



MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: May 22, 2000
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-00-55; Petition No. 34TCH-00PB
An ordinance of the City of Gainesville, Florida, amending section 30-23 to provide definitions of personal wireless services and personal wireless services antennas; creating and adding subsection 30-98(i) to allow personal wireless services antennas as an accessory use in all zoning districts and providing conditions and regulations of such antennas; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission (1) approve Petition 34TCH-00 PB, with changes, and (2) adopt the proposed ordinance.

STAFF REPORT

The increased demand for wireless technology presents opportunities and challenges concerning the siting of antennas and telecommunications towers. With the passage of the Telecommunications Act of 1996, it became clear that the development of local telecommunications infrastructure would become a high priority for local governments around the country. Growth in the personal wireless services market, including cellular telephones, personal communications systems and paging services, has caused a substantial increase in the demand for new facilities to site antennas. The construction of transmitting and receiving antennas is necessary for the effective operation of wireless services. Many of these antennas are placed on rooftops, water towers, or other relatively tall structures.

This petition would allow personal wireless service (PWS) antennas to be located on existing commercial, industrial, office, institutional or multiple-family structures of 5 or more stories with certain condition. The change would not allow PWS antennas to be mounted on single-family structures, two-family structures, or on commercial, industrial, office, institutional or multiple-family structures of less than 5 stories in height.

The Plan Board reviewed the petition and recommended approval.

Public notice was published in the Gainesville Sun on March 1, 2000. The Plan Board held a public hearing March 16, 2000. Planning Division staff recommended that the Plan Board

approve the petition. The Plan Board recommended that the City Commission approve Petition 34TCH-00 PB. Plan Board vote 4-1.

..Fiscal Note
None

CITY ATTORNEY'S MEMORANDUM

This ordinance requires two public hearings. If the Commission adopts the ordinance on first reading, the second and final reading will be held on June 12, 2000.

Prepared by: Patricia M. Carter
Patricia M. Carter,
Sr. Assistant City Attorney

Approved and
Submitted by: Marion J. Radson
Marion J. Radson,
City Attorney

MJR:PMC:sw

ORDINANCE NO. _____
0-00-55

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An ordinance of the City of Gainesville, Florida, amending section 30-23 to provide definitions of personal wireless services and personal wireless services antennas; creating and adding subsection 30-98(i) to allow personal wireless services antennas as an accessory use in all zoning districts and providing conditions and regulations of such antennas; 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 and the Code of Ordinances 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 March 16, 2000; and

WHEREAS, notice was given and publication made of a Public Hearing which was then held by the City Commission on May 22, 2000; and

WHEREAS, pursuant to law, an advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission meeting room, City Hall, City of Gainesville to be held at least 7 days after the day this first advertisement was published; and

WHEREAS, a second advertisement no less than two columns wide by 10 inches long was placed in a newspaper of general circulation notifying the public of the second Public Hearing to be held at the adoption stage at least 5 days after the day this second advertisement was published; and

1 **WHEREAS**, the Public Hearings were held pursuant to the published notice described at
2 which hearings the parties in interest and all others had an opportunity to be and were, in fact,
3 heard;

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

6 **Section 1.** The following definitions are created and added to section 30-23 of the Land
7 Development Code of the City of Gainesville.

8 **Sec. 30-23. Definitions.**

9 *Personal wireless services (PWS)* means commercial mobile services, unlicensed wireless
10 services and common carrier wireless exchange access services.

11 *Personal wireless service (PWS) antenna* means a device used for sending or receiving radio
12 signals used by personal wireless services, including the support structure used to hold the
13 antenna at a particular height.

14 **Section 2.** Subsection 30-98(i) is created and added to the Land Development Code of the City
15 of Gainesville to read as follows:

16 **Sec. 30-98. Transmitted towers; retransmission and microwave transmission towers;**
17 **antennas.**

18 (i) *Personal wireless service (PWS) facilities.*

19 (1) *General.*

20 a. PWS antennas attached to existing structures shall be permitted as
21 accessory uses in all zoning districts.

22 b. PWS antennas may be located on existing commercial, industrial, office,

1 institutional or multiple-family structures of five or more stories. PWS antennas
2 shall not be mounted on single-family structures, two-family structures, or on
3 commercial, industrial, office, institutional or multiple-family structures less than
4 five stories in height.

5 c. PWS antennas may extend a maximum of 20 feet above the roofline or the
6 highest point of the existing structure on which they are mounted.

7 d. The height of a rooftop installation shall be measured from the finish level
8 of the portion of the roof on which the antenna is mounted.

9 e. The height requirement shall not apply if the PWS antenna is incorporated
10 into a steeple, bell tower or similar architectural feature of a church, school or
11 institution; however, the incorporated antenna must not exceed the height
12 limitations prescribed in the airport zoning ordinance.

13 f. PWS antennas may not display any advertising, nor may they display any
14 signals, lights or illumination unless it is required by an applicable federal, state or
15 local statute, ordinance, rule or regulation.

16 g. The design, construction and installation of PWS antennas shall comply
17 with all applicable building codes.

18 h. PWS antennas placed on a legally non-conforming structure shall not be
19 considered an expansion of the structure. Existing PWS antennas that were
20 legally installed at the time of initial installation may be repaired, replaced and/or
21 relocated at an equal or lower height on the existing structure.

22 2. *Visual compatibility.*

1 a. PWS antennas must be placed on the structure out of public view to the
2 greatest extent possible. If this is not practical, screens or enclosures are required
3 to conceal the facility from public view in a manner that is compatible with the
4 scale, color and architectural character of the structure.

5 b. If it is necessary to place the PWS antenna in public view, it shall be
6 integrated into the structure in such a manner that it is compatible with the scale,
7 color and architectural character of the structure to the greatest extent practical.

8 c. Equipment shelters used in conjunction with PWS antennas shall be
9 located inside the existing structure or hidden from public view, or made
10 compatible with the scale, color and architectural character of the structure.

11 d. A PWS antenna shall comply with the required setbacks for the zoning
12 district in which it is located.

13 (3) Development plan approval. Development plan approval in accordance with
14 Article VII is required prior to the issuance of a building permit for all PWS antennas.

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 the Code of Ordinances 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

1 conflict hereby repealed.

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

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PASSED AND ADOPTED this _____ day of _____, 2000.

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PAULA M. DeLANEY
MAYOR

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13 **ATTEST:**

Approved as to form and legality

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KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

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19 This Ordinance passed on first reading this _____ day of _____, 2000.

20 This Ordinance passed on second reading this _____ day of _____, 2000.

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22 carter:ordinances:34TCH-00PB

STATE OF TEXAS

COUNTY OF _____

Know all men by these presents, that _____ of the County of _____ State of Texas, for and in consideration of the sum of _____ Dollars, to _____ in hand paid by _____ the receipt of which is hereby acknowledged, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said _____ of the County of _____ State of Texas, all that certain _____

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CITY
-----OF----- INTER-OFFICE COMMUNICATION
GAINESVILLE

Item No. 9

TO: City Plan Board **DATE:** 3/16/00
FROM: Planning Division Staff
SUBJECT: Petition 34TCH-00 PB, City of Gainesville. Amend the City of Gainesville Land Development Code to allow antennas on buildings over a certain height as a permitted use.

Recommendation

Planning Division staff recommends approval of Petition 34TCH-00 PB.

Explanation

The increased demand for wireless technology presents opportunities and challenges concerning the siting of antennas and telecommunications towers. With the passage of the Telecommunications Act of 1996, it became clear that the development of local telecommunications infrastructure would become a high priority for local governments around the country. Growth in the personal wireless services market, including cellular telephones, personal communications systems and paging services, has caused a substantial increase in the demand for new facilities to site antennas. The construction of transmitting and receiving antennas is necessary for the effective operation of wireless services. Many of these antennas are placed on rooftops, water towers, or other relatively tall structures.

Personal wireless services (PWS) include cellular mobile telephone service, personal communications services (PCS), other mobile radio services, and any other wireless common carrier licensed by the Federal Communications Commission (FCC). These services are classified together despite the fact that each service works with a somewhat different technology and requires a different type of antenna and transmission facility. PCS offers services that include mobile phones, pagers and voice mail. PCS service that includes computer networking and wireless Internet access will be more common. Because the PCS network is digital, it sends stronger signals and has lower power requirements, better indoor reception, fewer dropped calls, and greater privacy capabilities through the use of encryption, than do traditional cellular services.

Since this technology operates at a higher frequency, PCS antennas need to be placed closer together to provide seamless coverage. As a result PCS providers will require more sites than traditional cellular providers. The radius of PCS cells can range from one-half mile to two miles in urban areas and three to five miles in rural areas.

PWS facilities can be located on existing transmitter towers or installed on existing tall structures such as buildings, water tanks and streetlights. When this can be done, it eliminates the concern over the sighting of a new transmitter tower. This is particularly important as more households in residential areas desire wireless services. However, under the current Land Development Code regulations, some of the taller buildings in the community cannot be used for the placement of a PWS antenna facility because of the residential zoning. Most residential districts do not allow Communications businesses, such as telephone communications or beeper services, as a use. An antenna placed upon the roof of a building for the purpose of providing commercial wireless services to consumers at-large and not exclusively to residents of the building is considered a commercial communications use, and is not normally allowed in the district.

It should be noted that antennas mounted on poles that are less than 3 inches in diameter and more than 20 feet above the highest point of the roof are considered transmitter towers and are subject to the provisions of Sec. 30-98 concerning transmitter towers. The purpose of this petition is to allow antennas under 20 feet above the highest point of the roof, for the provision of wireless services on buildings and structures of a certain height, with some specific guidelines and limitations. Some of these requirements are related to visual impact since it is possible to significantly lessen the impact through careful placement of the antenna. It is possible to screen antennas and the antenna mounts through the use of panels that can be designed to blend with or complement the existing structure. Some antennas that are mounted on the sides of buildings can be made to look like part of the building or an interesting architectural detail of the building. Staff feels that it is in the best interest of the City to limit the potential impact of more transmitter towers, yet recognizes that wireless services will be in greater demand in the future. The City is supportive of the utilization of existing tall structures for the location of PWS facilities, with certain requirements, and this petition gives the City an opportunity to modify the Code in order to allow these facilities in more areas while providing regulations to reduce the visual impacts. It is also a way to record where these facilities are located. Staff recommends that Section 30-98 be amended to allow antennas on buildings and structures over a certain height as a permitted accessory use in all zoning districts.

It is also recommended that Sec. 30-23. Definitions, be amended to add language related to personal wireless service. The definition for Personal Wireless Services is directly from the Telecommunications Act of 1996.

Personal wireless services (PWS) means commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

Personal wireless service (PWS) antenna means a device used for sending or receiving radio signals used by Personal Wireless Services, including the support structure used to hold the antenna at a particular height.

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

(i) Personal wireless service facilities.

(1) General.

a. PWS antennas attached to existing structures shall be permitted as accessory uses in all zoning districts.

b. PWS antennas may be located on existing commercial, industrial, office, institutional or multiple-family structures of 5 or more stories. PWS antennas shall not be mounted on single-family structures, two-family structures, or on commercial, industrial, office, institutional or multiple-family structures of less than 5 stories in height.

c. PWS antennas may extend above the roofline or the highest point of the existing structure on which they are mounted a maximum of 20 feet.

d. The height of a rooftop installation shall be measured from the finish level of the portion of the roof on which it is mounted.

e. The height requirement shall not apply if the PWS antenna is incorporated into a steeple, bell tower, or similar architectural feature of a church, school or institution, subject to not exceeding the height limitations prescribed by the airport zoning ordinance.

f. PWS antennas shall not display any advertising nor any signals, lights or illumination unless required by any applicable federal, state or local regulation.

- g. The design, construction and installation of PWS antennas shall comply with all applicable building codes.
 - h. PWS antennas placed on a legally non-conforming structure shall not be considered an expansion of the non-conforming structure. Existing PWS antennas that were legally installed at the time of initial installation may be repaired, replaced and/or relocated at an equal or lower height on the existing structure.
- (2) Visual Compatibility
- a. PWS antennas shall be placed on the structure out of public view to the greatest extent possible. If this is not practical, screens or enclosures are required to conceal the facility from public view in a manner that is compatible with the scale, color and architectural character of the structure.
 - b. If it is necessary to place the PWS antenna in public view, it shall be integrated into the structure in a manner that is compatible with the scale, color and architectural character of the structure to the greatest extent practical.
 - c. Equipment shelters used in conjunction with PWS antennas shall be located inside the existing structure or hidden from public view, or made compatible with the scale, color and architectural character of the structure.
 - d. PWS antennas shall comply with the required setbacks of the zoning districts in which the antenna is located.
- (3) Development plan approval. Development plan approval, in accordance with Article VII, is required prior to the issuance of a building permit for all PWS antennas.

Respectfully submitted,



Ralph Hilliard
Planning Manager

RH:JS

9. **Petition 34TCH-00 PB** City of Gainesville. Amend the City of Gainesville Land Development Code to allow antennas on buildings over a certain height as a permitted use.

Mr. Jason Simmons was recognized. Mr. Simmons explained that wireless services were an increasing presence in the market place and, therefore, the need for towers. He pointed out that towers could be quite controversial because of their visual impact and cost. He explained that, as an alternative, placing an antenna on the roof of a tall building would be less costly and provide adequate height for service area needs. Mr. Simmons discussed how the Land Development Code permitted antennas at the present time and the details of the proposed changes. He presented photographs of examples of buildings with roof mounted antennas. Mr. Simmons concluded his presentation and offered to answer any questions from the board.

Dr. Fried asked who determined if a proposed antenna met aesthetic standards.

Mr. Simmons indicated that it would be staff during the development plan approval process.

Chair Guy opened the floor to public comment.

Mr. Mark Goldstein was recognized. Mr. Goldstein indicated that he agreed with staff on the proposal to locate antennas in an unobtrusive manner. He suggested that there should be a review mechanism to be sure there were no unsightly towers in or near residential areas. He asked if the proposal would be limited building top mounted antennas and not independent free standing towers.

Mr. Simmons indicated that the amendment was not intended to prohibit the attachment of an antenna onto the side of a building. He noted that there was a requirement that the antennas comply with the setbacks of the zoning district in which it was located.

Mr. Goldstein indicated that he brought up the issue because there was a difference between a tower and an antenna, and the proposed text change did not clarify that difference. He explained that a tower was designed to hold antennas. He stated that he thought it was desirable for antennas to be mounted on roof tops and tall buildings rather than towers. He cited a concern about a fifty-foot, steel lattice tripod running up the side of a building or barely attached to a building.

Mr. Simmons pointed out that the definition of antenna in the Land Development Code was specific to the sending and receiving of radio signals.

Ms. Nina Postlewaith-Saive was recognized. Ms. Postlewaith-Saive cited a concern about oversight of the process.

Chair Guy closed the floor to public comment.

Mr. Polshek agreed that it was possible that one person's decision on aesthetic design for antennas would differ from another person's, but he did not believe there was a solution to that issue. He stated that, overall, he supported the petition.

Chair Guy cited a concern about compatibility issue. He suggested that the language of the text was vague in that area. He asked who would decide "the greatest extent possible and the greatest extent practical." He indicated that he would be more supportive of a more performance based guideline. He suggested that the limit on the number of stories was not as important as the antennas being hidden from view.

There was discussion of possible guidelines for antennas.

<u>Motion By:</u> Dr. Fried	<u>Seconded By:</u> Mr. Carter
<u>Moved to:</u> Approve Petition 34TCH-00PB	<u>Upon Vote:</u> Motion Carried 4-1 Yeas: Carter, Fried, Myers, Polshek Nays: Guy