

CITY OF DALTON
ORDINANCE
Ordinance No. 21-02

An Ordinance Of The City Of Dalton To Adopt Article VI “Franchise Fees” Of Chapter 118 “Utilities” Of The Revised Code Of Ordinances Of 2001 Of The City Of Dalton To Provide For The Collection Of Franchise Fees For The Use Of City Property And Right-Of-Way For Electrical Services; To Provide An Effective Date; To Repeal All Ordinances Conflicting Therewith; To Provide For Severability; And For Other Purposes.

WHEREAS, Chapter 118 “Utilities” Of The Revised Code Of Ordinances Of 2001 Of The City Of Dalton has been amended from time to time;

WHEREAS, the City desires to revise and amend Chapter 118 “Utilities” to provide for the collection of franchise fees for the use of City property and right-of-way for electrical services pursuant to the provisions of the City Charter Article IV, Section 4-8 (dd) and O.C.G.A. §36-34-2(7);

BE IT ORDAINED by the Mayor and Council of the City of Dalton in regular meeting assembled and by authority of the same it is hereby ordained as follows:

-1-

The recitals contained herein above are incorporated herein by reference and are adopted as findings and determinations of the Mayor and Council.

-2-

Chapter 118 “Utilities” of the Revised Code Of Ordinances Of 2001 of the City of Dalton, as amended, is hereby amended by adoption of Article VI “Franchise Fees” and shall read as follows:

Chapter 118 Utilities

Article VI – Franchise Fees

Section 118 - 187 through 118 – 199. – Reserved.

Division 1 – Generally

Sec. 118-200. - Permit or franchise fee pursuant to terms of this regulatory Ordinance required prior to installation of and continued maintenance of poles, pipes, etc., on public roads or alleys.

- (a) No person or entity shall install, construct, maintain or cause to be installed, constructed or maintained any pipe, main, conduit, cable, wire, pole, tower, traffic or other signal and other equipment, facilities, appliance, receptacle or sign, in, on, along, over or under the public roads or alleys of the city which are a part of the city's road system without first obtaining either a permit therefor or franchise granted by the City. .
- (b) No franchise shall be granted except by adoption by the mayor and city council of a franchise ordinance pursuant to this article. Within such ordinance, a franchise shall be granted for the constructing, maintaining, operating, extending, and use of utility infrastructure such as poles, lines, cables, equipment, pipes, mains, conduits, cables, wires, poles, lines, towers, equipment, and other apparatus in, on, along, over or under the streets, alleys, and other public places of the City within the present and future corporate limits of the City.
- (c) The fees for any franchise shall not be in excess of those as may be authorized by any state or federal regulatory agency where applicable.
- (d) For each sign and each receptacle on the public right-of-way, excepting those used in connection with the collection and delivery of the United States mail or utility infrastructure under a franchise, there is assessed a fee in the amount established by action of the city council, a copy of which is on file in the office of the city clerk.

Sec. 118-201. - Right to select electrical supplier.

Nothing contained in this Article shall limit or restrict the right of customers within the corporate limits of the City to select an electric supplier as may hereafter be provided by law.

Sec.118-202. - Amendments.

The City may enter into such additional agreements with respect to the streets, alleys, and public places of the City as the City and any electric service franchisee may deem reasonable and appropriate; provided, however, that such agreements shall not be inconsistent with the terms and conditions of the franchise granted in this Article, shall not extend beyond the term of the franchise, and shall be enforceable separate and apart from the franchise.

Sec. 118-203. - Acceptance.

The electric service franchisee's installation of the Facilities or continued use of existing Facilities after adoption of this ordinance shall form a contract between the electric service franchisee and the City.

Sec. 118-204. - Conflicting provisions.

All laws and ordinances, and all prior agreements between the electric service franchisee and the City with respect to the electric service franchisee's use of the City's streets, alleys, and public places, in actual conflict herewith shall stand repealed and terminated, respectively, upon the passing of this ordinance and the franchisee's installation of Facilities or continue usage of existing Facilities', provided, however, the franchisee shall retain all rights with respect to any easement or other property right, other than a franchise, previously granted.

Secs. 118-205 through 118-209. - Reserved.

Division 2. – North Georgia Electric Membership Corporation

Sec. 118-210. - Grant of franchise.

The authority, right, permission and consent are hereby granted to North Georgia Electric Membership Corporation (hereinafter sometimes referred to as "North Georgia EMC"), its successors, lessees and assigns (the "Company"), subject to the terms and conditions set forth hereinafter for a period of 35 years, to occupy and use the streets, alleys and public places of the City within the present and future limits of the City as from time to time the Company may deem proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus (collectively, the "Facilities") for any business or purpose, including transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as the Company may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of the Company, to ensure safe and efficient service.

Sec. 118-211. - Payment of franchise fees required.

- (a) Beginning April 1, 2021, the use by the Company of the streets, alleys, public places and other property of the City for the operation of the Facilities, and the grant of the requisite street franchise rights, shall incur the payment of franchise fees pursuant to this chapter, and continued use and occupancy of such City property for said purpose without payment of such franchise fees will violate the Ordinance, and the City shall be entitled to enforce compliance with this chapter by appropriate proceeding at law or in equity.
- (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the rate of seven (7%) percent per annum but not to exceed the maximum authorized by Georgia law.

Sec. 118 - 212. - Terms and conditions.

The rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions:

(a) The Company shall pay to the City (1) on or before the first day of April of the first year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential and commercial rate schedules within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to all of the Company's customers served under industrial rate schedules within the corporate limits of the City during the period beginning on the first day of the month following granting of this franchise and ending on December 31 of such preceding calendar year and (2) on or before the first day of April of each subsequent year thereafter during the term of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of the Company's customers served under residential, commercial, and industrial rate schedules within the corporate limits of the City during each preceding calendar year, it being understood that duplicative payments are not contemplated, and further on condition that in the event the City shall grant to any other entity the right to use and occupy the City's property and right-of-way for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof. Notwithstanding the foregoing the Company shall have the option to pay to the City the sums due under this paragraph on a monthly basis.

- (b) All payments shall be accompanied by a summary report prepared by the Company

showing the volume of gross sales for all service classifications (residential, commercial, industrial, etc.) for the preceding term. The City shall be entitled to audit at such times as deemed appropriate by the City the Companies performance under this article. The City shall not audit more frequently than once in a three year period.

- (c) The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account, other than ad valorem taxes on property and license taxes on the sale of home appliances, shall operate to reduce to the extent of such tax, fee, charge or imposition the amount due from the percentage of gross sales as provided in subsection (a) of this section.
- (d) The Company shall fully protect, indemnify and save harmless the City from all damages to person or property caused by the construction, maintenance, operation or extension of the Facilities, or conditions of streets, alleys or public places resulting therefrom, for which the said City would otherwise be liable, other than those arising from the City's sole negligence or misconduct or where the City would be immune from liability.
- (e) The Company shall, in constructing, maintaining, operating and extending its Facilities, be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require the Company to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
- (f) The grant of the rights, permission and consents by the City to the Company contained in this chapter are specifically conditioned upon the payment of all sums due the City in accordance with the rate, conditions and payment dates set forth in subsection (a) of this section, and failure by the Company to timely pay the franchise fees required by said subsection (a) of this section may constitute a forfeiture of all rights granted by this Division. In the event that the City maintains that the Company may forfeit its rights, permission, and consents hereunder it shall give the Company not less than thirty (30) days written notice thereof to cure such potential forfeiture. If the City and the Company have not resolved the issue within that time either may seek a declaratory judgment as to forfeiture in the Superior Court of Whitfield County, Georgia.
- (g) For the purposes of this section, the term "Distribution Facilities" or "Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of the Company (whether before or after the adoption of the ordinance from which this article is derived) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following:

- (i) Electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines");
 - (ii) Poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures");
 - (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures;
 - (iv) Lines, wires, cables, or conductors installed in concrete-encased ductwork; or
 - (v) Network underground facilities.
- (h) In the event that the City or any other entity acting on behalf of the City requests or demands that the Company relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then the Company shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. The Company's obligations under this subsection (i) shall not affect the amounts paid or to be paid to the City under the provisions of subsection (a) of this section. Notwithstanding the foregoing provisions of this subsection (h), the Company shall not be obligated to relocate, at its expense, any of the following:
- (i) Distribution Facilities that are located on private property (which shall include those located on easements acquired by the Company from persons or entities other than the City) at the time relocation is requested or demanded;
 - (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes);
 - (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes;
 - (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation; or
 - (v) Distribution Facilities that do not obstruct or interfere with plans for road widening, the creation of new turn lanes, or acceleration and deceleration lanes.
- (i) The City and the Company recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and the Company shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and the Company shall communicate in a timely fashion to coordinate City projects including the City's five-year capital improvement plan, the City's short-term work program or the City's annual budget in an effort to minimize relocation of the Company's Facilities. Such communication may include, but is not limited to:
- (i) Both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization); and

- (ii) Both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).
- (j) With regard to each project undertaken by or on behalf of the City for which the Company is not obligated, in accordance with subsection (h) of this section, to pay the cost of relocation, the City shall pay the Company in advance for the Company's estimated cost to relocate any of the Company's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project.
- (k) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, on the effective date of this franchise, are not both:
 - (i) Within the City limits on the effective date; and
 - (ii) Depicted as being within the City limits on the maps provided to Company and said map shall be available for inspection during business hours in the office of the City Clerk, such maps shall be identical to those submitted to the United States Census Bureau.

Upon request of the Company the City shall confirm an address as reasonably within the City limits.

- (l) Notwithstanding anything herein to the contrary, the Company shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, after the effective date of this franchise, are annexed to the corporate limits of the City before 90 days after the Company receives written notice from the City that the City intends to annex (or has already annexed) the territory in which said customers are located. To be effective, any such notice must include an electronic map of the annexed areas in a format reasonably acceptable to Company, and identical to the map submitted by the City to the United States Census Bureau.

Sec. 118-213 through 118-219. – Reserved.

Division 3. – Georgia Power Company

Sec. 118-220. - Grant of franchise.

The authority, right, permission and consent are hereby granted to Georgia Power Company its successors, lessees and assigns ("GPC"), subject to the terms and conditions set forth hereinafter for a period of 35 years, to occupy and use the streets, alleys, and public places of the City within the present and future limits of the City as from time to time GPC may deem proper or necessary for the overhead or underground construction, maintenance, operation and extension of poles, towers, lines, wires, cables, conduits, insulators, transformers, appliances, equipment, connections and other apparatus (collectively, the "Facilities") for any business or purpose, including transmitting, conveying, conducting, using, supplying and distributing electricity for light, heat, power and other purposes for which electric current may be or become useful or practicable for public or private use, and to re-enter upon such streets, alleys and public places from time to time as GPC may deem proper or necessary to perform these functions, and to cut and trim trees and shrubbery when and where necessary, in the judgment of GPC, to ensure safe and efficient service.

Sec. 118-221. - Payment of franchise fees required.

- (a) Beginning April 1, 2021, the use by GPC of the streets, alleys, public places and other property of the City for the operation of the Facilities, and the grant of the requisite street franchise rights, shall incur payment of franchise fees pursuant to this chapter, and continued use and occupancy of such City property for said purpose without payment of such franchise fees will violate this Ordinance, and the City shall be entitled to enforce compliance with this chapter by appropriate proceeding at law or in equity.
- (b) If not paid by the due date, unpaid franchise fees shall accrue interest at the rate of seven (7%) percent per annum but not to exceed the maximum authorized by Georgia Law.

Sec. 118 - 222. - Terms and conditions.

The rights, permission and consents herein contained are made for the following considerations and upon the following terms and conditions:

- (a) GPC shall pay to the City (1) on or before the first day of April of the first year following the granting of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of GPC's customers served under residential and commercial rate schedules (as prescribed by the Georgia Public Service Commission) within the corporate limits of the City during the preceding calendar year and four percent (4%) of the gross sales of electric energy to all of the GPC's customers served under industrial rate schedules (as so prescribed) within the corporate limits of the City during the period beginning on the first day of the month following granting of this franchise and ending on December 31 of such preceding calendar year and (2) on or before the first day of April of each subsequent year thereafter, during the term of this franchise, a sum of money equal to four percent (4%) of the gross sales of electric energy to all of GPC's customers served under residential, commercial, and industrial rate schedules (as so prescribed) within the corporate limits of the City during each preceding calendar year, it being understood that duplicative payments are not contemplated, and further on condition that in the event the City shall grant to any other entity the right to use and occupy the City's property and right-of-way for like purposes, such use and occupancy shall be upon the same terms and conditions as those herein contained, including the payment provisions hereof. Notwithstanding the foregoing, GPC shall have the option to pay to the City the sums due under this paragraph on a monthly basis.
- (b) All payments shall be accompanied by a summary report prepared by the GPC showing the volume of gross sales for all service summary classifications (residential, commercial, industrial, etc.) for the preceding term. The City shall be entitled to audit at such times as deemed appropriate by the City of GPC's performance under this article. The City shall not audit more frequently than once in a three year period.
- (c) The amount, if any, of any tax, fee, charge or imposition of any kind required, demanded or exacted by the City on any account, other than ad valorem taxes on property and license taxes on the sale of home appliances, shall operate to reduce to the extent of such tax, fee, charge or imposition the amount due from the percentage of gross sales as provided in subsection (a) of this section.

- (d) GPC shall fully protect, indemnify and save harmless the City from all damages to person or property caused by the construction, maintenance, operation or extension of GPC's Facilities or conditions of streets, alleys or public places resulting therefrom, for which the said City would otherwise be liable other than those arising from the City's sole negligence or misconduct or where the City would be immune from liability.
- (e) GPC shall, in constructing, maintaining, operating and extending its Facilities be subject to all reasonable exercises of the police power by the City. Nothing contained herein, however, shall require GPC to surrender or limit its property rights created hereby without due process of law, including adequate compensation, for any other purpose at the instance of the City or for any purpose at the instance of any other entity, private or governmental.
- (f) The grant of the rights, permission and consents by the City to the GPC contained in this chapter are specifically conditioned upon the payment of all sums due the City in accordance with the rate, conditions and payment dates set forth in subsection (a) of this section, and failure by GPC to timely pay the franchise fees required by said subsection (a) of this section may constitute a forfeiture of all rights granted by this Division. In the event that the City maintains that GPC may forfeit its rights, permission, and consents hereunder, it shall give the Company not less than thirty (30) days written notice thereof to cure such potential forfeiture. If the City and GPC have not resolved the issue within that time either may seek a declaratory judgment as to forfeiture in the Superior Court of Whitfield County, Georgia.
- (g) For the purposes of this section, the term "Distribution Facilities" or "Facilities" means poles, lines, wires, cables, conductors, insulators, transformers, appliances, equipment, connections, and other apparatus installed by or on behalf of GPC (whether before or after the adoption of the ordinance from which this article is derived) in the streets, alleys, or public places of the City for the purpose of distributing electricity within the present and future corporate limits of the City. Distribution Facilities do not include any of the following:
 - (i) Electric transmission lines with a design operating voltage of 46 kilovolts or greater (hereinafter referred to as "Transmission Lines");
 - (ii) Poles, towers, frames, or other supporting structures for Transmission Lines (hereinafter referred to as "Transmission Structures");
 - (iii) Transmission Lines and related wires, cables, conductors, insulators, or other apparatus attached to Transmission Structures;
 - (iv) Lines, wires, cables, or conductors installed in concrete-encased ductwork; or
 - (v) Network underground facilities.
- (h) In the event that the City or any other entity acting on behalf of the City requests or demands that GPC relocate any Distribution Facilities from their then-current locations within the streets, alleys, and public places of the City in connection with a public project or improvement, then GPC shall relocate, at its expense, the Distribution Facilities affected by such project or improvement. GPC's obligations

under this subsection (i) shall not affect the amounts paid or to be paid to the City under the provisions of subsection (a) of this section. Notwithstanding the foregoing provisions of this subsection (h), GPC shall not be obligated to relocate, at its expense, any of the following:

- (i) Distribution Facilities that are located on private property (which shall include those located on easements acquired by GPC from persons or entities other than the City) at the time relocation is requested or demanded;
 - (ii) Distribution Facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes);
 - (iii) Distribution facilities that are relocated in connection with streetscape projects or other projects undertaken primarily for aesthetic purposes;
 - (iv) Distribution Facilities that are converted from an overhead configuration or installation to an underground configuration or installation; or
 - (v) Distribution Facilities that do not obstruct or interfere with plans for road widening, the creation of new turn lanes, or acceleration and deceleration lanes.
- (i) The City and GPC recognize that both parties benefit from economic development within the City. Accordingly, when it is necessary to relocate any of GPC's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) within the City, the City and GPC shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, the City and GPC shall communicate in a timely fashion to coordinate City projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget, in an effort to minimize relocation of the GPC's Facilities. Such communication may include, but is not limited to:
- (i) Both parties' participation in the Georgia Utilities Coordinating Council, Inc. (or any successor organization) or a local utilities coordinating council (or any successor organization); and
 - (ii) Both parties' use of the National Joint Utility Notification System (or any successor to such system mutually acceptable to both parties).
- (j) With regard to each project undertaken by or on behalf of the City for which GPC is not obligated, in accordance with subsection (h) of this section, to pay the cost of relocation, the City shall pay GPC in advance for the Company's estimated cost to relocate any of GPC's Facilities (whether Distribution Facilities, Transmission Lines, Transmission Structures, or other facilities) in connection with such project.
- (k) Notwithstanding anything herein to the contrary, GPC shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, on the effective date of this franchise, are not both:
- (i) Within the City limits on the effective date; and

- (ii) Depicted as being within the City limits on the maps provided to GPC and said map shall be available for inspection during business hours in the office of the City Clerk; such maps shall be identical to those submitted to the United States Census Bureau.

In addition to said maps, the City shall provide GPC with a list of addresses and such additional information as it shall reasonably require to confirm the location of such customers as within the City limits.

- (l) Notwithstanding anything herein to the contrary, GPC shall not be obligated to pay to the City the fee provided for herein, or any portion thereof, on the gross sales of electric energy to customers living within areas that, after the effective date of this franchise, are annexed to the corporate limits of the City, before 90 days after GPC receives written notice from the City that the City intends to annex (or has already annexed) the territory in which said customers are located. To be effective, any such notice must include an electronic map of the annexed areas in a format reasonably acceptable GPC, and identical to the map submitted by the City to the United States Census Bureau.

Sec. 118-223 through 118-229. – Reserved.

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Should any section or provision of this Ordinance be declared by a Court of competent jurisdiction to be unconstitutional, invalid or unlawful, such declaration shall not affect the validity of the remaining portions of the ordinance not so declared to be unconstitutional, invalid, or unlawful.

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All resolutions and ordinances of the City of Dalton or parts thereof in conflict herewith are hereby repealed.

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This Ordinance shall take effect and be in force following its adoption and publication in two public places within the City of Dalton for five (5) consecutive days, the public welfare of the City of Dalton requiring it.

ADOPTED AND APPROVED on the ____ day of _____, 20____, at the regular meeting of the Mayor and Council of the City of Dalton.

The foregoing Ordinance received its first reading on _____ and a second reading on _____. Upon second reading a motion for passage of the ordinance was made by Council member _____, second by Council member _____ and upon the question the vote is _____ ayes, _____ nays and the Ordinance is adopted.

CITY OF DALTON, GEORGIA

Attest:

MAYOR

CITY CLERK

A true copy of the foregoing Ordinance has been published in two public places within the City of Dalton for five (5) consecutive days following passage of the above-referenced Ordinance as of the ____ day of _____, 20____.

CITY CLERK
CITY OF DALTON