

**CITY OF GAINESVILLE**  
**Office of the City Attorney**

**MEMORANDUM**

Box No. 46

334-5011 / Fax 334-2229

**TO:** Mayor and City Commission**DATE:** November 23, 1998**FROM:** Marion J. Radson, City Attorney**CITY ATTORNEY****SECOND READING****SUBJECT:** 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.

---

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. PCR has also submitted a written opinion from their legal counsel which concludes that:

“(Thus), the proposed moratorium (as originally submitted) is invalid and constitutes a taking of PCR’s private property requiring just compensation. The City can cure this fatal defect in its proposed moratorium if it exempts from the scope of the moratorium structures that obtain a written determination from the Federal Aviation Administration that the construction does not exceed any federal obstruction standards.” (See memoranda from Keith Baucom, PCR, dated November 13, 1998 and from Ralph A. DeMeo dated November 13, 1998.)

As of the writing of this memorandum, the position of the airport authority is not known.

Prepared and Submitted by:

  
Marion J. Radson  
City Attorney

MJR/afm

Attachment

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



To: Gainesville City Commission (Fax 334-2036)  
Copy: Mr. Marian Radson, City Attorney (334-2229)

From: Keith Baucom, PCR

Subject: Proposed Moratorium Ordinance on Construction around Airport

Date: November 13, 1998

Following the Commission Meeting of Monday, November 9, 1998, a conference call was held among the representatives of the City, Mr. A. J. Roberts of the FDOT Aviation Office, and PCR representatives. The concerns of all for public safety, the need for a moratorium and the needs of PCR to respond to other regulatory pressures were restated. Mr. Roberts suggested specific language that could be put in the ordinance which could help those who had a need to obtain construction permits while allowing the City to identify and implement those things which need to be done to make any needed improvements in the City's ordinances relative to construction around the airport. This language would allow the City to meet all Federal and State requirements. The details of the conference call I will leave to City staff to provide to the Commission.

Attached is a memo prepared by PCR Counsel relative to the matter under consideration. It is offered by me to provide our attorneys' view of the matter. I had intended to ask for a few minutes of your time to meet with each of you individually to talk about how we see the situation; however, I will be out of town early next week and was unable to meet with you today, Friday, the 13<sup>th</sup>.

Thank you for your assistance in this matter. We remain eager to work with the City to resolve the remaining issues but urge that the suggestions of Mr. Roberts and those of our attorneys be considered.

Sincerely,

A handwritten signature in cursive script that reads 'Keith Baucom'.

Keith Baucom

**HOPPING GREEN SAMS & SMITH**  
PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET  
POST OFFICE BOX 6526  
TALLAHASSEE, FLORIDA 32314

(850) 222-7500

FAX (850) 224-0001

FAX (850) 425-3415

JAMES B. ALVES  
BRIAN H. BISEAU  
KATHLEEN BLIZZARD  
RICHARD S. BRIGHTMAN  
KEVIN S. COVINGTON  
PETER C. CUNNINGHAM  
RALPH A. DEMEO  
THOMAS H. DORRSE  
RANDOLPH M. GIDDINGS  
WILLIAM H. GREEN  
KIMBERLY A. GRIPPA  
WABE L. HOPPING  
GARY K. HUNTER, JR.  
JONATHAN T. JOHNSON  
ROBERT A. MANNING  
FRANK E. MATTHEWS  
RICHARD D. NELSON

ANGELA R. MORRISON  
GABRIEL B. NIETO  
GARY V. PERRO  
MICHAEL P. PEYNOVICH  
DAVID L. POWELL  
WILLIAM D. PRESTON  
CAROLYN S. RAEPPEL  
DOUGLAS S. ROBERTS  
GARY P. SAMS  
TIMOTHY C. SCHOENHALGER  
ROBERT P. SMITH  
CHERYL G. STUART  
W. STEVE SYKER  
T. KENT WETHERELL, II

OF COUNSEL  
ELIZABETH C. BOWMAN

Writer's Direct Dial No.  
(850) 425-2204

MEMORANDUM

TO: Keith Baucom, PCR, Inc.

FROM: Ralph A. DeMeo

RE: City of Gainesville Proposed Moratorium on Construction Around the Gainesville Airport

DATE: November 13, 1998

You have asked us for a legal opinion concerning the City of Gainesville's proposed moratorium on construction around the Gainesville airport. The following is a summary of applicable Florida and federal law. As set forth more fully below, it is our opinion that to the extent the City of Gainesville imposes a moratorium on the construction of structures within the proposed moratorium area which exceeds federal and Florida air navigation obstruction standards, the moratorium would be invalid and would constitute a taking of private property requiring just compensation.

The City of Gainesville has proposed adopting an ordinance to enable the City sufficient time to study the impact and effect of structures, including telecommunication towers located within the moratorium area surrounding the City of Gainesville airport. The moratorium also allows the City time to amend the Airport Hazard Zoning Code, the Comprehensive Plan, and the City of Gainesville Code of Ordinances as may be necessary concerning development permits for structures. The intent of the amendments is to ensure that those structures located in the moratorium area will be consistent with state law, the Comp plan, and the City of Gainesville Code of Ordinances. During the pending moratorium, the City will not issue any development orders which have the effect of allowing the construction of certain structures within the moratorium area.

The City has the constitutional and statutory obligation 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. However, in carrying out its responsibilities, the City of Gainesville must adopt a moratorium which does not impose an unreasonable burden on the community, including, in particular in this case, the community surrounding the City of Gainesville airport. The City must accomplish its goals in a less restrictive manner than that which is proposed in the moratorium.

PCR is located about 3500 to 4000 feet from the airport, but at a point to the side of the existing runways. PCR is not in the flight path for either existing runway. Furthermore, existing permit and structures at PCR are at a maximum height of about 76 feet. Additionally, the tree canopy around PCR is at about 80 feet, which is the average height of a pine tree.

PCR is in the process of planning building enclosures around storage tanks where contained material is subject to the requirements of the Clean Air Act, Section 112R. This and other allowed passive mitigation systems are being prepared by PCR engineers to help PCR ensure that its facilities will be the most favorable possible and most protective of the public health, safety, and welfare. None of these structures would be higher than the tree canopy or than existing permanent structures at PCR. In addition, PCR is evaluating moving some of the existing storage tanks and to install other storage tanks, none of which would exceed the height of current existing structures at PCR.

The proposed moratorium has adopted the most restrictive height limitation to define the scope of the moratorium. Except for areas that fall underneath the take-off and landing approach areas at the ends of the runways, the imaginary surface that restricts the height of structures around the airport for a distance of 10,000 feet in all directions from the nearest point on the runway under FAA regulations is a horizontal surface 150 feet above the elevation of the runway. This is the restriction that applies to structures in the vicinity of the PCR facility. No structures on the PCR property, current or planned, are more than 90 feet high. In addition, FAA regulations provide that no notice to the FAA administrator is required from a person who proposes construction or alteration of an object shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height. All the alterations and construction proposed by PCR are at or below the elevation of existing structures on the PCR property and are shielded by existing topographical features, i.e., tree cover of similar height. Furthermore, under federal regulations no notice would be required for any of the construction proposed by PCR and none of the improvements would come within 60 feet of the minimum horizontal surface height restriction applicable under FAA regulations to the PCR site. A project such as PCR's, which does not impose any hazard to air navigation, is unnecessarily and unreasonably restrained by the proposed moratorium.

Under federal and Florida law, the City of Gainesville must write its ordinance to permit PCR's existing and planned structures described above, which will not compromise air safety and navigation. The City must modify its moratorium ordinance so that PCR can proceed with its normal business, which does not anticipate construction of any structures above existing structures at about 76 feet. Such a moratorium is appropriate to assure that no inappropriate development occurs while the Commission reviews its ordinance and the applicable state and federal requirements.

The proposed moratorium should contain additional provisions allowing exceptions from the moratorium for projects that are below the horizontal surface, shielded by existing structures and/or topography and thus do not pose a hazard to air navigation. In addition, the proposed moratorium

should indicate that additional construction reasonably related to health and safety of employees and of the public, including installation of improved environmental controls, should be permitted under the moratorium.

Pursuant to the section 2(b), Art. VIII of the Florida Constitution and the Municipal Home Rule Powers Act, Chapter 166, Fla. Stat. ("the Act"), municipalities "shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law." 166.021(1) Fla. Stat. (emphasis added). Furthermore, "[i]t is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited." 166.021(4) Fla. Stat. (emphasis added).

The powers granted to municipalities under the Florida Constitution and the Act allow the City of Gainesville to enact moratoria; however, the City's proposed moratorium violates Florida and federal law. To be a valid exercise of police power a municipal ordinance must bear a rational relationship to the public health, morals, safety, aesthetics, or general welfare, must reasonably be designed to correct a condition adversely affecting the public good, and must be fairly debatable. *City of Hollywood v. Hollywood, Inc.* 432 So.2d 1332 (Fla. 4th DCA 1983). Further, a municipal ordinance that violates the constitutional rights of a property owner is discriminatory. All moratorium ordinances must serve the public health, safety, morals and general welfare. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The City of Gainesville's proposed moratorium does not bear a rational relationship to the public safety, is not reasonably designed to correct an adverse condition, and is not fairly debatable under the above law because there is no data or information to support the imposition of standards more stringent than those of the Federal Aviation Administration pertaining to air navigation obstruction standards.

In addition, the proposed moratorium would deprive PCR and other similarly situated property owners of all or substantial economic use of their private property, constituting an unconstitutional taking requiring the payment to PCR and other similarly situated property owners of just compensation. *Orlando/Orange County Expressway Authority v. W & F Agrigrowth-Fernfield, Ltd.*, 582 So.2d 790 (Fla. 5th DCA 1991); *Joint Ventures v. Dept. of Transportation*, 563 So.2d 622 (Fla. 1990).

In summary, the City of Gainesville's proposed moratorium on construction around the Gainesville Airport is drawn too broadly and places an unreasonable and illegal burden on PCR and other similarly situated property owners to the extent that it exceeds federal and Florida air navigation obstruction standards. Thus, the proposed moratorium is invalid and constitutes a taking of PCR's private property requiring just compensation. The City can cure this fatal defect in its proposed moratorium if it exempts from the scope of the moratorium structures that obtain a written determination from the Federal Aviation Administration that the construction does not exceed any federal obstruction standards. Otherwise, the proposed moratorium should be stricken or the City required to pay just compensation to PCR and other similarly situated landowners.

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

