross-Connection Control," ("manual") promulgated by the general manager for utilities or his/her designee, as amended from time to time is hereby adopted and incorporated by reference as part of this section. The purpose of the cross connection control program is to protect the health, safety, and welfare of those persons consuming potable water from the city water system through preventing waterborne diseases and contaminants from entering the distribution system. The program is intended to prevent water from private plumbing systems, which could contain water borne diseases and contaminants, from entering the public water system through backflow or cross connection.

(b) The prevailing "Manual of Cross-Connection Control" shall be deposited with and maintained by the general manager for utilities or his/her designee and copies thereof shall be available therein for public use, inspection and examination. This manual lists the type of facilities and plumbing devices that require backflow prevention.

(c) Under the rules of the Florida Department of Environmental Protection, Section 62-555.360, F.A.C., relating to cross connection, the city has the primary responsibility to prevent water from unapproved sources, or any other substances, from entering the water system. Therefore, upon detection of a prohibited cross-connection, the city is directed to either eliminate the cross-connection by requiring the installation of an appropriate backflow prevention or discontinue service until the contamination source is eliminated.

(d) The customer's responsibility starts at the water service connection from the city potable water system. The costs of installing, operating and maintaining backflow preventers shall be the responsibility of the customers required by the general manager for utilities or his/her designee to install and maintain backflow prevention. The customer shall maintain accurate records of the test and repairs made to the backflow prevention devices and provide the city with copies of such records as required in the manual.

(e) In the event of accidental contamination of the public or customer's potable water supply system due to backflow from the customer's premises, the customer shall promptly take steps to confine further spread of the contamination with the customer's premises and shall immediately notify the city of the hazardous condition.

(f) The provisions in subsections (a) through (c) notwithstanding, the requirements for the installation of a backflow preventer may be waived at the discretion of the general manager for utilities or his/her designee, if such official finds that adequate protection against cross-connections is being provided by the customer.

(g) Service of water to any premise may be disconnected by the city if a required backflow prevention device is not installed, tested and maintained as required in the manual or has been removed or bypassed, or if unprotected cross-connections exist on the premises and there is inadequate backflow protection at the service connection. Water service will not be restored until such conditions or defects are corrected. All turn-off and turn-on service charges shall be paid by the consumer.

(Code 1960, § 28-37.5; Ord. No. 3565, § 3, 9-18-89; Ord. No. 3696, § 15, 2-18-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 030278, § 17, 9-8-03; Ord. No. 060457, § 5, 10-23-06)

Secs. 27-136—27-165. Reserved.

DIVISION 3. SEWERAGE[10]

Sec. 27-166. Policy, purpose, enforcement.

(a) The present sanitary sewerage system of the city, together with any and all extensions thereof and replacements thereto, and the sanitary sewage disposal plant now operated by the city, and any and all such plants hereafter acquired and operated by the city, be and the same are hereby established and declared to be a public utility for the use and benefit of the city in the maintenance of public health, welfare and sanitation throughout the city.

(b) In keeping with this policy, uniform requirements are set forth in this division for the disposal of wastewater in the service area of the city wastewater treatment system, in order to:

(1) Protect the public health;

(2) Provide problem-free wastewater collection and treatment service;

(3) Prevent the introduction of pollutants into the municipal wastewater system, which will interfere with the system operation or will cause physical damage to the wastewater system;

(4) Provide for full and equitable distribution of the cost of the wastewater treatment system;

(5) Enable the city to comply with provisions of the Federal Clean Water Act, the general pretreatment regulations (40 CFR 403), and other applicable federal and state laws and regulations;

(6) Improve the opportunity to recycle and reclaim wastewaters and sludges from the wastewater treatment system.

(c) This section shall apply to the city and to persons outside the city who are, by contract or agreement with the city, users of the municipal wastewater treatment system. Except as otherwise provided in this division, the general manager for utilities or his/her designee shall administer, implement, and enforce the provisions set forth in this division.

(Code 1960, § 28-56; Ord. No. 3696, § 16, 2-18-91)

[10]Editor's note(s)—Ord. No. 3754, §§ 53—57, adopted Jan. 27, 1992, repealed various sections of Div. 3, relative to sewerage, and § 80 of said Ord. No. 3754 renumbered the remaining sections of this division to read as herein set out. The history notation has been retained in the renumbered sections for reference purposes. The repealed provisions of this division derived from Code 1960, §§ 28-59.1(a)—(d), 28-63, 28-64.9, 28-65, 28-65.1; Ord. No. 3294, § 3, adopted Oct. 13, 1986; Ord. No. 3493, §§ 3, 4, adopted Nov. 21, 1988; Ord. No. 3644, § 3, adopted Aug. 20, 1990; Ord. No. 3696, §§ 17—19, adopted Feb. 18, 1991. Additionally, Ord. No. 3739, § 4, adopted Sept. 30, 1991, deleted former § 27-178, relative to off-site gravity line extension (CIAC), which derived form Code 1960, § 28-64.3 and Ord. No. 3697, § 14, adopted Feb. 18, 1991. See the Code Comparative Table for a specific enumeration of repealed and renumbered sections.

Sec. 27-167. Permit fee for plumbing and sewerage installation.

Before a permit is issued for any plumbing, sewer or drainage work or installation for which a permit is required, a fee therefor shall be paid to the plumbing inspector in accordance with the schedule set out in Appendix A.

(Code 1960, § 28-57)

Sec. 27-168. Sewer connection—New buildings.

No building permit for the construction of any building or structure located on property abutting any street, alley or right-of-way in which there is located a public sanitary sewer shall be issued, unless all waste disposal from the sanitary facilities in the buildings or structures shall be directly connected with a public sanitary sewer or to a graywater disposal system approved pursuant to section 27-182(b). However, if there is no available sanitary sewer located within 200 feet of the nearest property line whereon the building or structure is to be constructed, the terms of this section shall not apply.

(Code 1960, § 28-58)

Sec. 27-168.1. Same—Existing buildings generally.

The owner of any house, building, or other improvement on any property used, or to be used, for human occupancy, employment, recreation, business, or other purpose which is or shall be served by a sewerage disposal system other than a direct connection to the city's public sanitary sewer system and located on property abutting on any street, alley, right-of-way, or easement on which a public sanitary sewer line is installed, and located within 200 feet of such sewer line, shall, within two years after the completed construction of such sewer line in operative condition, connect, or cause to be connected, all sanitary sewerage disposal facilities from the property and improvement to the public sanitary sewer line or to a graywater disposal system approved pursuant to section 27-182(b).

(Code 1960, §§ 28-56.1(a), 28-59.1(a); Ord. No. 3754, § 80, 1-27-92)

Sec. 27-168.2. Same—Existing buildings with inadequate, unsatisfactory, etc., individual sewage disposal system.

The owner of any existing house, building or property used, or to be used, for human occupancy, employment, recreation, business or other purpose now served by an individual sewage disposal system other than a direct connection to a public sanitary sewer, and located on property abutting on any street, alley or right-of-way in which a public sanitary sewer is installed, or within 200 feet of the nearest available public sanitary sewer, shall be required, within 30 days after date of notice that the individual sewage disposal system is inadequate, unsatisfactory, causing a sanitary nuisance or endangering the water supply, to abandon the existing individual sewage disposal system and fill the same with suitable materials approved by the city health officer, and connect all waste from sanitary fixtures used by him/her directly with the public sanitary sewer or to a graywater disposal system approved pursuant to section 27-182(b).

(Code 1960, § 28-59; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-169. Rates and charges.

(a) *Rates.* There is hereby established a schedule of monthly rates and charges for the use of or availability for the use of wastewater collection, treatment and disposal services, including reclaimed water service, as set out in Appendix A, subject to the following:

(1) Wastewater collection service charges shall be billed to and be the responsibility of the customer responsible for paying the water bill at any specific location. Provided, however, no water customer of the city that is not connected to the wastewater collection system of the city and is not otherwise subject to wastewater collection service charges shall be charged for wastewater collection service.

(2) The Appendix A rates for reclaimed water service shall not apply where the terms and conditions of such service are otherwise provided by contract between the city and customer which is in existence at the time of adoption of Ordinance No. 001871.

(b) *Surcharge for entities and customers outside corporate limits.* A surcharge equal to 25 percent shall be applied to the following:

(1) Connection charges, as defined herein, associated with new service connecting to the city's wastewater system outside the corporate limits of the city; and

(2) The rates charged to customers for the use of wastewater collection, treatment and disposal services, including reclaimed water service, furnished by the city to customers outside the corporate limits of the city.

(c) *Applicability.* For any property required to be connected to the wastewater collection system, the owner and/or occupant of such property shall pay to the city the monthly fees, rates and charges for the use of the wastewater collection system in accordance with the schedule set out in Appendix A, regardless of whether an actual connection is made. The charges for wastewater collection shall commence on the date the property is connected, or required to be connected to the wastewater collection system as provided in sections 27-169 and 27-170, whichever date occurs first.

(Code 1960, § 28-64; Ord. No. 3087, § 1, 12-17-84; Ord. No. 3467, § 1, 9-26-88; Ord. No. 3564, § 1, 9-18-89; Ord. No. 3697, § 11, 2-18-91; Ord. No. 3754, §§ 18, 80, 1-27-92; Ord. No. 001622, § 1, 9-24-01; Ord. No. 001871, § 2, 10-8-01; Ord. No. 140171, § 3, 9-18-14; Ord. No. 150246 , § 3, 9-17-15)

Sec. 27-169.1. Reserved.

Ord. No. 211448 , § 3, adopted September 22, 2022, repealed § 27-169.1, which pertained to winter maximum calculation; adjustments and derived from Ord. No. 030278, § 18, 9-8-03; Ord. No. 160253 , § 5, 9-15-16.

Sec. 27-170. Deferred payment of residential wastewater service connection charges.

Notwithstanding the provisions of section 27-176 entitled "Wastewater Flow-Based Connection Charges," if the criteria listed below are met, each applicant for residential wastewater service shall have the option to defer payment of all wastewater flow-based connection charges during construction for a period of not more than six months from the date of application.

(1) *Criteria for deferring payment:*

a. All dwelling units to be served by the residential meter must be unoccupied at time of application and applicant must agree that no dwelling unit shall be occupied until all deferred charges have been paid.

b. Inspection for permanent electrical service must not have been made.

c. Permanent electric service must not have been installed.

d. Applicant must present service location addresses for all buildings at the time of application.

e. Application must be made pursuant to procedures established by the city and any required deposit must be paid.

f. Applicant must request payment deferral.

(2) *Payment of deferred fees.* No permanent electric power will be provided by the city to any single-family dwelling or to any unit in a residential building with multiple-dwelling units until all wastewater flow-based connection charges.

(3) *Nonpayment.* All fees and charges must be paid within six months of the meter application date. If the fees and charges are not paid within such period, service will be discontinued and the account will be closed. Service shall not be restored at such location until all applicable fees and charges have been paid.

(Ord. No. 3428, § 3, 4-4-88; Ord. No. 3739, § 1, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-171. Wastewater connection charges.

(a) *Identification of wastewater connection charges.* The wastewater connection charges under this section shall consist of a collection system connection charge and a treatment plant connection charge. The following categories of applicants shall pay the minimum connection charge according to the schedule set out in Appendix A: single family connections without fire sprinkler system with three-quarter inch or smaller meter; single family residential connections with fire sprinkler system with one inch or smaller water meter; and/or nonresidential connections with an estimated annual average daily flow (ADF) of less than or equal to 280 gallons per day (GPD). All other applicants shall pay the flow based connection charges according to the schedule set out in Appendix A. Wastewater flow-based connection charges shall be assessed prior to water meter installation. Each applicant for wastewater service shall pay to the city, prior to service being rendered, the applicable wastewater connection charges in accordance with the schedule set out in Appendix A. The wastewater connection charges shall not be applicable to any property that has been duly designated, by the general manager for utilities or the general manager's designee, as having had the city's relevant wastewater connection costs recovered previously for such property, provided such property had an active wastewater account with city within the past ten years from the date of application.

(b) *For water meters larger than one inch.* The applicant shall provide the city a detailed estimate of the expected ultimate water demand in annual average daily flow (GPD-ADF) to be served by the water meter to be installed. The wastewater service demand shall be deemed equal to the estimated water service demand. It is the applicant's responsibility to coordinate the preparation of this estimate with the city in order to ensure the provision of sufficient detail and proper documentation of estimated demand. Such detail shall include an ultimate site plan for the development indicating what properties are to be served by the subject water meter(s). The city reserves the right to perform its own estimate of service demand, which shall take precedence for the purpose of calculating the charge.

(c) *For nonresidential water meters one inch or smaller.* The applicant shall provide the city an ultimate site plan or other documentation to substantiate building size for all properties served by the subject water meter(s). The expected ultimate demand in gallons per day annual average flow (GPD-ADF) will be determined by the city based on the site plan and the anticipated use of the facilities being served by the subject meter(s). Alternatively, the applicant may provide the city a detailed estimate of the expected ultimate demand.

However, the city reserves the right to perform its own estimate of service demand, which shall take precedence for the purpose of calculating the charge.

(d) *Connection charge adjustment.* The purpose of this subsection is to provide for adjustment of wastewater connection charges when major and significant changes of water consumption associated with an existing service occur. The purpose of this subsection is not to adjust for insignificant errors in estimates of annual average daily flow, flow changes due to weather variances, or other normal changes in consumptive use of water. The city may use building permits, water consumption records, and other reasonable information to enforce the provisions of this subsection. After water meters are installed and whether or not any connection charges were assessed at the time of installation, an adjustment in the connection charges already paid or new charges may be assessed if one or more of the following conditions occur:

(1) *Additional water meter installed.* If an additional water meter is installed, the amount charged the applicant shall be calculated according to the schedule set forth in Appendix A.

(2) *Actual demand exceeds estimated or change in use of facility.* If the actual annual average daily flow (ADF) measured over a 12-month period should exceed the estimated demand on which a previous connection charge payment was based or if there is a change in use of the facility that is expected to result in a demand greater than the estimated demand on which a previous connection charge payment was based, the city reserves the right to review and revise the previous demand estimate and to assess additional charges for the increased demand calculated according to the schedule set forth in Appendix A.

(3) *Actual demand less than estimated.* If within the 24-month period following meter installation, the applicant can demonstrate to the city's satisfaction that the applicant's average daily flow (ADF) has been and will continue to be less than that estimated and used as a basis for assessing the wastewater connection charges, the applicant may request a refund. The request shall include the applicant's copy of the original service demand estimate which shall be accompanied by sufficient explanation of the lower than estimated demand. If the city approves the request, the city shall pay a refund to the applicant based on the amount of excess service demand originally assessed and the current charge for that demand calculated according to the schedule set forth in Appendix A.

(4) *Construction of new structures or facilities.* If new structures or facilities are constructed causing additional demand for wastewater services and these facilities were not included or properly described in the applicant's original detailed estimate (and site plan) of service demand, then additional wastewater connection charges shall be assessed by the city based on the estimated additional demand calculated according to the schedule set forth in Appendix A.

(f) *Greywater disposal systems.* The city is authorized to adjust wastewater connection charges assessed at the time of original water meter installation or assessed thereafter, as set forth in Appendix A, to reflect reduced wastewater loadings from approved individual graywater disposal systems. These adjustments shall be determined by procedures and engineering calculations contained in policies approved by the city commission.

(Code 1960, § 28-64.1; Ord. No. 3087, § 5, 12-17-84; Ord. No. 3564, § 2, 9-18-89; Ord. No. 3581, § 1, 12-4-89; Ord. No. 3697, § 12, 2-18-91; Ord. No. 3739 § 2, 9-30-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 951541, § 2, 6-10-96; Ord. No. 150246 , § 3, 9-17-15; Ord. No. 211448 , § 4, 9-22-22)

Sec. 27-172. Plan review fee and inspection service fee.

Applicants shall pay to the city a plan review fee according to the schedule set forth in Appendix A, prior to submitting plans for review by the city. No on-site facilities will be accepted by the city for connection to the city's wastewater system unless the design and construction of such facilities meet all standards and specifications of

the city. The facilities shall be inspected by the city prior to connection to the city's wastewater system to ensure such compliance. For such inspection, the developer shall pay to the city an inspection service fee as set out in Appendix A, to be assessed on the amount of developer installed mainline collection piping.

(Code 1960, § 28-64.2; Ord. No. 3564, § 3, 9-18-89; Ord. No. 3697, § 13, 2-18-91; Ord. No. 3739, § 3, 9-30-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 150246 , § 3, 9-17-15)

Sec. 27-173. Pump station (primary).

(a) Where a pumping station is constructed to receive the gravity wastewater flow from a development, the developer shall pay all costs associated with pump station design and construction required to serve the proposed development including all future phases. The city may elect to pay oversizing costs, if required, to serve existing or future customers outside of the proposed development.

(Code 1960, § 28-64.4; Ord. No. 3087, § 6, 12-17-84; Ord. No. 3564, § 4, 9-18-89; Ord. No. 3754, § 80, 1-27-92; Ord. No. 951541, § 3, 6-10-96)

Sec. 27-174. Force main extension (CIAC).

Where force mains are constructed by the city to extend wastewater service to a lot or development, the applicant for such wastewater service shall pay to the city a contribution in aid of construction (CIAC) prior to the commencement of construction of the force main. The force main CIAC shall be calculated as the cost as estimated by the city of constructing a force main sized (the smallest possible to serve the project, four inches minimum) and routed at the shortest practicable length to the closest point in the existing wastewater system capable of providing service to the applicant's development only. Sizing and routing of the force main will be determined by the city.

(Code 1960, § 28-64.5; Ord. No. 3739, § 5, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-175. Requirement for additional CIAC.

In any instance where the city determines that the city's share of cost to construct new facilities (including oversizing costs) prompted by an application for wastewater service is greater than the city is willing and/or able to afford, the applicant may be allowed to pay an additional contribution in aid of construction (CIAC), which may be required by the city in order to reduce the city's share of cost to an amount acceptable to the city. The city shall determine the amount of CIAC which is necessary under this section. Wastewater flow-based connection charges shall not be credited towards any required CIAC.

(Code 1960, § 28-64.6; Ord. No. 3739, § 6, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-176. Gravity line or pump station/force main construction.

In the instance where it is physically feasible to construct either gravity line or a pump station/force main to serve a development, the facilities to be constructed shall be determined by the city. The applicant shall pay the lesser of:

(1) CIAC for gravity line extensions; or

(2) Pump station (primary) CIAC plus force main extension CIAC plus any additional CIAC that may be assessed by the city.

(Code 1960, § 28-64.7; Ord. No. 3739, § 7, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-177. Refunds of prepaid charges.

Prepaid wastewater connection charges which are paid prior to installation of the facilities at the site for which they are paid, may be refunded to the current owner of the property for which the charges were paid upon application made, provided that the facilities for which payment was made have not been installed, and provided that all costs of the city incurred in connection therewith, including but not limited to administrative and engineering costs shall first be deducted prior to making any such refund. No interest shall be paid by the city on any such refund for prepayments. The burden of proof of any such prepayments shall be the applicant's.

(Code 1960, § 28-64.8; Ord. No. 3739, § 8, 9-30-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-178. Maintenance of laterals.

The customer is responsible for the operation, maintenance and repair of any wastewater lateral facilities connecting the customer's home or business to the city's wastewater facilities. The customer's responsibilities include the removal of any and all blockages within the customer facilities, including the removal of root intrusion, and the repair and replacement of any piping or connection failures associated with the customer's facilities. The customer is responsible for any and all damage to persons or property caused by the customer's ownership, operation, maintenance, repair and/or replacement of these facilities. The city is responsible for operating, maintaining, repairing and/or replacing the city's wastewater facilities located within the public right-of-way or a public utility easement.

(Code 1960, § 28-60; Ord. No. 3754, § 80, 1-27-92; Ord. No. 030278, § 19, 9-8-03)

Sec. 27-179. Oversized facilities.

The city reserves the right to require oversizing of any wastewater facility (gravity wastewater lines, lift stations, force mains and package treatment plants) and shall pay the developer for such oversizing on the basis of additional costs incurred because of the oversizing. The city shall pay oversizing costs based on the difference between the engineering estimates for the cost of oversized facility and the cost of the facility which is required to serve the development.

(Code 1960, § 28-60.1; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-180. Pretreatment program—Generally.

(a) The objectives of this section are to:

(1) Prevent the introduction of pollutants into the city wastewater treatment system that will cause interference with its operation or pass through inadequately treated into receiving waters or biosolids.

(2) Provide protection for the general public and city personnel who may be affected by wastewater and sludge in the course of their employment.

(3) Ensure compliance of the city with applicable federal and state laws including Section 402 of the Clean Water Act (specifically 40 CFR Part 403), and Chapter 62-625 and Chapter 62-640 of the Florida Administrative Code.

(4) To promote reuse and recycling of reclaimed water, biosolids, and industrial wastewater from the wastewater system.

(5) To provide for the equitable distribution of the cost of operation, maintenance, and improvement of the wastewater system.

(b) Compliance with this division may not under some circumstances constitute compliance with the Alachua County Hazardous Material Management Code. Industrial users should contact the Alachua County Environmental Protection Department for further information on compliance with the Hazardous Material Management Code.

(c) Except as otherwise provided herein, the general manager for utilities shall administer, implement, and enforce the provisions of this section. Any powers granted to or duties imposed upon the general manager for utilities may be delegated by the general manager for utilities to a duly authorized city employee.

(Code 1960, § 28-61; Ord. No. 3602, § 2, 3-5-90; Ord. No. 3696, § 20, 2-18-91; Ord. No. 3735, § 2, 8-19-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980894, § 2, 6-14-99; Ord. No. 120211, § 1, 9-20-12)

Sec. 27-180.1. Same—Prohibited substances.

(a) No user shall introduce or cause to be introduced into the wastewater system any pollutant or wastewater, which either singly or by interaction with other pollutants causes pass through or interference. This general prohibition applies to all users of the wastewater system whether or not they are subject to categorical pretreatment standards or any other federal, state, or local pretreatment standards or requirements.

(b) It shall be unlawful for any person willfully or with culpable negligence to discharge or cause to be discharged into the wastewater system of the city any substance which:

(1) Is harmful to the wastewater system, or is hazardous to the wastewater system because it contains flammable or explosive liquids, solids or gases, which by reason of their nature or quantity are, or may be, sufficient, either alone or by interaction with other substances, to cause fire or explosion or be injurious in any other way to the wastewater system or to the operation of the wastewater system. No substance may be discharged with a closed cup flashpoint of less than 60° C (140° F) using test methods specified in 40 CFR 261.21. At no time shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent, nor any single reading over ten percent, of the lower explosive limit (LEL) of the meter. Such materials shall include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the city determines to be a fire hazard, health hazard or a hazard to the system.

(2) Has a temperature which would have adverse effects on the wastewater system. In no case shall discharges cause the temperature of influent to the wastewater treatment plant to exceed 40° C (104° F).

(3) May cause stoppages in the wastewater system because of size, quantity, volume or any other characteristic. Solid or viscous substances which may cause obstruction to the flow in the sewer or other interference with the operation of the wastewater treatment facilities shall not be discharged into the wastewater system.

(4) Has corrosive properties capable of causing damage or hazard to structures, equipment and/or personnel of the wastewater system.

(5) May cause the wastewater system's effluent or any other product of the wastewater system, such as residues, sludges or scums to be unsuitable for reclamation and reuse, or to interfere with the reclamation process.

(6) Contains any pollutant, including oxygen demanding pollutants (BOD, etc.), released at a flow rate and/or pollutant concentration which either singly or by interaction with other pollutants, will cause interference or pass through in the wastewater system. No user shall discharge flow at a rate that will be disruptive to the wastewater system or cause interference or pass through in the wastewater system.

(7) Results in the presence of toxic gases, vapors, or fumes in any part of the wastewater system in a quantity that may cause acute worker health and safety problems.

(8) Contains pollutants in sufficient quantity, either singly or by interaction with other pollutants, which constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the wastewater system.

(9) Contains waste exceeding the local discharge limit of any pollutant for which a limit has been established by the general manager for utilities or his/her designee using standard procedures, calculations and methods acceptable to the Florida Department of Environmental Protection (FDEP) to protect against pass through, interference, protection of wastewater system employees, and adverse effects on wastewater biosolids disposal. Such limits shall be included as permit conditions and attached to each industrial wastewater discharge permit issued. The established local discharge limits, incorporated by reference herein, are subject to change and may be modified as needed based on regulatory requirements and standards, wastewater system operation, performance and processes, the industrial user base, potable water quality and domestic wastewater characteristics. Modifications to the established local discharge limits must be reviewed and approved by FDEP prior to implementation. Implementation shall be effective 30 days from notice of acceptance of the modified discharge limits by FDEP. Permitted significant industrial users shall also be issued an addendum to their wastewater discharge permit containing the revised local discharge limits. A copy of the approved local discharge limits shall be kept on file in the office of the general manager for utilities or his/her designee and made available on request.

(10) Discharge limits for sulfate, sulfide, and organic pollutants shall be determined by the general manager for utilities or his/her designee with considerations for acceptable worker exposure levels or prevention of damage, interference or pass through in the wastewater system, whichever provides the lower discharge limit.

(11) Local discharge limits shall apply at the point where the wastewater is discharged to the wastewater system. All concentrations for metallic substances are for "total" metal.

(c) No user shall ever increase the use of process water, or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment, to achieve compliance with a local discharge limit, prohibited discharge standard, or categorical pretreatment standard. The general manager for utilities or his/her designee may impose mass limitations when appropriate.

(d) No user shall discharge petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through in the wastewater system.

(e) No user shall discharge trucked or hauled wastes to the wastewater system except at points designated by special agreement with the city.

(f) The city may establish, by ordinance or in individual wastewater discharge permits, more stringent standards or requirements or standards for substances not contained in this section for discharges to the wastewater system consistent with the purpose of this division.

(g) The National Categorical Pretreatment Standards found at 40 CFR Chapter I, Subpart N and Chapter 62-660, F.A.C., as may be amended from time to time, are hereby incorporated by reference.

(h) When wastewater subject to a National Categorical Pretreatment Standard is mixed with wastewater not regulated by the same standard, the general manager for utilities or his/her designee shall impose an alternate limit in accordance with Rule 62-625.410 F.A.C.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 060457, § 2, 10-23-06; Ord. No. 120211, § 2, 9-20-12)

Sec. 27-180.2. Same—Conditional requirements for specific discharges.

(a) *Fats, oils and grease.* Wastewater containing such amounts of fats, oils or greases as may be determined by the general manager for utilities or his/her designee to be detrimental to the wastewater system shall not be discharged into the wastewater system. An efficient grease trap, grease interceptor or oil/water separator shall be utilized prior to discharge to the wastewater system and maintained as required in this section. Wastewater from restaurants or places where cooking is done shall be presumed to contain grease and grease traps or grease interceptors shall be required at all such locations. Automotive-related facilities including but not limited to car-washes and automobile repair shops, which may contribute petroleum-based oil to the collection system, are required to have an approved oil/water separator.

(1) All nonresidential facilities that prepare, process or serve food as determined by the assistant general manager for water/wastewater utilities or his/her designee are required to have a grease interceptor discharge permit issued by GRU and an approved grease interceptor or approved grease trap. The grease interceptor discharge permit for any facility shall be renewed whenever there is a significant change in operation including facility expansion, remodeling that requires a plumbing permit, or change in ownership.

(2) Grease interceptors, grease traps, and oil/water separators shall be installed solely at the customer's expense. Proper operation, maintenance, and repair of grease interceptors, grease traps, and oil/water separators shall be done solely at the customer's expense.

(3) The "Oil and Grease Management Manual" promulgated by the general manager for utilities or his/her designee, as amended from time to time is hereby adopted and incorporated by reference as part of this section. Copies of the "Oil and Grease Management Manual" shall be available upon request.

(4) Grease traps, grease interceptors and oil/water separators shall be designed, installed, and maintained as required in the "Oil and Grease Management Manual." The owner or operator shall maintain a maintenance log for the grease interceptors, grease traps, or oil/water separators on site that includes the previous 12-months activity. The log shall be available upon request by the city and include the date, time, maintenance performed, volume removed each pump out, and the name, signature, and contact information of the person who performed the maintenance.

(5) If grease accumulates in the wastewater collection system lines or damage to the wastewater system is caused by the discharge of fats, oils, or greases, the owner or operator will be billed for cleaning the collection lines or any other expense incurred by the city.

(b) *Private wells.* Where private wells are used, disposal into the wastewater system shall be done only by special agreement with the city.

(c) *Storm water, air-conditioners and similar wastes.* Storm water, air-conditioning water, condenser waters, swimming pool waters or other similar type wastes shall be discharged into the wastewater system only by special agreement with the city.

(d) *Septic tank and portable toilet waste.* Septic tank and portable toilet waste shall be introduced into the city's wastewater system only when specifically authorized and only at the time, place and manner prescribed by the city.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 030278, § 20, 9-8-03)

Sec. 27-180.3. Same—Permitting.

(a) Industrial wastes shall not be discharged into the wastewater system without written permission of the general manager for utilities or his/her designee. All significant industrial users who are proposing to connect or contribute to the wastewater system shall obtain an industrial wastewater discharge permit before connecting to or contributing to the wastewater system. Industrial wastewater discharge permits shall contain but are not limited to the following conditions:

(1) *Duration.* The duration shall not exceed five years from the effective date of the permit.

(2) *Renewal.* The user shall apply for permit renewal a minimum of 180 days prior to the expiration of the existing permit.

(3) *Transferability.* The permit may not be sold, transferred, or reassigned.

(4) *Limits.* Effluent limits, including best management practices, shall be specified based on applicable pretreatment standards.

(5) *Monitoring.* Self-monitoring, sampling, reporting, notification, and record-keeping shall be specified, including identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on applicable federal, state, and local laws.

(6) *Penalties.* Applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule shall be stated. Such schedule shall not extend the compliance date beyond applicable state or federal deadlines.

(7) *Slug discharges.* The permit shall contain requirements to control slug discharges if determined by the general manager for utilities or his/her designee to be necessary.

(8) *Monitoring waiver.* The permit shall include any grant of a monitoring waiver and shall specify the process for seeking a waiver from monitoring for a pollutant either not present or not expected to be present in the industrial user's wastewater discharge in accordance with section 27-180.4(r).

(b) Significant industrial users, and any other user required to obtain a wastewater discharge permit by the general manager for utilities or his/her designee, shall be required to complete an industrial wastewater discharge application as provided by the general manager for utilities or his/her designee prior to receiving a permit.

(c) Industrial users shall be required to submit a waste minimization plan when submitting either an industrial wastewater discharge application or an application for permit renewal. The waste minimization plan must include but is not limited to the following items:

(1) A detailed description of the components and estimated volume of all waste streams that comprise the industrial wastewater discharge.

(2) Practices currently employed or future plans to minimize the amount of waste in the industrial wastewater discharge.

The plan will be forwarded to the Alachua County Environmental Protection Department for comment. Any comments received within 14 days of delivery of the plan to the Alachua County Environmental Protection Department shall be considered by the general manager or his/her designee when making waste minimization plan approval decisions.

(d) The general manager for utilities or his/her designee may require an industrial user to perform self-monitoring as a prerequisite to being granted an industrial wastewater discharge permit.

(e) The general manager for utilities or his/her designee may require other users, who are not significant industrial users, to obtain industrial wastewater discharge permits.

(f) Modifications. The general manager for utilities or his/her designee may modify any industrial wastewater discharge permit. The industrial user shall be informed of any substantive modifications to the permit at least 30 days prior to the effective date of the change.

(g) Approval decisions. The general manager for utilities or his/her designee will review and evaluate the application and waste minimization plan and determine whether or not to issue an industrial wastewater discharge permit. The general manager for utilities or his/her designee may deny any application for an industrial wastewater discharge permit. Industrial users shall comply with the standards set forth in Chapter 62-625, Florida Administrative Code, as amended from time to time.

(h) Appeals. Any person, including the user, may petition the general manager for utilities or his/her designee to reconsider the terms of an industrial wastewater discharge permit within 30 days of notice of its issuance.

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the industrial wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the industrial wastewater discharge permit.

(3) The effectiveness of the industrial wastewater discharge permit shall not be stayed pending the appeal.

(4) If the general manager for utilities or his/her designee fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider an industrial wastewater discharge permit, not to issue an industrial wastewater discharge permit, or not to modify an industrial wastewater discharge permit shall be considered final administrative actions for purposes of judicial review.

(i) The general manager for utilities or his/her designee may require any user connected prior to the effective date of this division to obtain an industrial wastewater discharge permit.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 120211, § 3, 9-20-12)

Sec. 27-180.4. Same—Monitoring, reporting, and notification.

(a) *Baseline monitoring report.* Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final administrative decision made upon a category determination request under Rule 62-625.410(2)(d), F.A.C., whichever is later, industrial users subject to such categorical pretreatment standards and currently discharging to, or scheduled to discharge to the wastewater system, shall submit to the general manager for utilities or his/her designee a report which contains information as required in Rule 62-625.600(1)(a)—(g). At least 90 days prior to commencement of discharge, new sources, and sources that become subject to categorical standards, shall submit to the general manager for utilities or his/her designee a report which contains the information listed in Rule 62-625.600(1)(a)—(e).

(b) *Categorical compliance report.* Within 90 days following the date for final compliance with applicable categorical pretreatment standards under Rule 62-660, or in the case of a new source following commencement of the introduction of wastewater to the city wastewater system, any industrial user subject to the pretreatment standard shall submit a report containing the information as required in Rule 62-625.600(1)(d)—(f). For users subject to equivalent mass or concentration discharge limits established by the general manager for utilities or his/her designee in accordance with the procedures in Rule 62-625.410(4), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production or other measure of operation, this report shall include the user's actual production during the appropriate sampling period. This report shall also meet the requirements of section 27-180.4(g).

(c) *Semiannual compliance report.* Any significant industrial user discharging to the city wastewater system is required to submit by January 31st and July 31st each year a report detailing the nature and concentration of pollutants in their wastewater discharge, a record of the wastewater flow for the period, and a summary of any changes to pretreatment equipment. The general manager for utilities or his/her designee may require these reports more frequently to ensure industrial user compliance. The general manager for utilities or his/her designee may reduce the reporting frequency to a minimum of once per year, unless required more frequently in any applicable pretreatment standard or unless required more frequently by the Florida Department of Environmental Protection, provided that the industrial user meets all of the following conditions:

(1) The industrial user's total categorical wastewater flow does not exceed 0.01 percent of the design dry weather hydraulic capacity of the water reclamation facility to which it discharges, or 5,000 gallons per day, whichever is smaller, as measured by a continuous flow monitoring device unless the industrial user discharges in batches.

(2) The industrial user's total categorical wastewater flow does not exceed 0.01 percent of the design dry weather organic treatment capacity of the water reclamation facility to which it discharges.

(3) The industrial user's total categorical wastewater flow does not exceed 0.01 percent of the maximum allowable headworks loading for any pollutant regulated by any applicable categorical pretreatment standard for which approved local limits have been developed for the water reclamation facility to which it discharges in accordance with 62-625.400(3), F.A.C.

(4) The industrial user has not been in significant noncompliance in the past two years and the industrial user does not have daily flow rates, production levels, or pollutant levels that vary so much that decreasing the reporting requirement would result in data that are not representative of conditions occurring during any reporting period pursuant to 62-625.400(6)(c), F.A.C.

If changes occur at the industrial user's facility which cause it to no longer meet the conditions of section 27-180.4(c)(1)—(4), the industrial user must immediately notify the general manager for utilities or his/her designee and the industrial user must immediately begin reporting semiannually or more frequently as determined by the general manager for utilities or his/her designee.

(d) *Unpermitted user reports.* The general manager for utilities or his/her designee may require any unpermitted user to submit reports relating to the wastewater discharge as specified by the general manager for utilities or his/her designee.

(e) *Self-monitoring.* The general manager for utilities or his/her designee may require self-monitoring reports from industrial users as are deemed necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements including but not limited to the reporting requirements set forth in Rule 62-160 and the test procedures for wastewater analyses found in 40 CFR Part 136, which are incorporated by reference as part of this section. All self-monitoring reports shall be based on data obtained through sampling and analysis performed during the period covered by the report. These data shall be representative of conditions occurring during the reporting period.

(f) *Sample collection.* All wastewater samples shall be representative of the industrial user's discharge. Wastewater monitoring and flow measurement equipment shall be properly operated and maintained. The failure of an industrial user to maintain its monitoring equipment in good working order shall not be grounds for the industrial user to claim that sample results are not representative of its discharge. Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds shall be obtained using grab collection techniques. Using methods specified in 40 CFR Part 136, multiple grab samples collected during a 24-hour period may be composited prior to analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. All other samples shall be collected using flow proportional composite techniques. The general manager for utilities or his/her designee may authorize the

use of time proportional sampling or a minimum of four grab samples. For sampling required in support of baseline monitoring (section 27-180.4(a)) and 90-day compliance reports (section 27-180.4(b)), a minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for industrial users for which historical sampling data do not exist; for industrial users for which historical sampling data are available, the general manager for utilities or his/her designee may authorize a lower minimum.

(g) *Compliance monitoring.* The general manager for utilities or his/her designee shall conduct compliance monitoring to ensure that the industrial user's discharge is in compliance with the industrial wastewater discharge permit and shall have the right to enter the premises of any industrial user for the purpose of such monitoring.

(h) *Notification of changed discharge.* All industrial users shall notify the general manager for utilities or his/her designee in writing of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least 60 days prior to the change.

(i) *Prohibited discharge notification.* Any industrial user discovering in the course of self-monitoring that any prohibited discharge limit has been exceeded shall notify the general manager for utilities or his/her designee within 24 hours of learning of the discharge. This notification shall be followed within 30 days of the date of discovery of the violation by resampling of the parameter, reanalysis, and submittal of a certified monitoring report. Such notification and resampling will not relieve the industrial user of liability for any penalties or corrective action required due to the prohibited discharge. Resampling by the industrial user is not required if the general manager for utilities or his/her designee performs sampling at the industrial user's facility at least once per month, or if the general manager for utilities or his/her designee performs sampling at the industrial user's facility between the time when the initial sampling was performed and the time when the industrial user or the general manager for utilities or his/her designee receives the results of this sampling, or if the general manager for utilities or his/her designee has performed the sampling and analysis in lieu of the industrial user.

(j) *Accidental discharge notification.* Any person causing or suffering from any accidental discharge shall immediately notify the general manager for utilities or his/her designee by telephone to enable countermeasures to be taken to minimize damage to the wastewater system, the health and welfare of the public, and the environment. This notification shall be followed within five days of the date of occurrence by a detailed written statement submitted by the industrial user describing the cause of the accidental discharge and the measures being taken to prevent future occurrence. Such notification will not relieve the industrial user of liability of any expense, loss, or damage to the wastewater system.

(k) *Hazardous waste discharge notification.* Any industrial user shall notify the general manager for utilities or his/her designee in writing of any discharge into the wastewater system of a substance, which, if otherwise disposed of, would be hazardous waste under Chapter 62-730, F.A.C. Such notification shall comply with the requirements of Rule 62-625.600(15), F.A.C.

(l) *Signatory and certification requirements.* Documents submitted by any industrial user for the purposes of compliance with an industrial wastewater discharge permit or any requirement of this section shall be signed by a duly authorized representative and contain the appropriate certification statement determined as follows:

(1) Any industrial user submitting permit applications, baseline monitoring reports, reports on compliance with any categorical pretreatment standard deadlines, periodic compliance or monitoring reports, and any industrial user submitting an initial request to forego sampling of a pollutant on the basis of section 27-180.4(r) shall submit the certification statement found in Rule 62-625.410(2)(b)2, F.A.C.

(2) Any industrial user determined by the general manager for utilities or his/her designee to be a non-significant categorical industrial user shall submit the certification statement found in Rule 62-625.600(17), F.A.C.

(3) Any industrial user that has a monitoring waiver approved by the general manager for utilities or his/her designee in accordance with section 27-180.4(r) shall submit each report with the certification statement found in Rule 62-625.600(4)(c)5. F.A.C.

(m) *Recordkeeping.* All industrial users shall keep, for a minimum of three years, any documents that are required by or developed to comply with this section or with an industrial wastewater discharge permit including but not limited to monitoring data, notices of violation, documentation associated with best management practices, and compliance reports. The record retention period shall be extended for the duration of any litigation concerning the industrial user or the city, or where the industrial user has been specifically notified of a longer retention time by the general manager for utilities or his/her designee. Monitoring records shall include the following information: date and time of sampling, sampling location, sampling method, name of the person collecting the sample, analysis date, analyst name, analytical method, and results of analysis.

(n) *Public records access.* Documents submitted by industrial users to the general manager for utilities or his/her designee are open to inspection by the public in accordance with city policy, state, and federal law. Documents claimed as proprietary information must meet the criteria outlined in Rule 62-625.800. Under no circumstances will effluent data be treated as confidential.

(o) *Costs.* All costs associated with monitoring, reporting, and notification shall be borne solely by the industrial user.

(p) *Slug discharge.* All significant industrial users shall notify the general manager for utilities or his/her designee immediately of any changes at its facility affecting the potential for a slug discharge.

(q) *Best management practice documentation.* In cases where an industrial user is required to meet compliance with a best management practice (BMP) or pollution prevention alternative, the industrial user must submit documentation as required by the general manager for utilities or his/her designee to determine the compliance status of the industrial user.

(r) *Monitoring waiver of a categorical pretreatment standard.* The general manager for utilities or his/her designee may authorize an industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is not present or not expected to be present in the wastewater discharge, or present only at background concentrations from intake water and without any increase in the pollutant due to the activities of the industrial user. This authorization is subject to the following conditions:

(1) The waiver may be authorized if a pollutant is determined to be present solely due to the sanitary wastewater discharged from the industrial user's premises provided that the sanitary wastewater of the industrial user is not regulated by any applicable categorical standard and otherwise includes no process wastewater.

(2) The waiver is valid only for the duration of the wastewater discharge permit. The industrial user must submit a new request for a waiver before the waiver can be granted for each subsequent wastewater discharge permit.

(3) The industrial user shall demonstrate that a pollutant is not present by submitting data to the general manager for utilities or his/her designee from at least one sample of the industrial user's process wastewater prior to any pretreatment and which is representative of all wastewater from all processes.

(4) Non-detectable sample results may be used as a demonstration that a pollutant is not present only if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection limit for that pollutant was used in the analysis.

(5) Any grant of a monitoring waiver by the general manager for utilities or his/her designee shall be included as a condition in the industrial user's wastewater discharge permit. The reasons supporting the waiver and any information submitted by the industrial user in its request for the waiver shall be maintained by the general manager for utilities or his/her designee for three years after expiration of the waiver.

(6) In the event that a waived pollutant is found to be present or is expected to be present due to changes that occur in the industrial user's operations, the industrial user shall immediately notify the general manager for utilities or his/her designee and shall comply with the minimum monitoring requirements found in section 27-180.4(c) or more frequent monitoring as required by the general manager for utilities or his/her designee.

(7) No waiver shall be granted by the general manager for utilities or his/her designee unless the industrial user's applicable categorical pretreatment standards allow such waivers.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 120211, § 4, 9-20-12)

Sec. 27-180.5. Same—Pretreatment facilities and monitoring equipment.

(a) Pretreatment facilities and/or monitoring equipment shall be required for any waste that may be harmful to equipment or the wastewater collection system, cause pass through or interference in the wastewater system or cause nuisance, odor, or stoppage problems in the wastewater system. Users shall provide wastewater treatment as necessary to comply with this division and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in section 27-180.1 within the time limitations specified by the EPA, the Florida Department of Environmental Protection, or the general manager for utilities or his/her designee, whichever is more stringent.

(b) The general manager for utilities or his/her designee may require monitoring equipment including but not limited to flow monitoring and sampling devices.

(c) The owner shall be responsible for the construction, operation and maintenance of any pretreatment facilities or monitoring equipment required by the general manager for utilities or his/her designee. Detailed plans describing such facilities and operating procedures shall be submitted to the general manager for utilities or his/her designee for review, and shall be acceptable to the general manager for utilities or his/her designee before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facilities as necessary to produce a discharge acceptable to the general manager for utilities or his/her designee under the provisions of this section.

(d) Users shall control production of all discharges to the extent necessary to maintain compliance with discharge standards contained in this division upon reduction, loss, or failure of the user's treatment facility until the facility is restored or an alternative method of treatment is provided.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 120211, § 5, 9-20-12)

Sec. 27-180.6. Same—Accidental discharge/slug prevention.

(a) All industrial users shall provide such facilities and such procedures as are reasonably necessary to prevent or minimize the potential for accidental discharge into the wastewater system. Areas with the potential for release include but are not limited to liquid or raw material storage areas, truck and rail car loading and unloading areas, in-plant transfer or processing and materials handling areas, diked areas or holding ponds.

(b) The general manager for utilities or his/her designee shall evaluate at least every two years whether each significant industrial user needs an accidental discharge/slug control plan and may require any user to

develop, submit for approval, and implement such a plan. This plan shall include but is not limited to the following items:

(1) Description of discharge practices, including non-routine batch discharges.

(2) Description of stored chemicals and containment areas.

(3) Procedures for immediately notifying the general manager for utilities or his/her designee of any accidental or slug discharge that would constitute a violation of any part of this division with procedures for follow-up written notification within five days as required by the reporting and notification section of this division.

(4) Procedures to prevent adverse impact from any accidental or slug discharge.

(c) The industrial wastewater discharge permit of any industrial user shall be subject on a case by case basis to a special permit condition or requirement for the construction of facilities or the establishment of procedures which will prevent or minimize the potential for accidental/slug discharges. Facilities to prevent accidental/slug discharge shall be provided and maintained at the user's expense. Detailed plans showing the facilities and operating procedures shall be submitted to the general manager for utilities or his/her designee for approval before the facility is constructed. The review and approval of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility to provide the protection necessary to meet the requirements of this division.

(Ord. No. 980894, § 3, 6-14-99; Ord. No. 120211, § 6, 9-20-12)

Sec. 27-180.7. Same—Enforcement.

(a) *Inspection.* The general manager for utilities or his/her designee may enter the premises of any industrial user to determine whether the user is complying with all requirements of this section and any industrial wastewater discharge permit. Industrial users shall allow the general manager for utilities or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination, and copying and the performance of any additional duties. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the general manager for utilities or his/her designee and shall not be replaced. The costs of clearing such access shall be borne by the user. Unreasonable delays in allowing the general manager for utilities or his/her designee access to the user's premises shall be a violation of this division. The general manager for utilities or his/her designee may remove records for the purposes of copying if copying facilities are not available on the premises.

(b) *Search warrants.* If the general manager for utilities or his/her designee has been refused access to the premises and is able to demonstrate probable cause to believe that there may be a violation of sections 27-180 and 27-180.1 through 27-180.7, or that there is a need to inspect and or sample as part of a routine inspection and sampling program of the city designed to verify compliance with sections 27-180 and 27-180.1 through 27-180.7 or any industrial wastewater discharge permit or to protect the public health, safety, and welfare of the community, then the general manager for utilities or his/her designee may seek issuance of search warrant from the appropriate court of law.

(c) *Notification of violation.* Whenever the general manager for utilities or his/her designee finds that a user has violated or continues to violate any provision of this division, industrial wastewater discharge permit, compliance schedule, or any order issued in association with this division, the general manager for utilities or his/her designee may serve on the user a written notice of violation. Within 15 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention of the violation shall be submitted by the user to the general manager for utilities or his/her designee. Nothing in

this provision shall be interpreted to require the general manager for utilities or his/her designee to issue a notice of violation before taking any action including emergency actions or any other enforcement action.

(d) *Remedies nonexclusive.* The remedies provided for in this division are not exclusive. Generally, enforcement action procedures will be conducted in accordance with the city industrial pretreatment program enforcement response plan ("enforcement plan") on file in the office of the general manager for utilities or his/her designee, incorporated by reference herein, copies of which are available upon request. However, the general manager for utilities or his/her designee may take other action against any user when circumstances warrant and may take more than one enforcement action against any user in noncompliance with this section including, but not limited to, action under the provision chapter 2, article III, division 8.

(e) *Publication of users in significant noncompliance.* The general manager for utilities or his/her designee shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the city, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. An industrial user is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined as those in which 66 percent or more of all the wastewater measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, for the same pollutant parameter;

(2) Technical review criteria (TRC) violations, defined as those in which 33 percent or more of all the measurements for any pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, multiplied by the applicable TRC (TRC = 1.4 for conventional pollutants such as, BOD, TSS, total oil and grease; TRC = 1.2 for all other pollutants except %LEL and pH). For %LEL, any reading in excess of the industrial wastewater discharge permit or limit set forth in this division shall be significant noncompliance.

(3) Any violation of a pretreatment standard or requirement (daily limit, long term average limit, instantaneous limit, or narrative standard) that the general manager for utilities or his/her designee determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of city employees or the general public).

(4) Any discharge that has resulted in the general manager for utilities or his/her designee's exercise of emergency authority (under 62-625.500(2)(a)5.b. F.A.C.) to halt or prevent such a discharge.

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, reports on compliance with categorical pretreatment standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance;

(8) Any other violation or group of violations, including a violation of best management practices, which the general manager for utilities or his/her designee determines will adversely affect the operation or implementation of the pretreatment program, except when the state department of environmental protection is acting as the control authority.

(f) *Compliance schedules.* The general manager for utilities or his/her designee may issue a compliance schedule to any industrial user that has violated, or continues to violate, any provision of this section or an industrial wastewater discharge permit, directing that the user come into compliance within a specified time. Such

schedules shall contain increments of progress in the form of dates for the commencement and completion of major events leading to schedule completion and compliance with documentation being required upon completion of each major event. No increment of progress shall exceed nine months and the time interval between progress reports to the general manager of utilities or his/her designee shall not exceed nine months. The user shall submit a progress report to the general manager of utilities or his/her designee no later than 14 days following each date in the schedule including the final date of compliance. Progress reports shall include whether or not the user complied with the increment of progress, the reason for any delay, and if appropriate the steps being taken by the user to return to the established compliance schedule. Compliance schedules may also contain other requirements to address the noncompliance including additional self-monitoring and management practices. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities are installed and properly operated. Compliance schedules shall not relieve the user of liability for any violation nor preclude the general manager for utilities or his/her designee from taking further action against the user.

(g) *Liability.* Any user who discharges a substance prohibited by this section shall be responsible for the payment of all costs incurred by the city to stop the discharge, remove the unlawful substance from the wastewater system, and make necessary repairs to the system. The existence of an affirmative defense as provided herein shall not relieve the user of the obligations in this subsection (g).

(h) *Fines.* In accordance with Rule 62-625.500(2)(a)5., F.A.C. as amended, a fine of up to $1,000.00 per violation per day determined in accordance with the enforcement plan shall be assessed against the user for violations of any provision of this section, industrial wastewater discharge permit, compliance schedule, or any order issued in association with this section. Assessment of a fine does not relieve a user of any applicable charges contained in Appendix A, including excess strength charges.

(i) *Permit revocation.* Any industrial user who commits the following offenses is subject to having his/her industrial wastewater discharge permit revoked, in accordance with the procedures set forth in this section:

(1) Failure of an industrial user to factually report the wastewater constituents and characteristics of his/her discharge;

(2) Failure of an industrial user to report changes in operations which significantly affect wastewater constituents and characteristics;

(3) Refusal of reasonable access to an industrial user's premises for the purposes of inspection or monitoring; or

(4) Violation of conditions of the permit.

(j) *Enforcement action hearing.* The general manager for utilities or his/her designee may require any user who has violated or is violating this division, an industrial wastewater discharge permit or any prohibition or requirement contained therein, to attend an enforcement action hearing. A notice shall be served on the customer specifying the time and place of the hearing, which will be held by the general manager for utilities or his/her designee, regarding the violation and the proposed enforcement action, and directing the customer to show cause before the general manager for utilities or his/her designee why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally on the customer or by registered or certified mail (return receipt requested) at least 20 days before the hearing. Service may be made on a duly appointed authorized representative of the user.

At any hearing held pursuant to this section, testimony taken must be under oath and tape-recorded. The transcript so recorded will be made available to any member of the public or any party to the hearing, upon payment of the usual charges therefor.

After the general manager for utilities or his/her designee has reviewed the evidence, he/she may issue an order to the customer responsible for the discharge, directing that following a specified time period sewer service and/or the industrial wastewater discharge permit may be discontinued, unless and until adequate treatment

facilities, devices or other related appurtenances shall be installed and are properly operating on existing treatment facilities, devices and other related appurtenances. Further orders and directives as are necessary and appropriate may also be issued by the general manager for utilities or his/her designee.

Any customer aggrieved by an order issued by the general manager for utilities or his/her designee may appeal the order to a court of competent jurisdiction within 30 days from the date the order is reduced to writing and delivered by certified or registered mail (return receipt requested) to the user.

(k) *Injunctive relief.* If any user discharges wastes to the wastewater system contrary to the provisions of this division, federal or state pretreatment requirements, or any order of the general manager for utilities or his/her designee, the city attorney may commence any action for appropriate legal and/or equitable relief in the appropriate court.

(l) *Emergency suspension of service.* The general manager for utilities or his/her designee may suspend the wastewater treatment service and/or an industrial wastewater permit when necessary to stop an actual or threatened discharge which presents or may present an imminent or substantial danger to the health or welfare of the public or the environment or cause damage or interference to the wastewater system. Any user notified of a need to sever wastewater treatment service and/or suspend the industrial wastewater permit shall immediately stop or eliminate the discharge in question. In the event of a failure of the user to comply voluntarily with a suspension or severance notice, the general manager for utilities or his/her designee shall take such steps as deemed necessary to prevent or minimize danger to the health or welfare of the public or the environment or to prevent damage or interference to the wastewater system. Such steps may include immediate severance of the sewer connection and/or suspension of the industrial wastewater permit. The general manager for utilities or his/her designee may reinstate wastewater treatment service upon satisfactory demonstration of the elimination of the non-compliant discharge and of adequate measures taken to prevent non-compliant discharges in the future. A detailed written statement submitted by the user describing the causes of the non-compliant discharge and measures taken to prevent a future occurrence shall be submitted to the general manager for utilities or his/her designee within 15 days of the date of occurrence.

(m) *Criminal prosecution.* Criminal violations of this division may subject the user to prosecution under applicable state, federal, and local laws.

(n) *Affirmative defense.* Affirmative defenses shall be available to an industrial user as provided in F.A.C. 62-625.400(1)(b), 62-625.840 and 62-625.860, which by this reference are incorporated herein.

(o) *Consent order.* The general manager for utilities or his/her designee may enter into a consent order, assurance of compliance, or other similar document establishing an agreement with any user responsible for noncompliance. Such document shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such document shall have the same force and effect as the requirements of section 27-180.7(f) and shall be judicially enforceable.

(p) *Cease and desist order.* When the general manager for utilities or his/her designee finds that a user has violated, or continues to violate, any part of this division, an individual wastewater discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the general manager for utilities or his/her designee may issue an order to the user directing it to cease and desist all such violations and directing the user to immediately comply with all requirements and to take such appropriate remedial or preventive action as may be necessary to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge. Issuance of a cease and desist order shall not bar, or be a prerequisite for, taking any other action against the user. Such order shall have the same force and effect as the requirements of section 27-180.7(f) and shall be judicially enforceable.

(Ord. No. 980894, § 3, 6-14-99; Ord. No.031205, § 8, 6-28-04; Ord. No. 060457, § 3, 10-23-06; Ord. No. 120211, § 7, 9-20-12)

Sec. 27-180.8. Same—Regulation of wastewater received from other jurisdictions.

(a) *Inter-jurisdictional agreement.* If another municipality or user located within another municipality, contributes wastewater which is transmitted by pipe directly into the City of Gainesville wastewater collection system, the general manager for utilities or his/her designee shall enter into an inter-jurisdictional agreement with the contributing municipality

(b) *Contents of inter-jurisdictional agreement.* The inter-jurisdictional agreement shall contain the following:

(1) A requirement that the contributing municipality adopt a sewer use ordinance which is at least as stringent as this division including wastewater discharge limits and monitoring and reporting requirements.

(2) A requirement that the contributing municipality revise its ordinance and wastewater discharge limits as necessary to reflect changes made to the city ordinance or wastewater discharge limits.

(3) A requirement that the contributing municipality provide access to all information that the contributing municipality obtains as part of its pretreatment activities including a list of users which is updated at least annually.

(4) A provision specifying which pretreatment program activities, including wastewater discharge permit issuance, and inspection, sampling, and enforcement, will be conducted by the contributing municipality, which of these activities will be conducted by the general manager for utilities or his/her designee, and which of these activities will be conducted jointly by the contributing municipality and the general manager for utilities or his/her designee.

(5) A provision specifying limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the city wastewater collection system.

(6) A provision specifying requirements for monitoring the contributing municipality's wastewater discharge.

(7) A provision ensuring that the general manager for utilities or his/her designee has access to the facility of any user located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the general manager for utilities or his/her designee.

(8) A provision specifying remedies available for breach of the terms of the inter-jurisdictional agreement. Such provision shall also ensure the right of the general manager for utilities or his/her designee to enforce the terms of the contributing municipality's ordinance or to impose and enforce any applicable pretreatment standards and requirements directly against users within the contributing municipality's jurisdictional boundaries in the event the contributing municipality is unable or unwilling to take such action.

(Ord. No. 120211, § 8, 9-20-12)

Sec. 27-181. Graywater disposal facilities.

(a) *Conditions for approval.* The general manager for utilities or his/her designee is authorized to approve, on a limited and experimental basis, the installation of individual graywater systems as feasible and practicable under the following conditions:

(1) Graywater flows shall include only domestic wastes carried off by bath, lavatory, sink, (but not kitchen sink) and laundry drains and sewers or wastes of similar nature not normally containing urine, fecal matter, food particles or any other harmful or noxious matter.

(2) Blackwater flows would include all wastes not described in paragraph (a)(1) above and otherwise allowed by this Code for introduction into the wastewater system. No blackwater flows shall be introduced into a graywater disposal system.

(3) An individual graywater system shall consist of a system of piping, a septic tank or pretreatment device, and a subsurface absorption bed or drainfield, for handling or treating graywater where blackwater is treated by the central wastewater system.

(4) All applicable plumbing codes, the general requirements of Chapter 10D-6 of the Florida Administrative Code, as administered by the county health department, the requirements of section 17-183 and any other applicable provisions of this Code shall apply for the approval and installation of individual graywater disposal systems.

(5) Approved individual graywater systems are subject to the provisions of this Code for special wastewater facilities related to maintenance and inspection. If approved graywater systems should fail or prove hazardous to public health, or blackwater wastes are introduced into the graywater system, the city may require that graywater flows be connected to the central wastewater system. The requirements of section 27-171 shall apply when any wastes previously connected to an approved graywater system are connected to the central wastewater system. Rates and charges in effect at the time of connection shall be applicable. Connection of any portion of an approved graywater system to the central wastewater system without a written permit issued by the general manager for utilities or his/her designee shall be unlawful and subject to the provisions of section 27-1.

(b) *Maintenance.* The owner shall be responsible for the construction, operation, and maintenance, of approved graywater disposal systems.

(c) *Inspection.* Duly authorized representatives of the city shall have access to, and the right to inspect approved graywater disposal systems and to take samples of the wastewater before or after flowing through an approved graywater disposal system. Persons or occupants of premises where wastewater is created or discharged shall allow the city or their representatives ready access at all reasonable times to all wastewater discharge related parts of the premises for the purpose of inspection, sampling, inspecting or copying records, or to perform any of their duties. Duly authorized representatives shall have the right to remove records for the purposes of copying facilities are not available on the premises.

(Code 1960, § 28-62.1; Ord. No. 3345, § 2, 6-15-87; Ord. No. 3602, § 3, 3-5-90; Ord. No. 3735, § 3, 8-19-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980894, § 4, 6-14-99)

Sec. 27-181.1. Reserved.

Editor's note(s)—Section 5 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-181.1 which pertained to prohibited substances—reporting of discharges and derived from Ord. No. 3602, § 4, adopted Mar. 5, 1990; Ord. No. 3696, § 21, adopted Feb. 18, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-181.2. Reserved.

Editor's note(s)—Section 5 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-181.2 which pertained to notification of changed discharge and derived from Ord. No. 3602, § 5, adopted Mar. 5, 1990 and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-181.3. Reserved.

Editor's note(s)—Section 5 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-181.3 which pertained to noncompliance assessment and derived from § 28-66.1 of the 1960 Code, Ord. No. 3602, § 6, adopted Mar. 5, 1990; Ord. No. 3735, § 4, adopted Aug. 19, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-182. Private wastewater disposal system—Approved by county; compliance with state standards required.

If any building or structure is to be constructed upon property, the nearest property line of which is more than 200 feet from an available public wastewater line, no building permit therefor shall be issued unless an official representative of the county health department shall have first issued a permit to construct a private wastewater disposal system for the building or structure. Before any such permit, the health department representative shall investigate the soil conditions, drainage, size of lot and any other factors, bearing thereon in the interest of public health and shall afterward inspect the construction of the private wastewater disposal system to determine that the same has been built in compliance with the provisions of Chapter 64E-6, F.A.C., entitled, "Standards for Onsite Sewage Treatment and Disposal Facilities," which is by this reference made a part of this section, a copy of which shall be retained in the office of the city clerk as required by law.

(Code 1960, § 28-62; Ord. No. 3696, § 22, 2-18-91; Ord. No. 3735, § 5, 8-19-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 980894, § 6, 6-14-99; Ord. No. 210562 , § 24, 6-16-22)

Sec. 27-182.1. Same—Permits; inspection.

(a) Permits for the construction of private sewage disposal systems shall be obtained from the general manager for utilities or his/her designee before construction thereon is begun. Applicants for such permits shall pay a fee in accordance with the schedule set out in Appendix A to cover the cost of inspection as required in this section.

(b) No private sewage disposal system not provided for under the terms of this division shall be hereafter constructed in the city nor shall any private sewage disposal system constructed under the terms of this division be covered or backfilled until the same has been inspected and approved by the city health officer.

(Ord. No. 980894, § 7, 6-14-99)

Sec. 27-182.2. Same—Discharges.

No person shall maintain any privy, sewage disposal system, pipe or drain so as to dispose or discharge the contents or other liquid or matter therefrom to the atmosphere or on the surface of the ground, or so as to endanger any source of drinking water; nor shall any person discharge into any watercourse, storm sewer, drain or body of water any sewage or sewage effluent unless a permit for such discharge shall have been issued therefore by the general manager for utilities or his/her designee upon approval of the city health officer.

(Ord. No. 980894, § 7, 6-14-99)

Sec. 27-183. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-183 which pertained to private wastewater disposal system—approved by county; compliance with state standards required, and derived from § 28-67 of the 1960 Code and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Secs. 27-183.1, 27-183.2. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed §§ 27-183.1 and 27-183.2 which pertained to private wastewater disposal system—permits; inspection and discharges, respectively, and derived from §§ 28-68, 28-69 of the 1960 Code; Ord. No. 3696, §§ 23, 24, adopted Feb. 18, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-184. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-184 which pertained to emergency suspension of service and industrial wastewater permits, and derived from § 28-69 of the 1960 Code; Ord. No. 3696, § 24, adopted Feb. 18, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-185. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-185 which pertained to industrial users—accidental discharges, and derived from § 28-61.1 of the 1960 Code; Ord. No. 3696, § 25, adopted Feb. 18, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-185.1. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-185.1 which pertained to industrial users—violation; revocation of permits, and derived from § 28-66.2 of the 1960 Code; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-186. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-186 which pertained to violation—notification and derived from § 28-66.3 of the 1960 Code; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Sec. 27-186.1. Reserved.

Editor's note(s)—Section 8 of Ord. No. 980894, adopted June 14, 1999, repealed § 27-186.1 which pertained to violation—enforcement action hearing and derived from § 28-66.4 of the 1960 Code; Ord. No. 3602, § 7, adopted March 5, 1990; Ord. No. 3696, § 26, adopted Feb. 18, 1991; and Ord. No. 3754, § 80, adopted Jan. 27, 1992.

Secs. 27-187—27-200. Reserved.

DIVISION 4. INFRASTRUCTURE IMPROVEMENT AREAS

Sec. 27-201. Intent.

It is the intent of this division that the city will designate infrastructure improvement areas for water and wastewater gravity collection improvements, and impose infrastructure improvement area user fees to fund water and wastewater gravity collection improvements which benefit a new structure, in whole or in part, and/or the

construction of additional square footage to an existing structure, within the geographic boundaries of the designated infrastructure improvement areas.

(Ord. No. 110541 , § 1, 4-7-16)

Sec. 27-202. Definitions.

The following words, terms, and phrases shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Commercial establishment shall mean any structure used for or intended for the exchange of commercial goods or services for compensation. Such uses may include, but are not limited to, retail sales, office establishments that are not used for professional services, eating and/or drinking establishments, light assembly, and/or any other similar commercial uses.

Hotel establishment shall mean any structure used for or intended for use as a public lodging establishment containing sleeping room accommodations for 25 or more guests, providing the services generally provided by a hotel, and/or recognized as a hotel in the community in which it is located or by the industry.

Infrastructure improvement area shall mean the geographic boundaries for each area within the city that is designated by the city and delineated by the map(s) depicted in figure(s) within this division.

Infrastructure improvement area fee shall mean the user fee charged pursuant to this division to support the funding of infrastructure improvements to the water and wastewater gravity collection systems within an infrastructure improvement area.

Institutional establishment shall mean a structure that is used for the educational or cultural needs of the community, including, but not limited to, learning institutions or places of religious assembly.

Laboratory (dry) establishment shall mean a structure that is used for conducting computer simulations or data analysis.

Laboratory (wet) establishment shall mean a structure that is used for testing and analyzing chemicals, drugs, and/or any other material or biological matter requiring water, direct ventilation, and/or specialized piped utilities.

Motel establishment shall mean any structure used for or intended for use as a public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, with at least six rental units, and/or is recognized as a motel in the community in which it is located or by the industry.

Multi-family residential establishment shall mean a structure that is used for two or more dwelling units, including apartments, duplexes, triplexes, quadraplexes and/or townhomes.

Parking garage establishment shall mean a structure that is either above ground or underground where vehicles can be parked.

Professional office establishment shall mean a structure used for professional business services, which may include, but is not limited to, professional consultancy, medical or legal profession practices.

(Ord. No. 110541 , § 1, 4-7-16)

Sec. 27-203. Areas.

The city may, subject to the availability of city funds and resources, designate infrastructure improvement areas for water and wastewater gravity collection systems in areas the city determines feasible and beneficial for

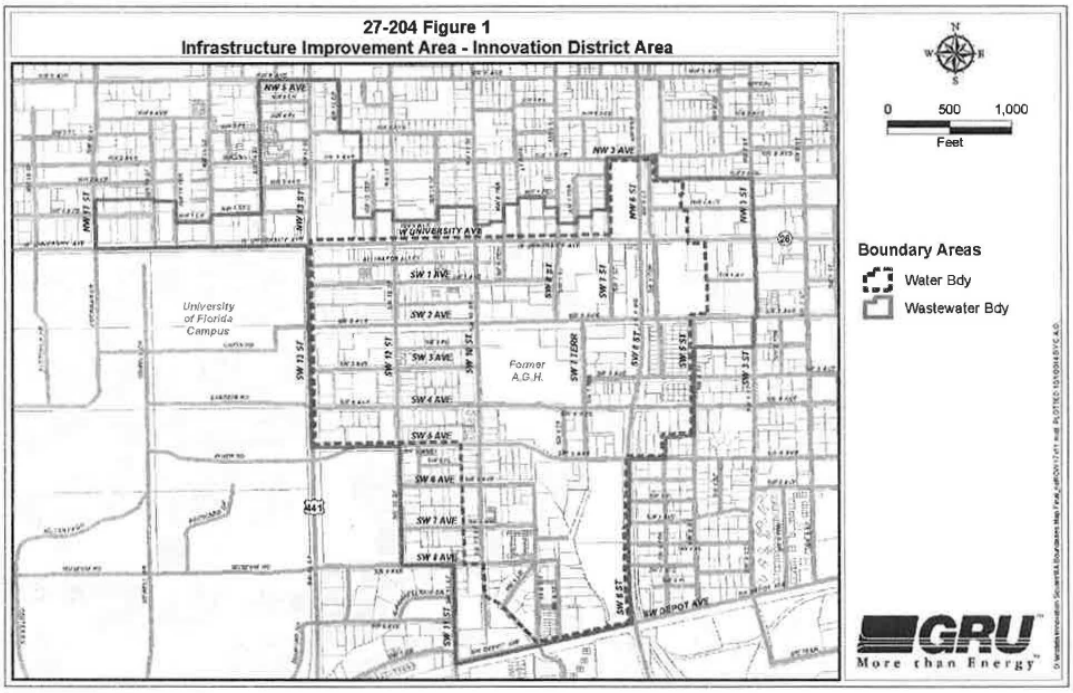
economic development. Some of the factors that may be considered in determining feasibility include, but are not limited to: instances where multiple developers are preparing for high-density/high-intensity redevelopment of an existing urban area, instances where large infrastructure improvements are needed to serve multiple high-density/high-intensity redevelopment projects, instances where the city has the ability to master plan multiple high-density/high-intensity utility improvements, and/or instances where the required improvements can be cost-effectively implemented. Within the geographic boundaries of each designated infrastructure improvement area, the city will design and construct capacity improvements to its water and wastewater gravity collection systems, as the city deems necessary or advisable to meet the demands of the infrastructure improvement area.

(Ord. No. 110541 , § 1, 4-7-16)

Sec. 27-204. Designated infrastructure improvement areas.

The following areas are designated as infrastructure improvement areas:

(1) The Innovation District Infrastructure Improvement Area. This area is depicted in Figure 1.



(Ord. No. 110541 , § 1, 4-7-16)

Sec. 27-205. User fees.

(1) Each new or existing customer who constructs a new commercial establishment, institutional establishment, hotel establishment, laboratory (wet) establishment, laboratory (dry) establishment, professional office establishment, motel establishment, multi-family residential establishment, a parking garage establishment and/or constructs additional square footage to any such existing establishment within an infrastructure improvement area shall pay infrastructure improvement area user fees based on the rates set forth in Appendix A of this Code. Infrastructure improvement area user fees for the water system will be assessed

based on the gross building square footage or number of hotel rooms, motel rooms or bedrooms of the new structure and/or the addition to an existing structure. Infrastructure improvement area user fees for the wastewater gravity collection system will be assessed based on total heated and cooled building square footage or number of hotel rooms, motel rooms, bedrooms of the new structure, and/or the addition to an existing structure. Infrastructure improvement area user fees shall not apply if a structure is destroyed by fire or other unforeseen casualty and the new structure is reconstructed in substantially the same square footage and with the same use (type of establishment) as the structure that was destroyed. The infrastructure improvement area user fees shall be paid on or before the date a certificate of occupancy or a certificate of completion is issued by the city.

(2) The infrastructure improvement area rates set forth in Appendix A are established based on a master plan of future water distribution and wastewater gravity collection system infrastructure capacity improvements for the area, that includes the estimated capital construction costs for such improvements and the estimated square footage of anticipated future establishments in the area that will receive the benefit of the infrastructure improvements. The user fees collected by the city in any designated infrastructure improvement area shall be used by the city to fund the water and wastewater gravity collection services infrastructure in that area and shall not be used for any other purpose.

(Ord. No. 110541 , § 1, 4-7-16)

Secs. 27-206—27-235. Reserved.

ARTICLE V. STORMWATER MANAGEMENT UTILITY[11]

Sec. 27-236. Intent.

It is the intent of this article that the city will establish stormwater management as a city utility enterprise in accordance with F.S. § 403.0893 and shall establish a program of user charges for stormwater management service to be charged to all developed property within the city that contributes stormwater runoff to the city's stormwater management systems to accomplish the functions of such utility. These functions include, but are not limited to, maintenance, planning, design, construction, regulation, surveying, and inspection as they relate to stormwater management facilities of the city.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 980174, § 1, 9-14-98; Ord. No. 001335, § 1, 6-25-01)

Sec. 27-237. Definitions.

As used in this article:

Adjusted impervious area shall mean the stormwater basin area(s) multiplied by the stormwater management facility impervious area factor plus the impervious area(s) plus one-half of the partial impervious area(s).

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[11]Editor's note(s)—Ord. No. 3444, § 1, adopted July 25, 1988, adding Ch. 30.2, §§ 30.2-1—30.2-9, to the 1960 Code, has been codified herein as Art. V, §§ 27-236—27-244, at the editor's discretion. Ord. No. 001335, § 1, adopted June 25, 2001, changed the title of Art. V from "Stormwater Management Utility Program" to "Stormwater Management Utility".

Cross reference(s)—Stormwater management, § 30-270.

City shall mean the City of Gainesville, Florida, and its staff and elected officials.

Department shall mean the city public works department.

Developed property shall mean any parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. These modifications include, but are not limited to, clearing, grading, cementing, filling, or compacting the natural ground, or erecting or constructing buildings, parking lots, driveways, patios, decks, walkways, and athletic courts.

Drainage area shall mean the watershed (acreage) contributing surface water runoff to the city's storm drainage system.

Equivalent residential unit (ERU) shall mean the basic unit for the computation of stormwater service charges and is defined as 2,300 square feet of impervious area, which represents the estimated average impervious area for all developed, detached single-family properties in the city.

Impervious area shall mean any part of any parcel of land that has an impermeable cover caused to be erected or constructed by the action of persons, and such covers include, but are not limited to, buildings, parking lots, driveways, patios, decks, walkways, and athletic courts.

Manager shall mean the city manager or designee.

Multifamily residential properties shall mean and include all duplex, condo, trailer, apartment and other properties containing more than one dwelling unit. Common areas associated with such properties shall be included in the charge to the multifamily units on such properties.

Nonresidential/commercial properties shall mean and include all property zoned or used for commercial, industrial, retail, governmental, or other nonresidential purposes and shall include all developed real property in the city not classified as single-family or multifamily as defined in this section.

Partial impervious area shall mean any part of any parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes areas which have been cleared, graded, graveled, filled, or compacted, and typically involve unpaved parking, unpaved vehicle and equipment storage, and material storage. Excluded are all lawns, landscape areas, and gardens or farming areas.

Receiving water shall mean those creeks, streams, rivers, lakes, sinkholes, and other bodies of water into which surface waters are directed, either naturally or in manmade ditches, pipes, or open systems.

Retention credit factor shall mean the numeric value generated by dividing the stormwater retention volume by the standard retention volume, but the value cannot exceed 1.0.

Single-family property shall mean and include all single-family detached housing units.

Standard retention volume shall mean the quantity of stormwater runoff generated by multiplying 7.9 inches by the adjusted impervious area.

Stormwater basin area shall mean the horizontal area occupied by stormwater detention, retention, and/or detention/retention basins at the design maximum water surface elevation.

Stormwater detention basin shall mean a facility, either natural or manmade, that collects and contains stormwater runoff and allows the release of the stormwater through a structure that is designed to control the rate of the release of the stormwater, as acknowledged by the city manager or designee.

Stormwater detention/retention basin shall mean a facility, either natural or manmade, that performs a combination of both a stormwater detention basin and a retention basin, as acknowledged by the city manager or designee.

Stormwater management facility impervious area factor shall mean the amount that the stormwater retention basin area(s) is adjusted; the factor is derived by dividing 4.2 inches (which is the amount of rainfall

generated by the 25-year, 24-hour rain storm event between the 11th and 13th hours) by 7.9 inches (which is the amount of rainfall generated by the 25-year, 24-hour rain storm event) which quotient is 0.53.

Stormwater management system shall mean and include all natural and manmade elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable receiving water body or location internal or external to the boundaries of the city. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities.

Stormwater retention basin shall mean a facility, either natural or manmade, that collects and contains stormwater runoff and only allows the release of the stormwater runoff by one or more of the following: evaporation, percolation into the natural ground and/or percolation into a manmade filtration system that may convey the stormwater runoff to a stormwater management system, as acknowledged by the city manager or designee.

Stormwater retention volume shall mean the maximum capacity of a stormwater retention basin(s).

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 3571, § 1, 10-2-89; Ord. No. 3724, § 1, 5-20-91; Ord. No. 980174, § 1, 9-14-98; Ord. No. 001335, § 1, 6-25-01)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 27-238. Stormwater management utility—Established.

There is hereby created and established in the city a stormwater management utility in accordance with section 403.0893 of the Florida Statutes. This utility shall be responsible for the city's stormwater management system and shall have equal status with the other utility services provided by the city.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 980174, § 1, 9-14-98)

Sec. 27-239. Same—Directors.

Directors of the stormwater management utility shall be the city commission.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 980174, § 1, 9-14-98)

Sec. 27-240. Same—Duties and powers.

The stormwater management utility shall have all powers necessary for the exercise of its responsibility for the drainage from all properties within the city, including, but not limited to, the following:

(1) Preparation of plans for improvements and betterments to the stormwater management system.

(2) Construction of improvements and betterments to the stormwater management system.

(3) Promulgation of regulations for the use of the stormwater management system, including provisions for enforcement of such regulations.

(4) Review and approval of all new development permits within the city for compliance with stormwater management regulations included in present city ordinances or ordinances later adopted.

(5) Performance of routine maintenance and minor improvement to the stormwater management system.

(6) Establishment of charges for the city's stormwater management system.

(7) Evaluation of water quality concerns for discharges to the stormwater management system.

(8) Performance of all normal utility functions to include construction, operation, and maintenance of the city's stormwater management system, including, but not limited to, the hiring of staff, the selection of special consultants, the entering into contracts for services and construction of facilities, and the handling of purchase, lease, sale or other rights to property for the stormwater management system.

(9) Issuance of revenue bonds for the purpose of performing those duties as described herein.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 3514, § 1, 2-13-89; Ord. No. 980174, § 1, 9-14-98; Ord. No. 001335, § 1, 6-25-01; Ord. No. 002679, § 1, 5-20-02)

Sec. 27-241. Authority for service charges.

(a) *Authorization.* The stormwater management utility is empowered by this article to establish charges for the use and discharge to the city's stormwater management system. Such charges shall be based on the cost of providing stormwater management services to all properties within the city and may be different for properties receiving different classes of service.

(b) *Rates for stormwater management service.* There is charged to all owners or occupants of real property in the city, with improvements or uses thereon which contribute stormwater runoff to the city's stormwater management system, a monthly fee as established by separate ordinance in accordance with the following definitions:

(1) *Single-family property service charges.* Each single-family property shall be considered one ERU for billing purposes. Monthly service charges for each single-family dwelling unit shall be identical, provided that the ratio of impervious area to total area of the lot does not exceed 50 percent and the total area of the lot exceeds 10,000 square feet. If the ratio of impervious to total area exceeds 50 percent and the total area of the lot exceeds 10,000 square feet, the rates established in subsection (b)(3) shall apply.

(2) *Multifamily property service charges.* The monthly service charge for all multifamily properties shall be:

Duplex units = One ERU/dwelling unit

Condominium units = One ERU/dwelling unit

Apartment units = 0.6 ERU/dwelling unit

Mobile homes = 0.6 ERU/dwelling unit

Definition of dwelling unit shall be those living areas served by individual electric and/or water meters.

(3) *Nonresidential/commercial property service charge.* Nonresidential/commercial property service charge shall be:

No. Base ERU's =

No. Billable ERU's = No. Base ERU's × (1 - Retention Credit Factor)

Monthly Service Charge = (No. Billable ERU's) × (Rate/ERU)

A minimum value of 1.0 ERU shall be assigned to each nonresidential/commercial property unless such property has earned a 100-percent retention credit, in which case, the property will be assigned a value of 0.0 ERU. The impervious area of each nonresidential/commercial property shall be determined by the city manager or designee.

(4) *Application to all developed properties.* Service charges shall apply to all developed properties within the city using the city's stormwater management system, including those properties classified as nonprofit or tax-exempt for ad valorem tax purposes. Service charges shall apply to all government properties, including properties of the city, including the city-owned buildings, parks, and other properties.

(5) *Undeveloped property.* Stormwater management service charges shall not be charged to undeveloped property that has not been altered from the natural state as defined under section 27-237, "impervious area" and "partial impervious area." Farmland, gardens, and landscaped areas shall also be exempt except for any roads, parking, or structures associated therewith.

(c) *Billing.* The fees imposed by this article shall be billed on a monthly basis and may be billed in conjunction with the property owner or property user's monthly electric bill issued by the city through Gainesville Regional Utilities. Such fees shall be due and payable at the same time and in the same manner and subject to the same penalties as other utility fees. In the event a developed property does not have other city utility service(s), a new account shall be developed and that property shall be billed separately for the stormwater management charges. The city manager or designee may create a new account for stormwater utility billing purposes only for a property owner or a property user that may also have a valid city electric and/or water utility account.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 3514, § 2, 2-13-89; Ord. No. 3515, § 1, 2-13-89; Ord. No. 3570, § 1, 10-2-89; Ord. No. 3571, § 2, 10-2-89; Ord. No. 3724, § 2, 5-20-91; Ord. No. 3737, § 1, 9-30-91; Ord. No. 3790, § 1, 9-21-92; Ord. No. 950602, § 1, 9-25-95; Ord. No. 980174, § 1, 9-14-98; Ord. No. 980362, § 1, 9-28-98; Ord. No. 990371, § 1, 9-27-99; Ord. No. 000362, § 1, 9-25-00; Ord. No. 001335, § 1, 6-25-01; Ord. No. 002679, § 2, 5-20-02)

Sec. 27-242. Trust fund.

(a) A stormwater management utility trust fund is hereby established into which all revenues from user fees, grants, or other funding sources shall be deposited and from which all expenditures related to the city's stormwater management utility shall be paid. Accounting and reporting procedures shall be consistent with state law and reported to the city commission by the city manager or designee annually.

(b) Expenditures from the fund for activities that are not related to the city's stormwater management utility shall not be permitted, except for a prorated charge for general city government services as is in effect for other city utility funds.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 980174, § 1, 9-14-98; Ord. No. 001335, § 1, 6-25-01)

Sec. 27-243. Appeals.

(a) Any customer or property owner who feels that the stormwater management service charge for their property has been assigned or computed incorrectly may petition in writing to the city manager or designee for a review of such charges.

(b) If not satisfied with the determination of the city manager or designee, the petitioner may ask for a hearing before the city commission, whose decision shall be final. Any credits authorized by the appeal process shall only be effective against billings subsequent to the date of authorization.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 980174, § 1, 9-14-98)

Sec. 27-244. Delinquent charges.

(a) All charges not paid within 30 days after the bill is due, or that are not under active appeal, shall be considered delinquent.

(b) All charges billed by Gainesville Regional Utilities shall be subject to the same penalties for delinquencies as other city utility fees.

(c) All charges billed by Gainesville Regional Utilities to users of property which are not paid within 60 days of billing may be billed to the owner of the property. When the property owner is billed pursuant to this subsection, the provisions of subsection (a) shall attach, and a late fee of $1.00 or two percent of the delinquent amount, whichever is greater, shall be assessed on all balances of more than $15.00 on each monthly statement reflecting a delinquent amount.

(d) All charges remaining delinquent after 60 days may be:

(1) Referred to a collection agency; or

(2) Referred to the city attorney to file suit thereon and collect all unpaid charges, fees, and interest, including reasonable attorney's fees and charges.

(e) These provisions are supplemental and in addition to the provisions of section 27-14.

(Ord. No. 3444, § 1, 7-25-88; Ord. No. 3514, § 3, 2-13-89; Ord. No. 3724, § 7, 5-20-91; Ord. No. 3790, § 1, 9-21-92; Ord. No. 980174, § 1, 9-14-98; Ord. No. 001335, § 1, 6-25-01)

Secs. 27-245—27-270. Reserved.

ARTICLE VI. NATURAL GAS[12]

Sec. 27-271. Definitions.

The following words and phrases when used in this article shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Billing period. An interval between successive meter reading dates, which interval may be 30 days, more or less.

Consumer. Any natural or liquid propane gas customer whose application for service has been accepted by the city and classified either "residential service," "general service," "large volume service," or "liquid propane gas service."

[12]Editor's note(s)—Ord. No. 3754, §§ 58—69, adopted Jan. 27, 1992, repealed various sections of Art. VI, relative to natural gas, and § 80 of said Ord. No. 3754 renumbered the remaining sections of this article to read as herein set out. The history notation has been retained in the renumbered sections for reference purposes. The repealed provisions of this article derived from Ord. No. 3664, § 1, adopted Sept. 24, 1990 and Ord. No. 3606, § 4, adopted March 18, 1991. See the Code Comparative Table for a specific enumeration of repealed and renumbered sections.

Cross reference(s)—Buildings and building regulations, Ch. 6; gas code, § 6-116 et seq.; construction trades regulations, § 6-176 et seq.; public service tax, § 25-16 et seq.

General service. Service to a consumer supplied on a firm, non-interruptible basis for any purpose other than residential purposes set forth in section 27-271(m).

General service, small commercial. Under the same criteria as general service, consumers may elect this alternate nonresidential rate category that includes a lower customer charge but higher non-fuel energy charge.

House piping. All piping and fittings installed beyond the meter and/or regulator setting.

Large volume service. Interruptible service for commercial and/or industrial purposes to a consumer who meets the following conditions:

(1) Consumer shall subscribe to the delivery of a minimum of 30,000 therms of natural gas per month for a minimum of 12 consecutive months and agree to all terms and conditions of this rate classification as contained in this chapter and related Appendix A. This rate will be qualified based on a single metered point of delivery only.

(2) Consumer will be billed for a minimum of 30,000 therms per month or the actual number of therms delivered per month, whichever is greater.

(3) Consumer agrees to be served on an interruptible basis under this classification and specifically understands that the gas service may be interrupted as provided in section 27-277 and Appendix A.

(4) Natural gas requirements are for the use of a single business or establishment.

(5) Consumer's natural gas distribution system extends only to the consumer's property.

(6) Service under this rate is subject to annual volume review by the city or any time at the consumer's request. If reclassification to another rate is appropriate and timely, such classification will be prospective.

(7) A responsible legal entity is established to which the city can render its bills for said service.

Mains. Pipes installed to transport natural gas within a service area to points of connection with the service lines.

Meter and/or regulator setting. All piping and fittings between the service line and the outlet of the meter.

Meter tampering. A natural gas meter is tampered with when any person shall willfully alter, injure, or knowingly suffer to be injured any natural gas meter or meter seal or other apparatus or device belonging to the city in such a manner as to cause loss or damage or to prevent any such meter installed for registering the quantity which otherwise would pass through same; or to alter the index or break the seal of any such meter; or in any way to hinder or interfere with the proper action or just registration of any such meter or device in such a manner as to use, without the consent of the city, any natural gas without such service being reported for payment or such natural gas passing through a meter provided by the city and registering the quantity of natural gas passing through the same.

Off-system sales. All firm and interruptible gas sales not classified as retail sales.

Purchased gas adjustment. A monthly fuel charge per therm consisting of the estimated fuel costs for the month, the true-up correction factor, and taxes and fees.

Residential service. Service to a consumer supplied on a firm, non-interruptible basis for residential purposes of domestic heating, cooking, air-conditioning and housekeeping in a single-family dwelling, a multiple-family dwelling, or in separately metered apartment units. Also, for gas used in commonly owned facilities of condominium associations, cooperative apartments, and homeowner associations, subject to the following criteria:

(1) One hundred percent of the energy is used exclusively for the co-owners' benefit.

(2) None of the energy is used in any endeavor which sells or rents a commodity or provides service for a fee.

(3) Each point of delivery will be separately metered and billed.

(4) A responsible legal entity is established as the consumer to whom the city can render its bills for said service.

Retail sales. Residential, general, large volume and liquid propane gas service.

Service line. All piping between the main tap up to and including the first valve or fitting of the meter and/or regulator setting.

Standard delivery pressure. The pressure measured at the outlet of the meter and/or regulator setting which shall not be less than three inches nor more than 12 inches water column.

Technical terms:

(1) *Atmospheric pressure.* Fourteen and seventy-three hundredths pounds per square inch, irrespective of the actual elevation or location of the point of measurement above sea level or variations in actual atmospheric pressure from time to time.

(2) *British thermal unit (Btu).* The quantity of heat required to raise the temperature of one pound (avoirdupois) of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute.

(3) *Cubic foot.* For purposes of measurement when natural gas is metered, the volume of natural gas which, at a temperature of 60 degrees Fahrenheit and at an absolute pressure of 14.73 pounds per square inch, occupies one cubic foot.

(4) *Therm.* One hundred thousand British thermal units.

Total heating value. The number of British thermal units per cubic foot of natural gas. For the purposes of determining the number of therms delivered to the consumer, the city's utilities department will utilize the average heating value, reported by the transporter or supplier, of the natural gas received from the transporter or supplier.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3738, § 1, 9-30-91; Ord. No. 030278, § 21, 9-8-03; Ord. No. 120170, § 1, 9-20-12; Ord. No. 120597, § 1, 3-21-13; Ord. No. 130222, § 2, 9-19-13)

Cross reference(s)—Definitions and rules of construction generally, § 1-2.

Sec. 27-272. Rates for retail service.

(a) *Rates.* The rates to be charged and collected for natural gas furnished by the city to retail consumers shall be in accordance with the schedule set out in appendix A.

(b) *Taxes.* An amount equal to all applicable taxes imposed against the sale or consumption of natural gas energy shall be added to the rates hereinabove set forth. The United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions, and instrumentalities thereof, and all recognized places of religious assembly are exempt from the city's utility tax.

(c) *Availability.* This service is available to consumers in the natural gas service area both within and outside the corporate limits of the city.

(d) *Manufactured gas plant cost recovery factor.* The manufactured gas plant cost recovery factor shall be in place until September 30, 2032. The cost recovery factor shall include costs associated with the assessment, remediation, clean up and monitoring activities, to the extent deemed appropriate by the general manager

for utilities or his/her designee, related to contamination resulting from the manufactured gas plant operated by Gainesville Gas Company, a substantial portion of the assets of which were acquired by the city in January, 1990.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 020268, § 1, 9-9-02; Ord. No. 120597, § 1, 3-21-13)

Sec. 27-272.1. Surcharge for consumers outside city limits.

The rates to be charged and collected by the city for natural gas furnished by the city to consumers of natural gas service outside of the corporate limits of the City of Gainesville shall be the base rates as set forth above, plus a surcharge equal the amount of the city utility tax charged consumers inside the city limits; provided, however, that the United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions, and instrumentalities thereof and all recognized places of religious assembly of the State of Florida are exempt from the payment of the surcharge imposed and levied thereby.

(Ord. No. 050328, § 1, 9-26-05)

Sec. 27-273. Purchased gas adjustment.

(a) A purchased gas adjustment shall be added to the base rate for natural gas service to all retail rate classifications as specified in the schedule set out in appendix A of the Gainesville Code of Ordinances. The purchased gas adjustment shall be computed to the nearest 0.001¢ per therm of energy consumed in accordance with the formula specified in subsections (c) and (d) of this section. The purposes of the purchased gas adjustment are to allocate to each retail customer rate classification the appropriate amount of system fuel cost associated with the natural gas service to such customer classification; to specify the amount of such costs that have resulted from increases in the cost of fuel subsequent to October 1, 1973; and, to segregate that portion of charges that are exempt from utility tax. For the purposes of this section, system fuel costs shall be the cost of fuel delivered to the system, which may include adjustments to reflect extraordinary fuel related expenses or credits. Retail fuel cost shall be system fuel cost less the fuel cost portion of off-system sales. Off-system sales include all non-retail firm and interruptible sales to customers not specified under the provisions of this article. Off-system fuel cost shall be the cost of fuel delivered.

(b) The purchased gas adjustment for retail sales each month shall be based on retail fuel cost and energy sales in therms which are estimated by the general manager for utilities or his/her designee. When applicable, a levelization amount and a true-up correction factor, which shall be based on the actual system performance in the second month preceding the billing month, as certified by independent certified public accountants, shall be applied to the purchased gas adjustment before applying to customer(s) bills.

(c) The following formula shall be used in computing the purchased gas adjustment for all retail sales:

1.		Projected Fuel Cost for the billing month		= $___
2.		Projected therms of Gas Sales for the billing month		= ___ therms
3.		"True-up" Calculation from Second Month Preceding the Billing Month		
	a.	Fuel Revenue from the second month preceding the billing month		
		(1) Purchased Gas Adjustment Revenue	= $___	
		(2) Embedded Fuel *[c]*	= $___	
		$0.06906 × therms of firm sales		
		(3) Total Fuel Revenue	= $___	
		Item 3a(1) + Item 3a(2)		

	b.	Fuel Cost for Sales from the second month preceding the billing month	
		(1) Fuel Cost *[a]*	= $___
		(2) Plus taxes and fees *[b]*	= $___
		*Item 3a(3) *0.1919%*	
		(3) Total Fuel Cost	= $___
	c.	True-Up in the second month preceding the billing month	= $___
	d.	Levelization in the second month preceding the billing month	= $___
	e.	True-Up for the billing month	= $___
		Item 3b(3) + Item 3c - Item 3a(3) + Item 3b(3) + Item 3d	
4.		Calculation of Purchased Gas Adjustment for the billing month	
	a.	Projected Purchased Gas Adjustment Revenue Required	
		(1) Projected Fuel Cost	= $___
		Item 1	
		(2) True-Up	= $___
		Item 3e	
		(3) Embedded Fuel *[c]*	= $___
		$0.06906 × therms	
		(4) Levelization Amount	= $___
		(5) Total Purchased Gas Adjustment Revenue Requirement	= $___
		Item 4a(1) + Item 4a(2) - Item 4a(3) + Item 4a(4)	
	b.	Purchased Gas Adjustment for the billing month	= $___ per therm
		Item 4a(5)/Item 2	

Footnotes:

[1] Fuel costs and therms of gas sales are to be estimated for the billing month by the general manager for utilities or his/her designee.

[a] Special assessment factor of 0.1919% for the Florida Public Service Commission.

[b] $0.0609 per therm was the fuel cost embedded within base rates for gas service, on October 1, 1973.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3606, §§ 1—3, 3-18-91; Ord. No. 3750, § 2, 11-18-91; Ord. No. 950733, § 2, 10-9-95; Ord. No. 070379, § 1, 9-24-07; Ord. No. 080216, § 1, 9-18-08; Ord. No. 120597, § 1, 3-21-13)

Sec. 27-274. Reserved.

Editor's note(s)—Ord. No. 080216, § 2, adopted Sept. 18, 2008, repealed § 27-274 which pertained to true-up correction factor and derived from Ord. No. 3664, § 1, adopted Sept. 24, 1990 and Ord. No. 070379, § 1, adopted Sept. 24, 2007.

Sec. 27-275. Resale of natural gas prohibited.

Except for natural gas delivered to entities duly franchised for the sale of compressed natural gas, natural gas received under either residential gas service, general gas service or large volume gas service provisions shall be used for the consumer's direct use only. No other resale of such natural gas shall be permitted.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3738, § 2, 9-30-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 120597, § 1, 3-21-13)

Sec. 27-276. Choice of rates.

If, at any time, more than one rate classification is applicable to the consumer's service, the general manager for utilities or his/her designee shall, at the consumer's request, assist in determining the rate believed to be most favorable to the consumer. Another rate, if applicable to the service, may at any time be substituted, at the consumer's option, for the rate under which service is rendered, provided that not more than one substitution of a rate may be made within a year and that such change shall not be retroactive.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-277. Large volume service.

(1) *Character of service.* Natural gas sales on an interruptible basis are subject to the large volume gas service terms and conditions contained within this chapter and Appendix A, and according to the following:

(a) *Natural gas supply.* The city will endeavor to satisfy the consumer's requirements for natural gas within this classification to the extent that sufficient quantities are available from its supplier and within the interruption framework set forth in this Code of Ordinances.

(b) *Agreement to interrupt.* The city in its sole discretion has the right to interrupt the delivery of natural gas to large volume gas service consumers at any time due to a) constraints or reductions that affect the ability to deliver natural gas and b) constraints or reductions that affect the volume of natural gas available for delivery. The consumer agrees to interrupt the consumption of gas in the manner, at the time and to the extent directed by the city. The consumer agrees that the city shall not be liable in any manner to the consumer or any person or entity for any interruption of the supply of gas, for the interference with the operations of the consumer or loss of use resulting from such operations or interference as provided for herein. Resumption of service shall be in reverse order of interruption.

(c) *Interruption provisions.*

(1) Interruption notice shall be given as early as possible and notice shall be provided at least one hour in advance of the effective time and such notice may be verbal or written.

(2) If a consumer fails to discontinue the use of natural gas when requested by the city, the consumer's gas service may be shut off at the city's sole discretion. In addition, all natural gas taken during the interruption period will be billed at the rate prescribed in Appendix A.

(3) The consumer's failure to comply with an interruption notice, in part or in entirety, shall be considered sufficient cause for immediate cancellation of the consumer's large volume service rate.

(4) Interruption provisions are subject to modification by higher governmental authority having jurisdiction.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 120597, § 1, 3-21-13)

Sec. 27-278. Approval of premises required.

No gas service shall be rendered by the city to any consumer at any premises until such time as the appropriate gas inspector, or his/her designee, shall have approved such premises for services as follows:

(1) *All customer classes.* Approval of the premises for gas service must be obtained prior to initial provision of gas service and/or change of equipment, new or modified.

(2) *Copy of approval.* Each applicant for service must submit a copy of the approval where required as part of the application for service.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-279. Appliance installation, service and repair.

Gas appliance and/or piping installation charges shall be based on written estimates determined by the general manager for utilities or his/her designee for each specific project. Gas appliance and/or piping service and repair charges shall be in accordance with the schedule set out in Appendix A.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 19, 1-27-92)

Sec. 27-280. Meters—City to install and maintain; protection by consumer; negligent, etc., damage; right to designate locations and specifications; conformance with local, state, federal or National Fire Protection Association requirements.

The city will install and properly maintain at its own expense such meters and metering equipment as may be necessary to measure the natural gas service used by the consumer. The city will provide each consumer with a meter or meters for each applicable rate classification. The city may furnish and install such regulating and/or flow control equipment and devices as deemed necessary by the general manager for utilities or his/her designee to be in the best interest of the consumer served, or of the natural gas system as a whole. All service lines, curb cocks, meters and regulators furnished by the city shall remain the property of the city and the consumer shall properly protect the city's property on the consumer's premises. In the event of any loss or damage to property of the city caused by or arising out of carelessness, neglect or misuse by the consumer, or other unauthorized parties, the cost of making good such loss or repairing such damage shall be paid by the consumer.

The city reserves the right to designate the locations and specifications for the main line taps, service lines, and curb cocks, and to determine the amount of space which must be left unobstructed for the installation and maintenance of meters and the aforementioned facilities. The consumer shall provide a satisfactory location to the city for its metering equipment. This location shall be convenient and accessible at all reasonable times to the city's duly authorized employees. This location shall conform with all local, state, or federal requirements which are applicable, and with the rules of the National Fire Protection Association.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95)

Sec. 27-280.1. Same—Altering prohibited; discontinuation of service; billing estimated consumption.

It shall be unlawful for any person to meddle, tamper with, alter or to interfere in any way with a meter or meter connection. Should it appear that natural gas has been stolen, the general manager for utilities shall have the right to discontinue the service until the defect is corrected and the service approved by the appropriate gas inspector. The consumer shall be charged with and billed for the stolen natural gas on an estimated billing calculated by reference to the previous meter consumption.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95)

Sec. 27-280.2. Same—Testing.

Before installation and periodically thereafter, each meter shall be tested and shall be considered commercially accurate if it measures not more than one (1) percent fast and not more than two (2) percent slow when installed. Meters in use shall be tested at the request of the consumer, and in his/her presence if desired, provided the consumer shall make a meter testing deposit in accordance with the schedule set out in Appendix A. If the meter is shown to be inaccurate in excess of five (5) percent slow or two (2) percent fast for residential customers' meters or two (2) percent, fast or slow, for non-residential customer's meters, the bills will be adjusted as specified in section 27-14.4. If the meter is more than two (2) percent fast, the meter testing deposit shall be refunded, otherwise it may be retained by the city as a service charge for the test.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95; Ord. No. 160253 , § 6, 9-15-16)

Sec. 27-280.3. Reserved.

Editor's note(s)—Ord. No. 160253 , § 7, adopted Sept. 15, 2016, repealed § 27-280.3 which pertained to meter billing adjustments and derived from Ord. No. 3664, § 1, adopted Sept. 24, 1990; Ord. No. 3754, § 80, adopted Jan. 27, 1992; and Ord. No. 950773, § 3, adopted Oct. 9, 1995.

Sec. 27-281. House piping—Consumer to install and maintain; right of city to inspect and approve; city not liable for loss or damage; conformance with local, state, federal and National Fire Protection Association requirements; refusal of and/or discontinuance of service.

(a) All house piping and equipment beyond the city's meter and/or regulator setting shall be installed by and belong to the consumer and be maintained at his/her expense. The consumer shall bring his/her piping to a point for connection to the city's meter and/or regulator setting at a location satisfactory to the city. The consumer, acting jointly with the city, may install, maintain and operate at his/her expense such check measuring equipment as desired, provided that such equipment shall be so installed as not to interfere with the operation of the city's equipment and that no gas shall be re-metered or sub-metered for resale to another or others.

(b) The city reserves the right to inspect and approve the installation of all pipe and equipment to utilize the city's natural gas; provided, however, that such inspection by the city, failure to make such inspection, or the fact that the city may connect to such installation shall not constitute assumption of liability by the city for any loss or damage which may be occasioned by the use of such installation or equipment used therefrom or of the city's service.

(c) The piping fixtures, fixtures and appliances for which the consumer is responsible shall be maintained in conformity with all applicable local, state or federal requirements, and with the rules of the National Fire Protection Association. The nature and condition of these piping fixtures, fixtures and appliances shall be such as not to endanger life or property, interfere with the service to other customers or permit the passage of natural gas without meter registration, and it shall not be used for any illegal purpose. If in the opinion of the general manager for utilities or his/her designee, the consumer is in violation of these conditions, the city may refuse service or discontinue service without notice until such violations are remedied by the consumer.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95)

Sec. 27-282. Relocation, modification or removal of existing facilities.

If the city is required to relocate, modify or remove existing gas facilities because of either a utility customer's request or because changes in the customer's facilities and/or operations necessitate relocation, modification or removal of gas facilities in order to comply with local, state or federal requirements which are applicable, and with the rules of the National Fire Protection Association, all costs of any such relocation, modification or removal shall be borne exclusively by such customer. All costs of relocation, modifying or removing gas utility facilities that are attributable to city initiated renewal or reconstruction projects shall be borne exclusively by the city.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95)

Sec. 27-283. Availability of service—Gas main extension, installation, improvement or modification; installation of service lines and connections; enlargement of existing service; temporary or part-time service; gas mains.

(a) *Gas main extension, installation, improvement or modification.* The city will endeavor to supply gas service to any prospective customer within the corporate limits of the City of Gainesville, within the unincorporated areas of Alachua County, and/or within the corporate limits of any other requesting municipality, subject to the following conditions:

(1) Should gas main extension, installation, improvement or modification of facilities be required, either on-site or off-site, the city will pay the cost of such facilities if in the opinion of the general manager for utilities or his/her designee, the immediate or potential revenues justify the full cost of the facilities.

(2) Gas main extensions to the extent delineated below will be provided by the city at no cost to the customer:

Footage

Gas ApplianceCredited

Heating15 feet

Water heater35 feet

Heating and water heater75 feet

Space heating, clothes dryer, pool heater, and/or range/oven in any combination10 feet

In addition, for each natural gas heating unit and natural gas water heater installed pursuant to the city's energy conservation plan, a credit equal to the cost of the service extension will be granted. In no instance will credits granted exceed the actual cost of any gas main or service extension.

(3) In those cases where estimated revenues are inadequate to cover the full cost of the extension, installation, improvement or modification, the customer shall make a contribution in aid of construction (CIAC). Revenue adequacy of the gas main extension, installation, improvement or modification shall be elevated based on the internal rate of return (IRR). CIAC is required unless the IRR is 14 percent or greater. Where multiple customers are involved, contributions in aid of construction may be shared on a pro-rata basis.

(4) If the city installs a service line at the consumer's request and such service is not used or utilized for the intended purpose within six months of installation, the consumer may, at the discretion of the general manager for utilities or his/her designee, be held responsible for the charges associated with that service line installation.

(b) *Installation of service lines and connections.* Upon application for connection between a natural gas main and a building to be supplied with natural gas, the entire installation of the natural gas service line and connections from the main to the meter shall be made by the city. All consumer owned obstacles that lie underground within ten feet of a proposed gas service line installation will be marked or identified by the consumer. These obstacles may include but are not limited to septic and sewer systems, irrigation systems, underground tanks and buried electrical wiring. The consumer accepts all responsibility for damages, claims, and/or injuries arising from, out of, or in any way connected with the striking of any such underground obstacle which was not marked by the owner or marked incorrectly. No service line shall be used to supply more than one meter location, nor shall any service line be installed across private property other than the premises of the building to be supplied with natural gas, except after special investigation and approval by the city. When, in the opinion of the general manager for utilities or his/her designee, an existing service line is insufficient to supply new demands put upon it, the city will enlarge the facilities as necessary at no cost to the consumer. When it is necessary to establish a special service connection or a service connection for temporary or part-time use, the cost of the entire connection and removal of same, less the salvage value of the returned material, may be charged to the consumer requesting same.

(c) *Extension of mains.* Upon application for natural gas service, extension of mains will be made by the city in accordance with the provisions of this section. All extensions will be of the size and type prescribed by the general manager for utilities or his/her designee. When the required extension is of unusual character, in the opinion of the general manager for utilities or his/her designee, the city may require a deposit equal to the applicable cost of the extension in excess of the free extension cost specified above, except that the free extension cost does not apply to extensions of a temporary character. These provisions shall not require the city to extend its mains across private property or in the streets that are not at established grade, nor prohibit the city from making extension of mains of greater length than required herein.

(d) *Accessibility and inspection.* Upon completion of the installation of the natural gas facilities, the city shall, at all reasonable times, have the right to access the private property for the purposes of inspecting, maintaining, disconnecting, or removing said property and for examining and inspecting all pipes, tubing, equipment or other connections thereto.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3606, § 5, 3-18-91; Ord. No. 3754, § 80, 1-27-92; Ord. No. 950733, § 3, 10-9-95; Ord. No. 120597, § 1, 3-21-13; Ord. No. 140171, § 4, 9-18-14)

Sec. 27-284. Discontinuance of service.

(a) *Consumer initiated.* When a consumer desires to discontinue service, he/she shall give notice to the city at least two (2) days in advance. The consumer may be held responsible for all natural gas consumed for forty-eight (48) hours after date of such notice, provided that the meter shall not have been removed within that time by the city.

(b) *City initiated.* The city may, after notifying the consumer, discontinue service for any of the following reasons:

(1) Failure of a consumer to make a deposit or to increase a deposit as required, or failure to comply with requirements of the city with respect to signing a service application.

(2) Failure of a consumer to pay any bill for natural gas service within the time period specified.

(3) Refusal of legitimate access to premises or damage or loss of city property on the consumer's premises for which the consumer is liable.

(4) Improper character, condition, or use of consumer's piping or appliances as specified in section 27-281.

(c) *Medical waiver.* Discontinuance of service may be temporarily waived in specific cases when, in the opinion of the general manager for utilities or his/her designee, the service is medically essential and interruption will endanger life or require hospitalization to sustain life. Prior to granting a medical waiver, the consumer will be required to furnish the general manager for utilities or his/her designee written notice from a competent physician suitable to the city that the service is required for life support.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-285. Gas leaks; notice to city; billing adjustments; actions by consumer.

The consumer shall give immediate notice to the city of leakage of natural gas. In case of leakage or fire, the stop-cock at the meter should be closed without delay and remain closed until service is reinstated by appropriate gas personnel. No source of ignition should be used in the vicinity of the leak until such leak is corrected. No deduction on account of leakage shall be made from the consumer's bill unless such leakage occurs as a result of fault or neglect of duly authorized employees of the city.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-286. Temporary discontinuance of supply for repairs, emergencies.

The city reserves the right to temporarily shut off the supply of natural gas to the consumer's premises after reasonable notice for the purpose of making repairs or adjustments to mains or supply pipes and reserves the right to shut off the supply of gas without notice in case of an emergency. The city's supply of gas is derived from sources over which the city has no control. In addition, force majeure circumstances may arise which render the city unable to deliver the services found within this chapter. It is understood and agreed to by the consumer that in the event of a failure, curtailment or interruption of such supply or in the event of shortage or interruption of gas due to an event of force majeure, including but not limited to, an act of God, the elements, labor troubles, fires, accidents, breakage, necessary repairs or other causes beyond the city's control, the city cannot and does not guarantee a constant supply of gas and it shall not be held liable for any claims or damages arising from, out of, or in any way connected with the interruption or curtailment of the supply or services.

(Ord. No. 3664, § 1, 9-24-90; Ord. No. 3754, § 80, 1-27-92; Ord. No. 120597, § 1, 3-21-13)

Sec. 27-287. Oversized gas mains.

The city reserves the right to require oversized gas mains to serve any development. The city shall pay the oversizing costs based on the difference between the city's engineering estimates of the cost for the oversize line and the cost of the size line which is normally required to serve the development.

(Ord. No. 3606, § 6, 3-18-91; Ord. No. 3754, § 80, 1-27-92)

Sec. 27-288. Liquid propane gas distribution systems—Use; availability.

Upon application for natural gas service by a development outside existing natural gas system boundaries, liquid propane (LP) gas distribution systems may be used in lieu of natural gas system extension. Liquid propane gas distribution systems will be made available by the city if, in the opinion of the general manager for utilities or his/her designee, the provision of such service is deemed to be consistent with future natural gas system expansion plans.

(Ord. No. 3854, § 1, 4-19-93)

Sec. 27-288.1. Same—Rates; taxes.

(a) *Rates.* The rates to be charged and collected for liquid propane gas furnished by the city to retail customers shall be in accordance with the schedule set out in Appendix A.

(b) *Taxes.* An amount equal to all applicable taxes imposed against the sale or consumption of liquid propane gas energy shall be added to the rates hereinabove set forth. The United States of America, the State of Florida, and all political subdivisions, agencies, boards, commissions and instrumentalities thereof, and all recognized places of religious assembly are exempt from the city's utility tax.

(Ord. No. 3854, § 2, 5-19-93)

Sec. 27-288.2. Same—Liquid propane purchased gas adjustment.

(a) A liquid propane purchased gas adjustment shall be added to the base rate for liquid propane gas service as specified in the schedule set out in Appendix A. The liquid propane purchased gas adjustment shall be computed to the nearest one/one-thousandth of a cent (0.001¢) per gallon consumed in accordance with the formula specified in subsection (b) of this section. The purpose of the liquid propane purchased gas adjustment is to allocate the appropriate amount of system fuel cost associated with the liquid propane gas service; to specify the amount of such costs that have resulted from increases in the cost of fuel subsequent to October 1, 1973[(1)]; and, to segregate that portion of charges that are exempt from utility tax. For the purposes of this section, system fuel costs shall be the cost of fuel delivered to the system, which may include adjustments to reflect extraordinary fuel-related expenses or credits.

(b) The liquid propane purchased gas adjustment for retail sales each month shall be based on retail fuel cost and quantities of fuel purchased. The estimated billing month purchased gas adjustment is equal to the rolling average of the preceding consecutive 12 months' actual fuel cost, less the amount of fuel subject to utility tax.

Footnote:

[(1)] $0.15882 per gallon, was the cost of fuel, embedded within base rates on October 1, 1973.

(Ord. No. 3854, § 3, 5-19-93; Ord. No. 950733, § 4, 10-9-95; Ord. No. 160253 , § 8, 9-15-16)