ARTICLE IX. UTILITY AUTHORITY

Editor's note:

Ordinance No. 1285, adopted by the city commission on Feb. 19, 1985, and ratified at referendum March 26, 1985, to be effective Oct. 1, 1985, amended the Charter but did not specify the exact manner of inclusion of its provisions. However, upon the advice of the city, the editor had included the provisions of Ord. No. 1285, §§ 1 19 and 21, as a new Article IX.

Cross-reference:

Electrical code, Ch. 10; utilities, Ch. 29.

SECTION 1 [GENERAL PROVISIONS.]

There is hereby created and made a part of the government of the City of Kissimmee a utility authority to be known and designated as "Kissimmee Utility Authority," City of Kissimmee, Florida, which shall be responsible for the development, production, purchase, sale, exchange, interchange, transmission and distribution of all electricity and such other utility services as may be designated by resolution by the city commission. The authority shall have exclusive jurisdiction, control and management of the said utilities of the city and all its operations and facilities. The authority shall have all the powers and duties possessed by the city to construct, acquire, expand and operate said utility systems, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, economic and businesslike administration of the said utility systems. The authority shall operate as a separate unit of the city government; and except as otherwise provided in this ordinance [article], the authority shall be free from the jurisdiction, direction, and control of other city officers and of the city commission. The authority may sue or be sued in its own name. All damage claims arising from the operations of the authority and the said utilities shall be the responsibility of and be liquidated by the authority from the appropriate funds of the utility systems. For the purposes of this ordinance [article], unless otherwise designated or the context requires, the word "authority" shall mean the Kissimmee Utility Authority, and the word "city" shall mean the City of Kissimmee, Florida.

(Ord. No. 1285, § 1, 2-19-85)

SECTION 2 AUTHORITY TO CONSIST OF FIVE MEMBERS.

The City Commission shall, within fifteen (15) days of the determination of the election results as provided for in Section 22 of this ordinance [not codified herein], appoint by majority vote of the entire commission a group of five (5) citizens of the City of Kissimmee who shall act as a nominating committee. The responsibility of this nominating committee is to recommend within sixty (60) days three (3) qualified electors who have demonstrated a successful business or professional management career, except that two (2) of the three (3) persons may reside outside the city limits of the City of Kissimmee, and who purchases electricity from the city's utilities and who portrays the above attributes. Within fifteen (15) days of receipt of nominations, the city commission by majority vote of the entire commission shall elect individuals to serve on the Kissimmee Utility Authority for one term of three (3) years, four (4) years, and five (5) years, respectively. If any nominee is not elected by the commission, the nominating committee shall present another nominee within fifteen (15) days. In addition to said three (3) persons, the city commission shall direct the mayor commissioner, hereinafter referred to as mayor, to serve as ex officio member of the Kissimmee Utility Authority without a vote. Further, the city commission shall appoint the two (2) most senior members of the then active city commissioners to serve a one-year and a two-year term, respectively; the most senior member of the city commission to serve a one-year term on the Kissimmee Utility Authority. After this period no active city commissioner shall serve on the authority. Further, no member of the city commission, except the mayor of the City of Kissimmee and those members of the city commission named as initial members of the authority shall serve on the authority. Neither employees of the City of Kissimmee or any elected official shall be qualified to serve as a member of the said utility authority. No member of the authority shall, except the mayor of the City of Kissimmee, serve more than two (2) successive terms on the authority.

All terms of the initial authority members shall expire as if they had begun on October 1, 1985. All future full terms shall begin on October 1st.

From the time of their election by the city commission until this ordinance [article] becomes law on October 1, 1985, the Kissimmee Utility Authority is charged with developing and approving policies, bylaws and procedures to facilitate the orderly transition as

contemplated in this ordinance [article] on October 1, 1985.

If a member is elected to fill a vacancy created by death, disability, resignation or removal, he or she shall serve the remaining term of the member causing such vacancy. Any elected member may be removed from office upon a four-fifths vote of the entire city commission for malfeasance, misfeasance, nonfeasance, or upon recommendation to the city commission by a four-fifths vote of the entire members constituting the Kissimmee Utility Authority and affirmative action thereon by the city commission. Any member of the authority who is arrested, informed against, or indicted may be suspended or removed as authorized by law.

The utility authority by majority vote shall elect from among its members a chairperson, who shall preside over the meetings of the utility authority, a vice-chairperson who shall act for the chairperson during his or her absence, and a secretary. An election of officers of the utility authority shall be held at the first regular meeting at which all members are present following the appointment of a new member for a full term, but not later than the fourth meeting following the appointment. The utility authority shall adopt rules for the conduct of its meetings. No action shall be taken by the utility authority except by the affirmative vote of at least three (3) members. Three (3) members shall constitute a quorum. The utility authority shall hold a regular meeting at least once each month. All meetings shall be open to the public and minutes shall be kept of all meetings. Copies of such minutes shall be furnished to members of the city commission within seven (7) days of such meeting. Special meetings may be called upon six (6) hours' written notice thereof by the chairman or any three (3) members.

(Ord. No. 1285, § 2, 2-19-85; Am. Ord. 2762, § 1, passed 6-1-10; Am. Ord. 2763, § 1, passed 6-15-10)

SECTION 3 RESERVED.

SECTION 4 ELECTION OF MEMBERS AFTER INITIAL ORGANIZATION.

After the initial membership of the Kissimmee Utility Authority is filled as provided in Section 2 of this Article, all subsequent members shall be appointed in the following manner. The Kissimmee Utility Authority shall be composed of five (5) members possessing the qualifications as set out in Section 2. Each Kissimmee Utility Authority member will be appointed by a 4/5 vote of the entire city commission, sixty (60) days prior to a regular vacancy or within thirty (30) days of an unforeseen vacancy.

(Ord. No. 1285, § 4, 2-19-85; Am. Ord. 2825, passed 5-1-12)

SECTION 5 COMPENSATION.

No member shall be paid; however, members shall be entitled to be reimbursed for travel or other expenses in carrying out their duties.

(Ord. No. 1285, § 5, 2-19-85)

SECTION 6 INDEMNIFICATION.

The authority shall provide adequate liability insurance coverage for its members. The authority shall hold harmless and indemnify its members, utility director, agents and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses and losses incurred by its members, utility director, agents and employees in connection with acts of error or omissions, other than willful violations of laws, committed within the scope of their duties, and shall defend, at the authority's expense, all claims and suits in connection therewith.

(Ord. No. 1285, § 6, 2-19-85)

SECTION 7 ISSUING DEBT.

(a) The authority is authorized by resolution to issue revenue bonds from time to time (hereinafter referred to as "bonds") to provide funds for any of its corporate purposes to pay all or part of the cost of any project as above described or for the purpose of refunding bonds or other obligations issued for such purpose. Such bonds may be in such denomination or denominations, may bear interest at such rate or rates, which may be a floating rate, shall mature at such time or times, all as may be determined by the authority. The

bonds may be redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority prior to their issuance. The authority shall determine the form of bonds, including any interest coupons to be attached thereto, the manner of execution of the bonds, and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State of Florida. The resolution authorizing the issuance of the bonds shall contain such provisions relating to the use of proceeds from the sale of the bonds and for the protection and security of holders of the bonds, including, but not limited to, the source of payment for the bonds, their rights and remedies, and the rights, powers, privileges, duties and obligations of the authority with respect to the same, as shall be determined by the authority. In case any officer whose signature or facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

All bonds issued under the provisions of this act shall be and are hereby declared to have all the qualities and incidents of negotiable instruments under the laws of the State of Florida. The bonds may be issued in the coupon or in fully registered form, or both, as the authority may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The bonds shall be sold at public or private sale at such price or prices as the authority shall determine to be in its best interest.

(b) When bonds have been authorized by resolution of the authority, bond anticipation notes may be authorized and issued from time to time, to temporarily finance the costs, or any part thereof, of the project for which the bonds are to be issued, in anticipation of the issuance of said bonds. Such bond anticipation notes (hereinafter called "notes"), which shall include bond anticipation notes which may be issued as part of a tax exempt commercial paper program, or other short-term note financing program, shall be authorized by a resolution of the authority which resolution shall fix the maximum amount of notes to be issued, the maximum interest rate such notes may bear, which may be a floating rate, the denomination or denominations thereof, the redemption provisions thereof, which may include provisions for payment on demand of the purchaser or purchasers, and such other details, including the form of such notes, provisions for the renewal thereof and the security for payment thereof as shall be determined by the authority. Such notes shall have such qualities and incidents of negotiable instruments and shall be executed in the manner provided herein for the bonds and shall be payable from the proceeds of said bonds unless sooner paid from the revenues of the project for which they are issued or from any other sources. Each such note, including any renewals thereof, shall mature on such date or dates that shall be determined by the authority. When authorized by resolution such notes, including renewals, may be sold by officers of the authority at public or private sale and delivered by such officers to the purchaser or purchasers thereof within the limitations and restrictions contained in such resolution.

All bonds of the City of Kissimmee validated by court decree, and all bond anticipation notes and all indebtedness evidenced by written instrument and remaining unpaid are hereby ratified and confirmed as valid obligations of the Kissimmee Utility Authority.

The rates of interest payable on revenue bonds and revenue anticipation certificates and all other obligations issued by the Kissimmee Utility Authority shall be set by the authority notwithstanding any interest rate limitation prescribed by general law or any other special law.

(Ord. No. 1285, § 7, 2-19-85)

SECTION 8 AGREEMENTS AND SHORT-TERM DEBT.

The authority:

(a) May join with any other electric utility located within or without the state or any group of such electric utilities, public or private, for the purpose of jointly financing, acquiring, building, constructing, erecting, extending, enlarging, leasing (as lessor or as lessee), improving, furnishing, owning and operating any project in accordance with the provisions of this act, and may contract with any such utility or group of electric utilities for any such purpose;

(b) May contract for a specified period of years for:

(1) The purchase by take-or-pay contracts, or otherwise, of capacity or energy, or both, in any quantity from any project owned or operated directly or indirectly under lease, by any person, trust or corporation, including contracts or other arrangements between or among the existing electric system of the authority and one or more separate systems of the authority for the allocation to said existing electric system and/or any one or more such systems of the output, capacity, energy or services of projects of the authority, and for the allocation of the authority's costs related to such projects, on a take-or-pay basis or otherwise;

(c) May contract for a specified period of years for the purchase of fuel, fuel supply or source and fuel transportation facilities for

use in the operation of the system;

(d) May purchase, sell, lease, sublease, own, maintain and operate coal, oil, gas and other fuel reserves, together with any and all mines, wells, pipelines and other facilities as well as facilities for transportation of such reserves, including, but not limited to, hopper cars and other rolling stock, both within and without the State of Florida, as are necessary to provide economical, long-term and reliable fuel supply for projects to be accomplished under this act;

(e) May borrow money from the city, for any period not to exceed one year, to provide the authority with working capital to meet routine or emergency cash requirements at such interest rates, which may be a floating rate, and upon such conditions concerning the method of borrowing, the time and manner of payment and the maximum amount that may be on loan at any time, as are determined by ordinance of the commission; and to borrow money from lending institutions or persons or other entity, including borrowing as part of a tax-exempt commercial paper or other short-term note financing program, which may be a floating rate, which may include provisions for payment upon demand by the purchaser or purchasers, as authorized by resolution of the authority. When authorized by resolution of the authority such notes, including renewals, may be sold by officers of the authority at public or private sale and delivered by such officers to the purchaser or purchasers thereof within the limitations and restrictions contained in such resolution;

(f) May lend money to the city, for any period not to exceed one year, to provide the city with working capital to meet routine or emergency cash requirements at such interest rates, which may be a floating rate, and upon such conditions concerning the method of borrowing, the time and manner or payment, and the maximum amount that may be on loan at any time, as may be determined by the authority.

(Ord. No. 1285, § 8, 2-19-85)

SECTION 9 PENSION OR RETIREMENT SYSTEM.

All employees of the City of Kissimmee on the effective date of this ordinance [article] who shall be under the supervision of the authority shall continue without any loss of right or benefits as employees under the pension plans and civil service merit system of the city existing on the effective date of this ordinance [article] or hereafter.

The authority shall have power to create or regulate a pension or retirement system. It may utilize the existing city pension and retirement plans for its employees and shall make contribution to the cost of pension and retirement plans as may be, from time to time, required which cost shall be paid in the same manner as any other operating expense.

(Ord. No. 1285, § 9, 2-19-85)

SECTION 10 REPORTING REQUIREMENTS TO CITY.

The authority, in addition to the reports and accounting it may otherwise be required by law to make, within one hundred eighty (180) days after the close of the fiscal year, [shall] furnish the city commission its annual report which shall include financial statements as of the end of the preceding fiscal year presented in accordance with generally accepted accounting principles applicable to public utilities; and any additional supporting statements or schedules deemed necessary and desirable by the city commission to make a clear and informative presentation of the financial position of the authority. The reports shall be kept on file in the city manager's office and shall be open to public inspection. The financial statements of the authority shall be audited annually by a certified public accountant. The authority shall also annually prepare and adopt a budget for the ensuing year and furnish a copy to the city commission at least forty-five (45) days prior to the beginning of the next fiscal year. The fiscal year of the authority shall be the same as the City of Kissimmee. The annual budget shall contain an amount anticipated to be transferred to the general fund of the city, but not less than, as a minimum, 6.24 mils per kilowatt hour (kWh) of the retail sales (sales not for resales) of electricity. This anticipated transfer figure shall be furnished to the city within one hundred twenty (120) days prior to the beginning of the fiscal year, and the monetary "transfer" shall be made as provided for in Section 11.

(Ord. No. 1285, §10, 2-19-85; Am. Ord. 2762, § 1, passed 6-1-10)

SECTION 11 PAYMENT OF OBLIGATION.

The authority may authorize reasonable expenditures to advertise and otherwise promote the use of the utility services and to acquaint the public with the operations, programs and planned expansion of the utilities.

The authority may invest idle funds in order to return the highest yield possible consistent with proper safeguards as outlined in statutes, bond covenants, and procedures to be specified and from time to time amended by the authority. Such procedures shall include, as a minimum:

Designation of a custodian of funds;

Reporting requirements;

Classes and types of authorized investments;

Designation of maximum maturities;

Method for evaluation and selection of securities;

Maximum maturities for investments;

Provisions for safekeeping;

Provisions for collateralization.

The authority shall have the exclusive power and authority to manage and operate its financial affairs in accordance with the provisions of existing revenue certificate ordinances and the provisions of the present City Charter of the City of Kissimmee, except that transfers of net revenues by the authority to the city may be made monthly at the option of the city commission. In no event shall the amount transferred be less than 6.24 mils per kilowatt hour (kWh) of retail sales of electricity.

Contracts for services, construction, materials, supplies, equipment or machinery where the cost, value or amount exceeds an amount specified by the authority shall not be entered into or purchases made without competitive bidding. Bids shall not be required to purchase patented and manufactured products offered for sale in a noncompetitive market or when the product can be obtained only from a sole source of supply, or where the service cannot be contracted for upon the basis of competitive bidding, or where an operational emergency exists as declared by the utility director. Such noncompetitive purchases shall require ratification by the authority at the next meeting following the purchase. The provisions of this section shall not apply to any contract or agreement between the authority and any engineers, architects, accountants, attorneys, or for other professional services; or to agents, or investment bankers, relating to financing herein authorized; or to contracts of a continuing nature where an extension thereof without bids shall be in the best interest of the authority.

All purchases are to be made in accordance with statutes and a set of purchasing procedures to be established and from time to time amended by the authority, such procedures to include, as a minimum:

Dollar limitation for competitive bidding;

Method for obtaining and evaluating competitive bids and quotations;

Dollar limitations and types of purchase orders to be issued;

Designation of an individual responsible for purchasing.

(Ord. No. 1285, § 11, 2-19-85)

SECTION 12 INTEREST IN CONTRACTS WITH THE AUTHORITY MEMBERS AND OFFICERS.

If a member or officer of the Kissimmee Utility Authority is employed by any person, firm or corporation which is substantially interested in having or proposing to have any contractual relation with or rendering or proposing to render for any consideration services to the Kissimmee Utility Authority, such member shall not participate in any discussion before or action by the Kissimmee Utility Authority relating to such proposal. General law, however, shall control with respect to any conflict with this section. Any violation of the provisions of this section shall subject the person to removal as provided by law.

(Ord. No. 1285, § 12, 2-19-85)

SECTION 13 SAME EMPLOYEES.

No employee of the Kissimmee Utility Authority shall be directly or indirectly employed by any person, firm or corporation, nor be

substantially interested, directly or indirectly, in any firm or corporation having or proposing to have any contractual relationship with or rendering or proposing to render for any consideration services to the Kissimmee Utility Authority when the approval, decision, recommendation or advice of the employee shall be sought, obtained or required in any connection with such contract or services, except that prior thereto full disclosure of the same shall have been made by such employee to the authority or to the State of Florida as required by law.

(Ord. No. 1285, § 13, 2-19-85)

SECTION 14 MANAGEMENT AND CONTROL OF UTILITIES FACILITIES.

The Kissimmee Utility Authority shall have full and complete authority over the management and control of the electric facilities of the City of Kissimmee and all operations incident or related thereto. As incident thereto, the Kissimmee Utility Authority shall, but not by way of limitation, have full authority to plan, finance, acquire, construct, purchase, operate, maintain, lease, manage and control the electric facilities of the City of Kissimmee and to enter into contractual agreements for the acquisition and supply of fuel therefor.

All contracts shall be executed by the chairman or vice-chairman and secretary or assistant secretary. All other instruments in writing necessary to be signed by the authority shall be executed by the chairman or vice-chairman and secretary or assistant secretary, or by such officer, agent or employee of the authority as it may designate.

The authority shall have the power to appoint a utilities director to be responsible to the authority and who shall serve at its pleasure. There shall be such other officers and employees as may be provided by the authority. The officers shall be appointed or removed by the utilities director subject to confirmation by the authority. The employees shall be appointed and removed by the utilities director. The authority shall fix the salary of the utilities director and shall have the power to fix the salaries of all other officers and employees of the authority. The authority shall also have the power to employ or appoint engineers, accountants, lawyers and such other personnel as may be required for the operation and management of the utilities and to fix their compensation.

The authority may require surety bonds for any of the officers and employees in such amounts as the authority deems necessary. The premiums for the bonds shall be paid in the same manner as any other operating expense.

(Ord. No. 1285, § 14, 2-19-85)

SECTION 15 SERVICE TO CUSTOMERS.

The utility authority is hereby authorized to acquire, establish, construct, maintain and operate electric generating plants, electric lines, and facilities incident thereto anywhere within the State of Florida; to furnish electricity, to persons, firms and corporations in any part of Osceola County and where otherwise hereafter provided; and to construct and maintain electric lines, and other facilities in, along, under and above all public highways, streets and easements through Osceola County for the purpose of conveying electricity.

Said utility authority may connect its facilities with facilities of other utility systems and may enter into contracts with these utility systems whereby the utility authority shall agree to sell, purchase or interchange electric energy.

(Ord. No. 1285, § 15, 2-19-85)

SECTION 16 RATES FOR MUNICIPAL USE.

It shall be the duty of the utility authority to set rates for supplying the City of Kissimmee with electricity and to collect from the city for the supplying of said utilities, and in all other respects the City of Kissimmee shall meet its obligations and observe the rules and regulations of said utility authority the same as any individual consumer of said utilities.

(Ord. No. 1285, § 16, 2-19-85)

SECTION 17 RULES, RATES AND REGULATIONS FOR PRIVATE USE.

The utility authority is hereby given the full power and authority to prescribe rules, rates and regulations governing the sale and use of electricity wherever furnished by said utility authority, and to change the same at its pleasure.

(Ord. No. 1285, § 17, 2-19-85)

SECTION 18 EMINENT DOMAIN.

The Kissimmee Utility Authority is hereby authorized and empowered to exercise the right and power of eminent domain to appropriate real and personal property, except state and federal, for the purpose of obtaining, constructing and maintaining, water lines, transmission and distribution lines for electric or other utilities, transportation and storage for fuel supply and other associated facilities on, over, under and/or above any and all such lands in State of Florida without limitation and as otherwise provided by law and conferred upon municipal corporations under Chapter 166, Florida Statutes.

(Ord. No. 1285, § 18, 2-19-85)

SECTION 19 SERVICE DISCONTINUANCE.

Said Kissimmee Utility Authority shall have authority to discontinue the supplying of electricity or any other public facilities or services, now or hereafter under the control, management or jurisdiction of said utilities authority, to any and all users of the utility systems of the Kissimmee Utility Authority for nonpayment, when due, of the fees, rentals or other charges for facilities and services of said utility authority and any other utility systems. Regulations governing such discontinuance of any of such public facilities and services, and the terms and conditions for the restoration of such facilities and services, including penalties, interest and charges for the discontinuance or the restoration of such facilities and services, may be adopted by said utility authority.

(Ord. No. 1285, § 19, 2-19-85)

SECTION 20 [TRANSFER OF ASSETS AND LIABILITIES.]

Upon the passage of this ordinance [article] and approval by referendum, the city commission on behalf of the City of Kissimmee is hereby authorized and directed to transfer to the Kissimmee Utility Authority all of the assets and liabilities of the electric system as it exists on the effective date of this ordinance [article]. Said transfer shall be pursuant to the authority set forth in Article II, Chapter 1, Section 5 of the Kissimmee City Charter. After the transfer as aforesaid, the Kissimmee Utility Authority is not authorized to sell the assets so transferred or any acquired under their authority to any third entity without compliance with Article II, Chapter 1, Section 5 of the Kissimmee City Charter.

(Ord. No. 1285, § 21, 2-19-85)

SECTION 21 AUTHORITY TO SELL MUNICIPAL ELECTRIC SYSTEM.

Whenever a majority of the qualified electors of the City of Kissimmee, in an election called and held for that purpose, shall approve and ratify the sale by the city of its entire electric generating plant and distribution system, including all engines and power plant apparatus, all wires, meters, poles, transformers, right-of-way and street lighting equipment, electric stores and supplies owned and used by the city for the generating and distribution of electricity, the city is hereby authorized and empowered to barter, sell and transfer said property.

Prior to the holding of any election, the mayor-commissioner and the city manager shall issue their proclamation, calling such election, which proclamation shall contain a brief synopsis of the proposed sale. Such proclamation shall be advertised, once a week for four (4) consecutive weeks prior to the date set for such election, in a newspaper of general circulation in the city of Kissimmee. Such election shall, in all other respects, be held in the same manner as other elections are now held, under the laws of the state and the ordinances of the city.

Should such election be held and a majority of the qualified electors of the city in such election ratify and approve a proposed sale, then the city commission is hereby authorized, empowered and directed to consummate such sale and transfer and deliver such property to the purchaser thereof, upon compliance by the purchaser with the terms and conditions of such proposed sale.

(Ord. 2754, § 1, passed 4-20-10)

SECTION 22 JOINT OWNERSHIP AND OPERATION OF ELECTRICAL ENERGY PRODUCTION FACILITIES WITH ST. CLOUD, FLORIDA.

The City of Kissimmee, Florida, in addition to the authority it now possesses under its present charter, be, and it is hereby further authorized to jointly, with the city of St. Cloud, Florida, purchase, hire, construct, own, maintain and operate, both inside and outside the limits of said city, land and facilities necessary to produce electrical energy and to transmit such energy over joint or separate transmission facilities in conjunction with the city of St. Cloud, Florida, and to make such contracts as may be necessary in relation thereto, and to establish by ordinances of the city, if necessary, an authority or agency to accomplish the acquisition, construction, enlargement, improvement, operation and maintenance of the facilities with the city of St. Cloud, Florida, with the power to issue revenue obligations for the financing thereof.

(Ord. 2754, § 1, passed 4-20-10)