



# MEMORANDUM

Office of the City Attorney

Legistar No. 980732

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Box 46

TO: Mayor and City Commission

DATE: June 14, 1999

SECOND READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-99-38; Petition No. 213TCH-98PB  
An ordinance of the City of Gainesville, Florida, amending the Land Development Code relating to replacement of transmitter towers; amending subsection 30-98(a)(5) to allow modified or replacement transmitter towers under certain conditions; creating and adding subsection 30-98(h) concerning abandonment of use of a nonconforming tower; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance.

At its meeting on March 8, 1999, the City Commission authorized the City Attorney to draft and the Clerk of the Commission to advertise an ordinance amending the Land Development Code to allow for reconstruction of existing transmittal towers for additional antennas up to 50 feet from their existing location. A condition is also provided that towers must be removed if their use is discontinued for nine continuous months.

NOTE: The City Commission at the first reading of the ordinance requested the Department of Community Development to send actual notice of the second reading of this ordinance to all property owners within 400 feet of existing transmitter towers that are affected by this ordinance.

Prepared by:

Patricia M. Carter  
Sr. Assistant City Attorney

Approved and  
Submitted by:

  
Marion J. Radson  
City Attorney

MJR:PMC:sw

PASSED ON FIRST READING BY A VOTE OF 3-1.

ORDINANCE NO. \_\_\_\_\_  
0-99-38

An ordinance of the City of Gainesville, Florida, amending the Land Development Code relating to replacement of transmitter towers; amending subsection 30-98(a)(5) to allow modified or replacement transmitter towers under certain conditions; creating and adding subsection 30-98(h) concerning abandonment of use of a nonconforming tower; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on November 19, 1998; and

WHEREAS, notice was given and publication made of a Public Hearing which was then held by the City Commission on March 8, 1999; and

WHEREAS, at least 10 days notice has been given prior to first reading by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

WHEREAS, the Public Hearings were held as advertised and the parties in interest and all others had an opportunity to be and were, in fact, heard;

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

Section 1. Section 30-98(a)(5) of the Land Development Code is amended to read as follows:

Sec. 30-98. **Transmitter towers; retransmission and microwave transmission towers; antennas.**

(a) *Dimensional requirements.*

(5) *Existing transmitter towers.*

1 a. An existing transmitter tower that does not conform to the minimum  
2 distance requirements in subsection (a)(1) may be replaced by a tower of the  
3 same type and height without coming into compliance with those minimum  
4 distance requirements. All other applicable requirements of this section shall  
5 apply to the replacement tower.

6 b. Modification or reconstruction of any existing transmitter tower to  
7 accommodate the co-location of one or more additional users shall be permitted.  
8 The modification or reconstruction shall not ~~change the location~~, increase the  
9 height or change the type of tower, except that any type of tower may be  
10 reconstructed as a monopole. An existing transmitter tower that is being  
11 modified or replaced to accommodate the co-location of two or more additional  
12 users may be moved within the development site. However, the modified or  
13 replacement tower shall be located as close as possible to the existing transmitter  
14 tower and in no instance shall either the modified or replacement tower be  
15 constructed at a distance greater than 50 feet from the existing transmitter tower.  
16 The base of the transmitter tower cannot be closer than 25 feet to property  
17 designated for residential use on the future land use map of the comprehensive  
18 plan. Distance shall be measured from the base of the tower.

19 c. No existing transmitter tower location shall be made nonconforming  
20 with the minimum distance requirements of subsection (a)(1) due to the  
21 modification or replacement of the existing transmitter tower. An existing  
22 transmitter tower that does not conform to the minimum distance requirements of  
23 subsection (a)(1) shall not be moved within the development site to a position  
24 closer to existing adjacent residential land as designated on the future land use

1 map of the comprehensive plan.

2 d. In all cases the existing transmitter tower shall be removed within 30  
3 days of completion of the replacement tower.

4 e. The replacement tower must comply with the airport hazard zoning  
5 regulations of the city.

6 **Section 2.** Section 30-98(h) is created and added to the Land Development Code to read as  
7 follows:

8 **Sec. 30-98. Transmitter towers; retransmission and microwave transmission towers;**  
9 **antennas.**

10 (h) Unused or abandoned towers. Any transmitter tower that does not comply with any  
11 regulation or ordinance of the City of Gainesville and that is not used for transmission or  
12 retransmission for 9 continuous months shall be considered to have lost its legal nonconforming  
13 status and must comply with section 30-346(d)(5) of this chapter concerning nonconforming  
14 uses.

15 **Section 3.** It is the intention of the City Commission that the provisions of Sections 1 through 2  
16 of this ordinance shall become and be made a part of Land Development Code of the City of  
17 Gainesville, Florida, and that the Sections and Paragraphs of this ordinance may be renumbered  
18 or relettered in order to accomplish such intentions.

19 **Section 4.** If any section, sentence, clause or phrase of this ordinance is held to be invalid or  
20 unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect  
21 the validity of the remaining portions of this ordinance.

22 **Section 5.** All ordinances or parts of ordinances in conflict herewith are to the extent of such  
23 conflict hereby repealed.

1 Section 6. This ordinance shall become effective immediately upon final adoption.

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4 PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

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PAULA M. DeLANEY  
MAYOR

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ATTEST:

Approved as to form and legality

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KURT M. LANNON  
CLERK OF THE COMMISSION

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MARION J. RADSON  
CITY ATTORNEY

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This Ordinance passed on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

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This Ordinance passed on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

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carter:ordinances:213TCH-98PB

