



MEMORANDUM

Office of the City Attorney

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TO: MAYOR AND CITY COMMISSION **DATE:** April 11, 2005
CONSENT

FROM: CITY ATTORNEY AND CITY MANAGER

SUBJECT: **Communication Towers and Wireless Facilities**
(Petition No. 170-TCH-03 PB)

Recommendation: The City Commission approve the temporary postponement of this ordinance/petition pending action in the State legislative regular session at the recommendation of the Interim City Manager and City Attorney.

In 2003, the Florida Legislature amended section 365.174, F.S., specifically subsection (11), regarding wireless services. On the auspices of enhancing the E911 service provision, in part the 2003 amendments encouraged collocation and tightened deadlines for a local government's grant or denial of applications for wireless facilities. Furthermore, with regard to local governmental regulation, consistent with federal code requirements, local governments are prohibited from requiring evidence of compliance with federal regulations.

Petition 170TCH-03 PB, regarding wireless facilities, was heard by the City Commission last March and again in June. At the March 2004 meeting, the Commission recommended approval; however, the Commission directed staff to work with the industry on outstanding issues. At the June 2004 petition hearing, the Commission approved the petition, but requested staff to further investigate what other communities do to encourage replacement of older towers; asked staff to review setbacks (claimed by the industry as excessive); and asked staff to investigate opportunities for camouflaged towers on public assembly-type buildings, even those located in residential areas.

With regard to the June Commission comments and concerns, Planning staff reports that the current Code contains replacement provisions in Sec. 30-98(5). This section remains in the pending petition and allows replacement of existing towers, even if the existing tower does not meet the minimum distance requirements, and allows the replacement of existing towers to allow for the collocation of one or more additional users. The height of the tower cannot be increased and the type of tower cannot be changed except that any type of tower may be replaced by a monopole.

On the issue of camouflage opportunities on public assembly-type structures, staff reports the tower placement in single family residential areas has not changed. Reportedly, many public

assembly facilities are in PS, ED or CON zones that would allow camouflaged facilities and are reportedly intertwined throughout the community.

Following staff's review of the June 2004 industry concerns, the Office of the City Attorney received the petition in early September 2004 for preparation of an ordinance. One goal of the City Attorney's office in drafting any ordinance (especially one that is regulated by state and federal statutes) is to ensure consistency with federal and state law. Since receiving the current City petition, the City Attorney's office has recommended changes in an attempt to reaffirm the state's collocation goals and requirements as well as making other conforming and technical changes. Planning staff and this office have also discussed the proposed ordinance with attorneys who represent the industry for the purpose of addressing their specific legal and potentially legally related policy issues. Two issues which remain outstanding to the wireless industry, and which are contained in the current City draft document, are the setback requirements and the prohibition of new wireless structures in single-family residential areas.


At this time, we recommend the proposed Ordinance (i.e., petition) be placed on a temporary hold pending current legislative activity. This is because in this legislative session a new wireless bill was filed in both the House and Senate (HB305 and SB602). The House bill was recently amended in committee with a strike-everything amendment that was reportedly agreed upon by the wireless industry, cities and counties.


The Committee Substitute for HB305 (CS/HB 305), if successful, will result in significant and preemptive changes in state law. In relevant part, CS/HB 305 will:

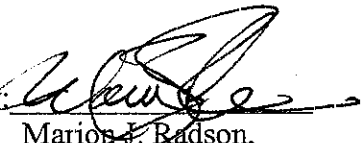
- ♦ Redefine some terms, which are also contained in the proposed draft ordinance.
- ♦ Change provisions for collocation by clarifying those provisions and dividing them into three types (collocation on existing towers, collocation on existing structures and other collocations).
- ♦ Amend governmental review requirements for evaluation of wireless facilities.
- ♦ Provide that setback and distance separation may not exceed the distance needed for structural safety or relevant aesthetic concerns.
- ♦ Allow the banning of wireless facilities in a residential area only if the provider can serve that residential area.

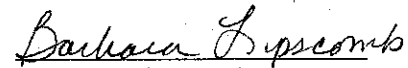
Because it appears likely that the 2005 legislation will significantly change wireless regulations statewide, the City Attorney's office will continue to monitor the bills' progress through the House and Senate. If the legislature does not adopt the pending bill, then the ordinance will be presented to the Commission for first reading. Alternatively, if the pending bill is adopted, the proposed ordinance will be revised to conform to the new state law and then presented to the Commission for first reading.

On a related note, during the public hearing process the Commission asked Planning staff specific questions regarding the review process used for the replacement tower located at Gainesville Police Department and the antennas located on the top of the water tower on 5th Avenue. Both projects were developed by Gainesville Regional Utilities and went through minor staff review.

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