

CITY OF GAINESVILLE
Office of the City Attorney

MEMORANDUM

Box No. 46
334-5011 / Fax 334-2229

TO: Mayor and City Commission

FROM: Marion J. Radson, City Attorney

SUBJECT: Ordinance No. 0-99-05

DATE: December 7, 1998
CITY ATTORNEY
SECOND READING

An Ordinance of the City of Gainesville, Florida, imposing a temporary moratorium on the issuance of any permits, development orders or any other official action of the City of Gainesville having the effect of permitting the construction or erection of any structure, including telecommunication towers, located in that certain area within the City of Gainesville, as more specifically defined in the Ordinance; providing a procedure for extraordinary hardship; providing a severability clause; and providing an immediate effective date.

Recommendation: The City Commission hear a presentation and adopt the proposed ordinance (as amended).

BACKGROUND

On October 26, 1998 the City Commission authorized the City Attorney to draft and the Clerk of the Commission to advertise a moratorium ordinance.

The purpose of this Ordinance is to enable the City of Gainesville sufficient time to study the impact and effect of structures, including telecommunication towers, located within the Moratorium area. The moratorium also allows the City the time to amend the Airport Hazard Zoning Code, the Comprehensive Plan, and the City of Gainesville Code of Ordinances, as may be necessary, to incorporate specific conditions, regulations, restrictions or methods of reviewing applications for development permits for certain structures, including telecommunication towers. The amendments will insure that those structures located in the Moratorium area will be consistent with State law, the Comprehensive Plan and the City of Gainesville Code of Ordinances. During this time, the City will not issue any development orders which have the effect of allowing or permitting the construction or erection of certain structures, including telecommunication towers, within the Moratorium area.

The Ordinance fulfills the City's constitutional charge and statutory obligations to protect and preserve the public health, welfare and safety of the citizens of the City of Gainesville, the Gainesville Regional Airport, and its users.

PROPOSED AMENDMENT FOR CONSIDERATION

At the first reading of the ordinance, the City Commission asked staff to develop an amendment to the proposed ordinance for the purpose of addressing the concerns raised by Mr. Keith


Baucom of PCR. A telephone conference between the planning staff, GACRAA staff, Mr. Al Roberts, FDOT, and Mr. Keith Baucom of PCR and his attorneys, resulted in the development of an amendment that would add the following subsection to Section 4 of the Ordinance:

“(d) During the imposition of the Moratorium, the City of Gainesville will issue building permits for structures within the Moratorium area provided that the applicant for building permit first obtains a written determination from the Federal Aviation Administration (F.A.A.) that the construction does not exceed any Federal obstruction standards as contained in 14 C.F.R. ss.77.21, 77.23,77.25, 77.28, and 77.29, and submits a true copy of the FAA determination to the City of Gainesville.”

As of the writing of this memorandum, both PCR and the Florida Department of Transportation find the amendatory language acceptable.

A public meeting was held on Tuesday, December 1, 1998, at 2:30 p.m. at City Hall. Mr. Roberts appeared and discussed the meaning and effect of Part 77, Code of Federal Regulations, and Chapter 333, Florida Statutes. Members of the public asked questions and offered their views. At the conclusion of the meeting, Mr. Roberts said that, in his opinion, the City is better off with the moratorium ordinance than without the ordinance.

Prepared and Submitted by:


Marion J. Radson
City Attorney

MJR/afm

Attachment

Passed on First Reading by a vote of 5-0.

ORDINANCE NO. _____
0-99-05

AN ORDINANCE OF THE CITY OF GAINESVILLE, FLORIDA,
IMPOSING A TEMPORARY MORATORIUM ON THE ISSUANCE
OF ANY PERMITS, DEVELOPMENT ORDERS OR ANY OTHER
OFFICIAL ACTION OF THE CITY OF GAINESVILLE HAVING
THE EFFECT OF PERMITTING THE CONSTRUCTION OR
ERECTION OF ANY STRUCTURE, INCLUDING
TELECOMMUNICATION TOWERS, LOCATED IN THAT
CERTAIN AREA WITHIN THE CITY OF GAINESVILLE, AS
MORE SPECIFICALLY DEFINED IN THE ORDINANCE;
PROVIDING A PROCEDURE FOR EXTRAORDINARY
HARDSHIP; PROVIDING A SEVERABILITY CLAUSE; AND
PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, The State of Florida and City of Gainesville have found that an
airport hazard, as that term is defined and used in Chapter 333, FS, endangers the
lives and property of users of the airport and of occupants of land in its vicinity; and

WHEREAS, the State of Florida and City of Gainesville have also found that if
the obstruction effectively reduces the size of the area available for the taking off,
maneuvering, or landing of aircraft, it tends to destroy or impair the utility of the airport
and the public investment therein; and

WHEREAS, the State of Florida and City of Gainesville have further declared:

(a) That the creation or establishment of an airport hazard in airport vicinities are
public nuisances and injure the community served by the airport in question;

(b) That it is therefore necessary in the interest of the public health, public
safety, and general welfare that the creation or establishment of airport hazards be
prevented; and

1 (c) That this should be accomplished, to the extent legally possible, by the
2 exercise of the police power, without compensation; and

3 **WHEREAS**, in order to prevent the creation or establishment of airport hazards,
4 the State of Florida has authorized every political subdivision having an airport hazard
5 area within its territorial limits to adopt, administer, and enforce, under the police power
6 and in the manner and upon the conditions hereinafter prescribed, airport zoning
7 regulations for such airport hazard area; and

8 **WHEREAS**, it is the policy of the City of Gainesville, as adopted in the City of
9 Gainesville, 1991-2001 Comprehensive Plan that the City shall promote the Gainesville
10 Regional Airport as the aviation facility for Gainesville and its air service area, and
11 provide an aviation facility to meet the needs of passengers, commercial airlines, and
12 general aviation in a safe and efficient manner; and

13 **WHEREAS**, the City of Gainesville enacted an ordinance as codified in Article IV
14 of Chapter 3 of the Code of Ordinance of the City of Gainesville, known as Airport
15 Hazard Zoning; and

16 **WHEREAS**, the Florida Department of Transportation, Aviation Office, has
17 informed the Gainesville-Alachua County Regional Airport Authority ("GACRAA") and
18 the City of Gainesville that the City's Airport Hazard Zoning is not in current compliance
19 with Chapter 333, F.S.; and

20 **WHEREAS**, GACRAA, at its meeting of October 8, 1998, requested the City of
21 Gainesville to revise its Airport Hazard Zoning and to impose a moratorium during the
22 pendency of the revision to the Airport Hazard Zoning; and

1 **WHEREAS**, changes in wireless telecommunications technology, additional
2 licenses granted by the Federal Communications Commission and the increased
3 demand for telecommunications services have led to an increase in the demand by
4 carriers for locating telecommunication towers facilities within the City of Gainesville;
5 and

6 **WHEREAS**, the City Commission finds that it is essential to protect and preserve
7 the public health, welfare and safety of its citizenry and property, that it is in the City's
8 best interest, and that it is consistent with the State law for the City to study the impact
9 and effect of structures, including telecommunication towers, within the Moratorium
10 area on the utility of the Gainesville Regional Airport and on the taking off,
11 maneuvering, or landing of aircraft in order to preserve and protect the utility of the
12 airport and the public investment therein; and

13 **WHEREAS**, the City Commission finds that it is essential to protect and preserve
14 the public health, welfare and safety of its citizenry and property, that it is in the City's
15 best interest, and that it is consistent with State law for the City to amend or revise its
16 Airport Hazard Zoning Comprehensive Plan and Gainesville Code of Ordinances to
17 provide the City with reasonable assurances that the structures, including
18 telecommunication towers, located in the Moratorium area will be constructed, erected
19 and developed in a manner consistent with state law, the Comprehensive Plan, and
20 the City of Gainesville Code of Ordinances; and

21 **WHEREAS**, a legal advertisement was placed in a newspaper of general
22 circulation notifying the public of this proposed Ordinance and of the Public Hearing to
23 be held in the City Commission Meeting Chambers, First Floor, City Hall, of the City of

1 Gainesville approximately seven (7) days after the day the first legal advertisement was
2 published; and

3 **WHEREAS**, a second legal advertisement was placed in the aforesaid
4 newspaper notifying the public of the second Public Hearing to be held approximately
5 five (5) days after the day the second legal advertisement was published; and

6 **WHEREAS**, the two (2) Public Hearings were held pursuant to the published
7 notices described above at which hearing the parties in interest and all others had an
8 opportunity to be and were, in fact, heard.

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

11 **Section 1. Purpose.**

12 (a) The purpose of this Ordinance is to enable the City of Gainesville
13 sufficient time to study the impact and effect of structures, including telecommunication
14 towers, located within the Moratorium area, and to amend the Airport Hazard Zoning
15 Code, the Comprehensive Plan, and the City of Gainesville Code of Ordinances, as
16 may be necessary, to incorporate specific conditions, regulations, restrictions or
17 methods of reviewing applications for development permits for certain structures,
18 including telecommunication towers, to insure that those structures located in the
19 Moratorium area will be consistent with State law, the Comprehensive Plan and the City
20 of Gainesville Code of Ordinances. Additionally, during the aforesaid time, the City will
21 not take any action or issue any development order or take any other official action
22 which has the effect of allowing or permitting the construction or erection of certain

1 structures, including telecommunication towers, within the Moratorium area except as
2 provided in Section 4 of this Ordinance.

3 (b) It is further the purpose of this Ordinance to fulfill the City's constitutional
4 charge and statutory obligations to protect and preserve the public health, welfare and
5 safety of the citizens of the City of Gainesville, the Gainesville Regional Airport, and its
6 users, by prohibiting the issuance of development orders or any other official action that
7 permit the construction or erection of certain structures, including telecommunication
8 towers, within the Moratorium area during the temporary period described in this
9 Ordinance, and thus defer official governmental action until the City Commission has
10 studied and adopted an amendment to the Airport Zoning Hazard, Comprehensive Plan
11 and the City of Gainesville Code of Ordinances, as may be necessary

12 **Section 2. Legislative Findings of Fact.** The City Commission of the City of
13 Gainesville, Florida, finds and declares:

14 (a) That all the statements set forth in the preamble to this ordinance and
15 Section 1 of this ordinance are true and correct.

16 (b) That there exists a need to impose a temporary moratorium as set forth
17 hereinafter in order to protect the health, safety, and welfare of the citizens and
18 property of Gainesville, the users of the airport, and the utility of the Gainesville
19 Regional Airport by preserving the status quo during the period in which the City of
20 Gainesville considers amending its airport hazard zoning, Comprehensive Plan, and
21 the Gainesville Code of Ordinances, as may be necessary, with regard to the
22 placement, construction, erection and installation of certain structures including
23 telecommunication towers.

1 (c) That the City Commission of the City of Gainesville anticipates that
2 persons or entities may seek to prevent the implementation of the commission's
3 decision concerning the placement, installation, erection and construction of certain
4 structures, including telecommunication towers, by securing development permits to
5 erect new structures, including telecommunication towers, during the period the City
6 conducts a review and study of the construction, erection, installation or placement of
7 telecommunication towers in the City of Gainesville and adopts amendatory ordinances.

8 **Section 3. Definitions**

9 (a) "Airport" means the Gainesville Regional Airport.

10 (b) "Application for building permit" means an application to obtain a building
11 permit as provided in the Standard Building Code, as adopted in Chapter 6 of the Code
12 of Ordinances of the City of Gainesville, Florida.

13 (c) "Building Permit" means a permit as provided in the Standard Building
14 Code as adopted in Chapter 6 of the Code of Ordinances of the City of Gainesville.

15 (d) "Development" has the meaning given it in Section 380.04, Florida
16 Statutes (1997).

17 (e) "Development Order" means any order granting, denying, or granting with
18 conditions an application for a development permit.

19 (f) "Development permit" includes any zoning permit or approval,
20 development plan approval, special use permit, variance, building permit, or any other
21 official action of the City of Gainesville having the effect of permitting the construction,
22 erection, placement or installation of a structure, including a telecommunication tower,

1 but does not include administrative actions on any development that holds valid building
2 permits issued prior to the imposition of the Moratorium, as set forth in this ordinance.

3 (g) "Moratorium area" means all that airspace above the real property located
4 in the City of Gainesville, of greater height than an imaginary surface extending outward
5 and upward at the following slope: one foot vertical to 100 feet horizontal outward for a
6 distance of 20,000 feet from the ends and each side of all active runways at the
7 Gainesville Regional Airport.

8 (h) "Structure" has the meaning given it in Section 333.01, Florida Statutes
9 (1997).

10 **Section 4. Imposition of Moratorium**

11 (a) Commencing with the date of adoption of this Ordinance and extending
12 either: 1) for a period of 6 months and ending on May 24, 1999; or 2) with the
13 adoption of an amendment to the Airport Hazard Zoning Ordinance, as currently
14 codified in Article IV of Chapter 3 of the Code of Ordinances, the City of Gainesville
15 1991-2001 Comprehensive Plan, or the Gainesville Code of Ordinances, as may be
16 necessary, whichever date occurs sooner: No development order may be approved or
17 issued in the Moratorium Area by any Department , Board, Commission or agency of
18 the City of Gainesville which has the affect of permitting or allowing the construction,
19 erection, installation or placement of a structure, including a telecommunication tower,
20 unless an application for building permit was properly filed with the Building Department
21 of the City of Gainesville on or before 5:00 p.m. on Monday, October 26, 1998, except
22 as provided in paragraph (b) below and Section 5 of this Ordinance.

1 (b) The imposition of the moratorium is not intended to affect either the
2 processing of applications for building permits, or the issuance of building permits on
3 any structure within the Moratorium area for which an application for building permit
4 was properly and completely filed with the City of Gainesville on or before 5:00 p.m. on
5 Monday, October 26, 1998.

6 (c) During the imposition of the moratorium, the City of Gainesville will
7 continue to accept and process applications for development permits for structures
8 within the Moratorium area, (e.g., assigning application numbers and other
9 administrative aspects associated with the filing of applications) subject to ordinance
10 provisions as may be revised during the period of the moratorium.

11 **Section 5. Alleviation of Hardship**

12 (a) The City Commission of the City of Gainesville may authorize exceptions
13 to the moratorium imposed by this ordinance when it finds, based upon substantial
14 competent evidence presented to it, that the deferral of the issuance of a development
15 order for the duration of the moratorium would impose an extraordinary hardship on a
16 landowner or developer.

17 (b) A request for an exception based upon extraordinary hardship shall be
18 filed with the City Manager or designee, including a fee of \$300.00, by the landowner,
19 or the developer with the consent of the landowner, to cover processing and advertising
20 costs; shall include a recitation of the specific facts that are alleged to support the claim
21 of extraordinary hardship; and shall contain such other information as the City Manager
22 shall prescribe as necessary for the City Commission to be fully informed with respect
23 to the application.

1 (c) A public hearing on any request for an exception for extraordinary
2 hardship shall be held by the City Commission at the first regular meeting of the City
3 Commission that occurs after the expiration of the period for publication of notice of the
4 request for an exception.

5 (d) Notice of the filing of a request for an exception, and the date, time, and
6 place of the hearing thereon shall be published once at least ten (10) days prior to said
7 hearing in a newspaper of general circulation within the City limits of the City of
8 Gainesville, Florida.

9 (e) In reviewing an application for an exception based upon a claim of
10 extraordinary hardship, the City Commission shall consider the following criteria:

11 (1) The extent to which the applicant has, prior to October 26, 1998,
12 received City of Gainesville permits or approvals for the proposed development.

13 (2) The extent to which the applicant has, prior to October 26, 1998,
14 made a substantial expenditure of money or resources in reliance upon permits or other
15 approvals of the City of Gainesville directly associated with physical improvements on
16 the land, such as grading, installation of utility infrastructure or any other public
17 improvements.

18 (3) Whether the applicant, prior to October 26, 1998, has contractual
19 commitments in reliance upon permits or other approvals of the City of Gainesville to
20 complete a structure and deliver title.

21 (4) Whether the applicant, prior to October 26, 1998, has in reliance
22 upon permits or other approvals of the City of Gainesville incurred financial obligations

1 to a lending institution which, despite a thorough review of alternative solutions, the
2 applicant cannot meet unless development proceeds.

3 (5) Whether the moratorium will expose the applicant to substantial
4 monetary liability to third persons; or would leave the applicant completely unable, after
5 a thorough review of alternative solutions, to earn a reasonable investment backed
6 expectation on the property.

7 (f) At the conclusion of the Public Hearing and after reviewing the evidence
8 and testimony placed before it, the City Commission shall act upon the request either to
9 approve, deny, or approve in part and deny in part the request made by the applicant.

10 **Section 6.** If any word, phrase, clause, paragraph, section or provision of this
11 ordinance or the application thereof to any person or circumstance is held invalid or
12 unconstitutional, such finding shall not affect the other provisions or applications of the
13 ordinance which can be given effect without the valid or unconstitutional provisions or
14 application, and to this end the provisions of this ordinance are declared severable.

Section 7. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this _____ day of _____, 1998

PAULA M. DeLANEY
MAYOR

ATTEST:

**Approved as to form and
legality:**

KURT LANNON
CLERK OF THE COMMISSION

Marion J. Radson
City Attorney

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

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

MJR:afm
moratorium ordinance

