

Resolution No. 2024-634

Passed September 4, 2024

A resolution of the Gainesville Regional Utilities Authority, operating as a unit of city government and as the governing board of Gainesville Regional Utilities, pursuant to the authority granted to the Gainesville Regional Utilities Authority in the City Charter, providing that the application of the City of Gainesville Code of Ordinances, Chapter 23, Article VI, Section 23-111, "Applicability," to the operations of Gainesville Regional Utilities is requested to be amended to reinstate the previously existing exemption from such provision for Gainesville Regional Utilities other than to the extent GRU is acting as a communications services provider; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, Chapter 2023-348, Florida Statutes, formerly known as Florida House Bill 1645, effective July 1, 2023, amended the City of Gainesville Charter to create Article VII entitled "Gainesville Regional Utilities Authority"; and

WHEREAS, the permits and fees required are not reasonable to the extent that GRU has operated without them for over 100 years with little or no conflict, incidence, or compromise to public safety or integrity to the system. The new requirement is clearly punitive to the establishment of GRUA; and

WHEREAS, Article VII, 7.01 of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – created the Gainesville Regional Utilities Authority (hereinafter "GRUA"), operating as a unit of city government for the "express purpose of managing, operating, controlling, and otherwise having broad authority with respect to the utilities owned by the City of Gainesville"; and

WHEREAS, Article VII, 7.03(1)(a) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – vests GRUA, operating as a unit of city government with the power 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 Commission to the GRUA; and

WHEREAS, Article VII, 7.03(1)(b) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – vests GRUA, operating as a unit of city government, with the power "to establish and amend the rates, fees, assessments, charges, **rules, regulations, and policies** governing the sale and use of services provided through the [City of Gainesville's municipal] utilities" (emphasis added); and

WHEREAS, Article VII, 7.10(2) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – provides that all City of Gainesville ordinances, policies, rates, fees, assessments, charges, rules, regulations, and budgets related to operation of the utilities shall remain in effect until such time as the GRUA, pursuant to the powers granted in Article VII of the Charter, modifies any such item; and

WHEREAS, pursuant to the powers granted in Article VII, 7.10(2) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature –, GRUA has the authority to request modification of City ordinances, when necessary, to take all actions necessary of such body to effectuate GRUA's request for modification of any ordinance, policy, rate, fee, assessment, charge, rule, regulation, and/or budget; and

WHEREAS, pursuant to the hierarchy established in Article VII, 7.10(2) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature –, "[i]n the event that **any City charter provision, ordinance**, resolution, decree, **or any part thereof** conflicts with the provisions of this article, the provisions of **this article shall govern** [...]" (emphasis added); and

CODE: Words ~~stricken~~ are deleted; words underlined are added.

WHEREAS, Article VII, 7.10(1) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – provides that "***The City*** and the Authority ***shall perform all acts necessary and proper to effectuate an orderly transition*** of the governance, operation, management, and control of all utility systems, properties, and assets held in the possession of GRU as of January 1, 2023, to the Authority [...]" (emphasis added); and

WHEREAS, Article VII, 7.10(4) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature – provides that "no franchise, right-of-way, license, permit or usage fee or tax may be levied by the City upon the Authority or the utilities unless allowed by general law"; and

WHEREAS, The City Commission of the City of Gainesville passed Ordinance No. 2024-167, purporting to amend Chapter 23, Article VI of the City of Gainesville Code of Ordinances to – in part – deleted a provision exempting GRU from applicable regulations with the intention of levying right-of-way permit fees on Gainesville Regional Utilities; and

WHEREAS, Section 337.401, Florida Statutes (2024), governs the use of rights-of-way for utilities and includes no provision which would allow the City Commission to impose right-of-way permit fees upon GRU – itself an unit of the City of Gainesville – given that there is no provision in such statute permitting local governmental entities to impose right-of-way fees upon itself; and

WHEREAS, no other provision of general Florida law permits the City Commission to impose right-of-way permit fees upon GRU; and

WHEREAS, pursuant to the lack of general law permitting the City Commission of the City of Gainesville to impose right-of-way permit fees upon GRU, Ordinance No. 2024-167 – insofar as it attempts to impose right-of-way permit fees upon GRU – is in direct conflict with the Charter of the City of Gainesville; and

WHEREAS, it is apparent to GRU that the attempted imposition of right-of-way permit fees upon GRU is an unreasonable and punitive action taken by the City Commission which is in conflict with Florida law and the Charter of the City of Gainesville as GRU has operated without such fees for over 100 years with little or no conflict, incidence, or compromise to public safety or integrity to the utility system; and

WHEREAS, in accordance with the powers vested in GRUA under Article VII of the Charter of the City of Gainesville, as referenced above, GRUA elects to exercise its power to request modification of Chapter 23, Article VI, Section 23-111 "Applicability" of the Code of Ordinances to revert this Chapter to prior language; and

WHEREAS, by posting on GRU's main website at <https://www.gru.com>, public notice was given regarding this proposed resolution and of a public hearing in the GRU Multipurpose Room located on the first floor of the GRU Administration building in the City of Gainesville; and

WHEREAS, the public hearing was held pursuant to the published notice described above, at which all interested parties had an opportunity to be and were, in fact, heard.

NOW, THEREFORE, BE IT RESOLVED BY THE GAINESVILLE REGIONAL UTILITIES AUTHORITY, OPERATING AS A UNIT OF CITY GOVERNMENT AS FOLLOWS:

SECTION 1. The application of the City of Gainesville Code of Ordinances, Chapter 23, Article VI, Section 23-111, "Applicability," to Gainesville Regional Utilities is requested to be amended as follows:

Chapter 23 – STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Article VI. – PUBLIC RIGHTS-OF-WAY USE BY UTILITIES

CODE: Words ~~stricken~~ are deleted; words underlined are added.

Sec. 23-111. – Applicability.

It is unlawful for any person to place, install, locate, relocate, construct, maintain, repair, operate, or remove any utilities under, on, over, across, or within the public rights-of-way without: 1) first obtaining a written permit from the city in accordance with this article, unless exempted from this requirement by section 23-116; and 2) maintaining compliance with this article for the entire duration that any permitted utility remains under, on, over, across, or within a public rights-of-way.

This article applies to all utilities existing in the public rights-of-way prior to the effective date of this article, and the owners or agents of such utilities have one year from the effective date of this article to comply with the terms of this article or be in violation thereof, with the exception of any provision of this article regarding the location or design of the utility. Notwithstanding the foregoing, this article does not apply to the City of Gainesville or Gainesville Regional Utilities (GRU), except to the extent that the city or GRU is acting as a communications services provider.

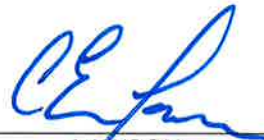
SECTION 2. It is the intent of the GRUA that the provisions of Section 1 of this resolution shall govern in relation to the operations of Gainesville Regional Utilities, notwithstanding any conflicting provisions in the City of Gainesville Code of Ordinances. To the extent this resolution conflicts with any provisions of the City of Gainesville Code of Ordinances, the provisions of this resolution shall govern in relation to the operations of Gainesville Regional Utilities in accordance with Article VII, 7.10(2) of the Charter of the City of Gainesville. In addition, to the extent this resolution conflicts with any provisions of the City of Gainesville Code of Ordinances, the City Commission of the City of Gainesville is hereby noticed to amend the Code of Ordinances accordingly.

SECTION 3. If any word, phrase, clause, paragraph, section, or provision of this resolution or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the resolution which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this resolution are declared severable.

SECTION 4. All resolutions, or parts of resolutions, in conflict herewith are to the extent of such conflict hereby repealed on the effective date of this resolution. Further, pursuant to the hierarchy established in Article VII, 7.10(2) of the Charter of the City of Gainesville – as instituted by Chapter 2023-348, Florida Statutes, 2024, a special act of the Florida legislature –, “[i]n the event that **any City charter provision, ordinance, resolution, decree, or any part thereof** conflicts with the provisions of this article, the provisions of **this article shall govern** [...]” (emphasis added).

SECTION 5. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 4 day of September, 2024.




C. ERIC LAWSON
GRU AUTHORITY CHAIRPERSON

Attest:

KRISTEN J. BRYANT
CITY CLERK

Approved as to form and legality by the Authority Attorney:


S. SCOTT WALKER, ESQ.
AUTHORITY ATTORNEY