

980274

CITY OF GAINESVILLE
Office of the City Attorney

Memorandum

334-5011/Fax 334-2229

Box 46

NOVEMBER 23, 1998

TO: City Commission

DATE: ~~November 9, 1998~~

FROM: Richard R. Whidden, Jr.
Assistant City Attorney

~~---FIRST READING---~~

SECOND READING

SUBJECT: Ordinance 0-98-77, Petition 154-TCH-98-PB
An ordinance of the City of Gainesville, Florida amending Chapter 30 of the Code of Ordinances relating to the procedures and hearings on the adoption or amendments to the City of Gainesville Comprehensive Plan, the Land Development Code, including land use changes, rezonings, and other development orders; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

Recommendation: The City Commission adopt the proposed ordinance.

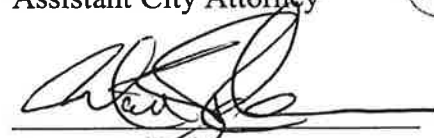
The above-referenced ordinance has been prepared pursuant to the City Commission action requesting that the City Attorney's office prepare the appropriate ordinance amending the City of Gainesville's Land Development Code.

At the City Commission meeting on September 14, 1998, the City Commission approved plan board petition 154-TCH-98-PB that amends the procedures and hearings on the adoption or amendments to the City of Gainesville Comprehensive Plan, the Land Development Code, including land use changes, rezonings, and other development orders. These changes would bring the City's adoption of land use and zoning ordinance process more in line with the State of Florida requirements under Chapters 163 and 166, Fla. Stat.

Prepared by:


Richard R. Whidden, Jr.
Assistant City Attorney

Approved and
Submitted by:


Marion J. Radson
City Attorney

ORDINANCE NO. _____

0-98-77

An ordinance of the City of Gainesville, Florida amending Chapter 30 of the Code of Ordinances relating to the procedures and hearings on the adoption or amendments to the City of Gainesville Comprehensive Plan, the Land Development Code, including land use changes, rezonings, and other development orders; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an 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 August 20, 1998; 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, a Public Hearing was held pursuant to the published notice described at which hearing 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 30-6, of the Gainesville Code of Ordinances is renumbered as Section 30-347.1 and made a part of article X Administration; and is amended to read as follows:

Article X Administration
Division 1 Hearings and Appeals

Sec. 30-347.1 6 Filing and review of petitions for changes or amendments.

(a) *Pre-application conference.* It is recommended that anyone intending to file a petition for amendments to the future land use map or zoning map atlas, or text of the comprehensive plan or this chapter, meet with the department of community development prior to filing the petition, in order to discuss the amendment and petition process. No person may rely upon any comment concerning a proposed amendment, or any expression of any nature about the proposal made by any participant, at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.

(b) *Procedures for filing and review.*

- (1) A petition for rezoning of land and changes to the future land use map may be filed by an owner thereof or by any person having a legal or equitable interest therein. If there are multiple owners, each shall be named on the petition. If an agent represents the owner(s) in this proceeding he/she shall be so authorized by affidavit from the owner(s). Petitions for subdivisions and street vacations shall be filed in accordance with Article VII.
- (2) A petition for a text amendment may be filed by any citizen or owner of land in the city.
- (3) Petitions for changes and amendments shall be filed on forms provided by the city and addressed to and filed with the department of community development. The petitions shall contain or be accompanied by all pertinent information which may be required by the city plan board for its proper consideration of the matter.
- (4) When reviewing amendments to the text of this chapter, the city plan board may receive and consider the comments and concerns of other boards serving the city commission which affect the development process, such as the development review board and the historic preservation board.
- (5) After consideration of ~~a proposal or~~ a petition for a street vacation, rezoning of land, change in the future land use map, or text amendment to the land development code or comprehensive plan the ~~city plan board~~ appropriate reviewing board shall transmit the petition and its recommendation thereon either to the city commission or the city attorney, as follows:

1 a) If either the Department of Community Development or the
2 appropriate reviewing board recommends denial of the petition, then the
3 petition will be forwarded to the City Commission for approval, denial,
4 approval with amendment, or remand to the board for further
5 consideration. If the City Commission approves the petition as submitted
6 or with amendments, then the City Attorney is authorized to prepare the
7 appropriate ordinance in accordance with law.

8
9 b) If both the Department of Community Development and the
10 appropriate reviewing board recommend approval of the petition as
11 submitted or with amendments voluntarily agreed upon by the petitioner,
12 then the petition will be forwarded to the City Attorney who is authorized
13 to prepare the appropriate ordinance in accordance with law.

14
15 (6) After consideration of a proposal for a petition for a design plat or street
16 vacation, the appropriate reviewing board shall transmit the petition and its
17 recommendation thereon to the city commission.

18
19 (7) No recommendation on a petition for a change or amendment shall be
20 made by the city plan board or development review board to the city
21 commission unless ~~and until~~ a public hearing as prescribed in this chapter
22 has been held by the city plan board or development appropriate reviewing
23 board.

24
25 (8) Proposals originated by ~~originating with~~ the city commission or initiated
26 by the city plan board shall be processed in the same manner as provided
27 for petitions in the preceding paragraphs.

28
29 (9) The quasi-judicial proceedings required by law on items regulated by this
30 Section shall be conducted by the city commission. The city commission
31 shall conduct the quasi-judicial proceeding at either consideration of the
32 plan board petition or first reading of the ordinance, as applicable. The
33 recommendations of the City's departments or other regulatory agencies
34 and the appropriate reviewing boards shall be included and become a part
35 of the record before the city commission.

36
37 **Section 2. Section 30-7, of the Gainesville Code of Ordinances is to be**
38 **renumbered as Section 30-347.2 and is amended to read as follows:**

39
40 **Sec. 30-347.2-7. Fees for petitions for changes or amendments.**

41 Fees shall be paid to the city and such payment shall be made at the time of filing
42 petitions with the department of community development in accordance with the schedule
43 set out in Appendix A (Schedule of Fees, Rates and Charges), in the Code of Ordinances
44 of the city.

Section 3. Section 30-9, of the Gainesville Code of Ordinances is renumbered as Section 30-347.3 and is amended to read as follows:

Sec. 30-~~347.3~~ 9. Basis for recommendations by city plan board on proposed changes or amendments.

(a) *Zoning ordinance changes.* In reviewing and formulating recommendations to the city commission on requested or proposed changes in the zoning ordinances that are quasi-judicial in nature, the city plan board shall consider and evaluate the changes in relation to all pertinent factors, including the following:

- (1) The character of the district and its peculiar suitability for particular uses;
- (2) Conservation of the value of buildings and encouraging the most appropriate use of land throughout the city;
- (3) The applicable portions of any current city plans and programs such as land use, trafficways, recreation, schools, neighborhoods, stormwater management and housing;
- (4) The needs of the city for land areas for specific purposes to serve population and economic activities;
- (5) Whether there have been substantial changes in the character or development of areas in or near an area under consideration for rezoning;
- (6) The goals, objectives and policies of the comprehensive plan; and
- (7) The facts, ~~and testimony~~ and reports presented to the city plan board ~~through~~ at public hearings.

(b) *Future land use map changes.* In reviewing and formulating recommendations to the city commission on requested or proposed changes to the future land use map that are quasi-judicial in nature, the city plan board shall consider and evaluate the changes in relation to all pertinent factors, including the following:

- (1) The goals, objectives and policies of the comprehensive plan.
- (2) An analysis, by community development department staff, of the need for the additional land based on the projected population of the city and the availability of property designated for the land use being requested by the petitioner.

(3) The location of the site in relation to adjacent uses and other similar uses.

(4) The potential impact of the proposed use on adopted level of service standards.

(5) The following criteria shall be used when considering the expansion and creation of additional mixed use low, medium or high intensity areas. All other nonresidential areas shall be evaluated in terms of their location to activity centers and commercial corridors.

Characteristic	Mixed Use Low Intensity	Mixed Use Medium Intensity	Mixed Use High Intensity
Minimum radius	0.5 miles	2 miles	15 miles
Maximum radius	1.25 miles	5 miles	Justified by a market study
Minimum population	2,000	20,000	150,000
Maximum population	10,000	60,000	Justified by a market study
1Percentage of market population	80%	60% or justified by	Justified by a market study market study
2Mass transit access	Not applicable	Yes	Yes

1 The percentage of the market population which must currently reside within the designated radii for the particular category, or which is projected to be accommodated over the next three (3) years using building construction permits and occupancy data.

2 As defined in the comprehensive plan.

Section 4. Section 30-10, of the Gainesville Code of Ordinances is renumbered as Section 30-347.4 and is amended to read as follows:

Sec. 30-347.4 10. Recommendation by city plan board on proposed change or amendment required; exception.

(a) The city commission shall not make comprehensive plan and zoning text amendments or changes to zoning districts boundaries and future land use map changes unless the proposed change(s) has/have been considered and a recommendation has been made by the city plan board.

(b) The city commission may, however, act on any such change or amendment without a recommendation from the city plan board if the board has not acted on the matter within forty-five (45) days of the date of the first regular meeting of the city plan board after a petition or proposal for a change or amendment has been filed with or received by the city manager or city manager's designee.

Section 5. Section 30-11, of the Gainesville Code of Ordinances is renumbered as Section 30-347.5 and is amended to read as follows:

Sec. 30-347.5 11. Enlargement of area proposed for rezoning.

In case of a petition for a change in the zoning or land use of property, the city plan board shall consider whether the area described in the original petition should be enlarged in order to reflect the interests of the city and to correspond with the goals, objectives and policies of the comprehensive plan. The city plan board shall study and recommend to the city commission such enlargement, according to the terms of this chapter, and such enlargement shall be processed as a rezoning or land use change in accordance with the procedures in section 30-6 and those for public hearings in Article X. of this chapter.

Section 6. Section 30-12, of the Gainesville Code of Ordinances is repealed.

Sec. 30-12. — Protest of change in zoning map or future land use map.

~~In order to protest a change in the zoning map atlas or future land use map to an area involving five (5) percent or less of the total land area of the city, the following procedure shall be followed. The city manager or designee shall calculate the percentage of owners of property within four hundred (400) feet of the area included in the proposed change who have signed a protest of the proposed change, and will supply this information, along with citizen comments, to the city commission. Publicly owned right of way, although included in calculating the distance of four hundred (400) feet referred to in the previous sentence, shall not be included in determining the total of the area lying within four hundred (400) feet of the property involved in the proposed change and the percentages referred to.~~

Section 7. Section 30-351, of the Gainesville Code of Ordinances is renumbered as Section 30-347.6 and is amended to read as follows:

Sec. 30-347.6 351. Withdrawal of applications; ~~notification procedures.~~

(a) Withdrawal of applications. Any application for any action provided by this chapter may be withdrawn by the applicant. However if notice has been given, the application must be withdrawn by the applicant at a public hearing, and, for purposes of refiling a land use or zoning map petition, a withdrawn application shall be limited as if it

1 were denied as prescribed in section 30-347.7 8. Fees paid shall not be refundable if any
2 expense has been incurred by the city for public notice.

3
4 **Section 8. Section 30-8, of the Gainesville Code of Ordinances is renumbered**
5 **as Section 30-347.87 and is amended to read as follows:**

6
7
8 **Sec. 30-347.7 8. Limit on petitions relating to same property as previous**
9 **petition or rezoning.**

- 10
11 (a) When the city commission has taken action to deny a petition for a land use
12 change or rezoning the city plan board shall not consider any further petition to
13 any part of the same property for a period of twelve (12) months from the date of
14 the action. If a comprehensive plan amendment is necessary for a rezoning to
15 planned development the foregoing one-year limitation may be waived by a
16 simple majority of the city commission.
- 17
18 (b) Whenever the city commission has changed the zoning or land use of property by
19 an ordinance amendment, the city plan board shall not consider any petition for
20 rezoning of any part of the same property for a period of twelve (12) months from
21 the date of the action.
- 22
23 (c) The city commission may waive the above time limitations by the affirmative vote
24 of four (4) commissioners, provided thirty (30) days have elapsed since the action
25 of the commission to deny the original request, and if the city commission deems
26 such action necessary to prevent an injustice or facilitate the proper development
27 of the city.

28
29 **Section 9. Section 30-13, of the Gainesville Code of Ordinances is**
30 **renumbered as Section 30-347.98 and is amended to read as follows:**

31
32 **Sec. 30-347.8 13. Failure of city commission to act on proposed change or**
33 **amendment.**

34
35 If a petition or recommendation for a change or amendment is not acted upon finally by
36 the city commission within six (6) months of the date upon which the report of the city
37 plan board is filed with the city commission, the petition shall be deemed denied without
38 prejudice. However, no petition shall be deemed denied if the city commission has
39 continued its consideration to a date certain, or has stayed action on the petition by
40 enactment of a moratorium ordinance.

41
42 **Section 10. Section 30-348, of the Gainesville Code of Ordinances is hereby**
43 **amended to read as follows:**

1
2 Sec. 30-348. Quasi-judicial Administrative hearings proceedings by appointed boards.

3
4 —~~Each A~~ quasi-judicial administrative hearing proceeding shall conform to the
5 following procedures, as ~~supplemented~~ required by law, rule or decision. All
6 Development orders that are quasi-judicial in nature, including, but not limited to, the
7 consideration of development plans ~~review~~, subdivision plats ~~review~~, street vacations
8 ~~vacaneies~~, special use permits ~~review~~, certificates of appropriateness and variances
9 (hereinafter "development orders") ~~hearings and other administrative actions~~ shall be
10 considered quasi-judicial administrative hearings proceedings.
11

12 (1) Burden and nature of proof. ~~The applicant for any development permit must prove~~
13 ~~by a preponderance of the evidence that the proposal satisfies the applicable requirements~~
14 ~~and standards of this chapter, the comprehensive plan, and other federal, state, and~~
15 ~~regional laws and regulations as applicable.~~

16
17 The burden of proof shall be as required by law.

18
19 (2) ~~Order of proceedings~~ Rules of Procedure.

20
21 —a.—~~The development review board or other appropriate board shall by rule or by-~~
22 ~~laws adopt procedures for the conduct of quasi-judicial proceedings. These procedural~~
23 ~~rules shall be subject to review and approval of the City Commission. :~~

24
25 (3) Record

26
27 The record of the quasi-judicial proceeding shall contain the following:

28 1. The reports and recommendations of the City's departments or other
29 regulatory agencies;

30 2. The reports and recommendations of the appropriate governmental
31 reviewing boards.

32 3. Physical evidence and exhibits admitted into evidence at the quasi-judicial
33 proceeding; and

34 4. Such other documentation and competent substantial evidence including
35 testimony deemed appropriate by the reviewing body at the quasi-judicial proceeding.

36
37 ~~1. Determine whether it has jurisdiction over the application.~~

38
39 ~~2. Determine whether any member must abstain or is disqualified.~~

40
41 ~~b. The board may take official notice of known information related to the issue,~~
42 ~~including:~~
43

1 ~~1. Federal, state and regional law and applicable ordinances, resolutions,~~
2 ~~rules and official policies of the city.~~

3
4 ~~2. Other public records and facts judicially noticeable by law.~~

5
6 ~~c. Matters officially noticed need not be established by evidence and are binding~~
7 ~~to the extent that they are relevant and material. Requests that official notice be taken~~
8 ~~shall be made on the record and an opportunity for rebuttal shall be given to opposing~~
9 ~~parties. The board may take notice without prompting or suggestion of matters listed in~~
10 ~~subsection (2)b. of this section and shall state all matters officially noticed for the record.~~

11
12 ~~d. Board members may individually view the site of the proposed development~~
13 ~~with or without notification to the parties, but, after the visit, shall place the time, manner~~
14 ~~and circumstances of the view in the record.~~

15
16 ~~e. Staff, the developer, and interested persons may present information. Unless~~
17 ~~the board specifies otherwise, a question from an interested person must be directed to the~~
18 ~~board, which will then direct the question to the person submitting testimony.~~

19
20 ~~f. Before the hearing has concluded, the board shall restate the issues and~~
21 ~~comment upon the law and facts pertaining to the decision, and if opportunity for~~
22 ~~rebuttals is provided, may ask additional questions of any person who has testified or~~
23 ~~presented information.~~

24 ~~(3) Findings and order. Unless otherwise stated in this chapter or the board and the~~
25 ~~developer agree to an extension, the board shall, within ten (10) working days of the~~
26 ~~hearing, prepare an order including:~~

27 ~~a. A statement of the applicable criteria and standards against which the proposal~~
28 ~~was tested.~~

29 ~~b. Findings of facts which established compliance or noncompliance with the~~
30 ~~applicable criteria and standards, regulations of this chapter, the comprehensive plan, and~~
31 ~~other federal, state and regional laws and regulations as applicable.~~

32
33 ~~c. The reasons for a conclusion to approve, conditionally approve, deny or make~~
34 ~~other decisions permitted by this chapter.~~

35
36 ~~(4) Record of proceedings.~~

37
38 ~~a. All proceedings shall be recorded stenographically or electronically and shall~~
39 ~~be transcribed if required for review or if ordered by the board.~~

40
41 ~~b. The board shall, where practicable, include in the hearing record each item of~~
42 ~~physical or documentary evidence presented and shall mark each item to show the~~
43 ~~identity of the person who presented it. Each exhibit received into evidence shall be~~
44 ~~retained in the hearing file until after the applicable appeal period has expired, when it~~

1 may be returned to the person identified thereon, or otherwise disposed of in accordance
2 with state law.

3
4 ~~—— c. The findings and order shall be included in the record.~~

5
6 **Section 11. Section 30-349, of the Gainesville Code of Ordinances is amended**
7 **to read as follows:**

8
9 Sec. 30-349. Legislative hearings matters.

10
11 Any map comprehensive rezoning of the City, change in land use, text amendment to
12 the comprehensive plan or this chapter or any other matter deemed legislative in nature
13 shall be considered a legislative ~~hearing or other matters deemed legislative by law~~
14 matter. A change in land use shall not include small scale development activities as
15 defined in Chapter 163, Florida Statutes. Each legislative hearing shall conform to the
16 following requirements:

17
18 (1) Notice. Notice that complies with the requirements of state law shall be given ~~and~~
19 as otherwise prescribed in this chapter.

20
21 (2) Conduct of hearing. The public hearing shall at as a minimum:

- 22
23 a. Comply with the requirements of state law.
24
25 b. Present the department's analysis of the proposed decision.
26 c. Present the department's summary of reports by other agencies.
27 d. Permit any person to submit ~~written recommendations and comments~~
28 documents before or during the hearing, as provided by rule or order.
29 e. Permit a reasonable opportunity for interested persons to make oral
30 statements, as provided by rule or order.

31
32 **Section 12. Section 30-350, of the Gainesville Code of Ordinances is**
33 **renumbered as Section 30-352.1 and is amended to read as follows:**

34
35 Sec. 30-350 2.1. Appeals from Development Review Board.

36
37 (a) Development Plan Appeals. ~~from decisions of development review board.~~ A
38 developer may appeal a final development order ~~the decision on a development plan by~~
39 the development review board reached at the conclusion of an administrative hearing to a
40 the hearing officer by filing a notice of appeal with the department of community
41 development within fifteen (15) working days of the final development order decision.

42
43 (1) Application for appeal. The application for appeal shall contain at minimum the
44 following items, plus any additional items required in specific sections of this chapter:

- a. A statement of the decision to be reviewed, and the date of the decision.
- b. A statement of the interest of the person seeking review.
- c. The specific error alleged as the grounds of the appeal.

(2) Stay during appeal. An appeal shall stay all proceedings in furtherance of the action appealed from until the findings of the hearing officer are rendered and any required action is taken by the original decision-maker.

(3) Appellate hearing. Unless otherwise indicated in this chapter, within forty-five (45) days of an appeal being filed, the hearing officer assigned to hear the appeal shall conduct a hearing open to the public in compliance with the following procedures as supplemented where necessary:

a. Scope of review.

1. The hearing officer's review shall be limited to the record and applicable law.

2. The hearing officer shall have the authority to review questions of law only, including interpretations of this chapter, and any rules and regulations implementing this chapter. For this purpose, an allegation that a decision of the decision-maker is not supported by competent substantial evidence in the record as a whole is deemed to be a question of law. The hearing officer may not reweigh the evidence but must decide only whether competent substantial evidence supports the decision under review.

b. Authority of hearing officer. A hearing officer shall have the authority:

1. To request briefs to be filed on behalf of any party and prescribe filing and service requirements.

2. To hear oral argument on behalf of any party.

3. To adjourn, continue or grant extensions of time for compliance with these rules, either on his/her own motion or upon application of the party, provided no requirement of law is violated.

4. To dispose of procedural requests or similar matters, including motions to amend and motions to consolidate.

5. To keep a record of all persons requesting notice of the decision in each case.

1
2 c. Improper influence.
3

4 1. No person who is party, nor a person who is reasonably likely to become a
5 party in the near future, nor anyone appearing on behalf of a party, shall communicate ex
6 parte, i.e., outside a hearing, with a hearing officer concerning any application, pending or
7 proposed; provided, however, a hearing officer may consider requests regarding
8 scheduling of hearings when made in writing.
9

10 2. A person who accepts an appointment as a hearing officer is, for a period
11 of two (2) years from the date of termination as a hearing officer, hereby expressly
12 prohibited from acting as agent or attorney in any proceeding, application or other matter
13 before any commission, board, agent or office of city government, involving property
14 which was the subject of an application which was pending before that person during the
15 person's term as a hearing officer.
16

17 3. A hearing officer shall neither initiate nor consider ex parte, i.e., outside a
18 hearing, communications concerning a pending or impending proceeding. A hearing
19 officer, however, may obtain the advice of a disinterested expert on law, planning or other
20 subject applicable to a proceeding before him/her if he/she gives notice to the parties of
21 the person consulted and the substance of the advice, and affords the parties reasonable
22 opportunity to respond. Costs and expenses of any expert shall be borne by the party
23 appealing the decision.
24

25 d. Decision of hearing officer and final action.
26

27 1. The hearing officer must affirm each contested decision or find it to be an
28 incorrect interpretation of law or not supported by competent substantial evidence. The
29 hearing officer shall prepare a written opinion stating the legal basis for each ruling. The
30 hearing officer shall submit the opinion to the department, which shall distribute it to the
31 decision-maker and the parties.
32

33 2. When the hearing officer affirms a contested decision pertaining to a final
34 action of a decision-maker, that action shall be deemed to be the final action of the
35 decision-maker and shall be subjected to no further review under this article.
36

37 3. When the hearing officer finds any decision to be an incorrect
38 interpretation of law or not supported by competent substantial evidence, that decision
39 shall be referred back to the decision-maker for reconsideration in light of the hearing
40 officer's opinion. The decision-maker shall reconsider its decision based solely on the
41 record and the opinion of the hearing officer. If the decision-maker reaffirms the original
42 decision, it shall be deemed to be the final action of the decision-maker and shall be
43 submitted to no further review under this article.
44

1 e. Custody of books and papers. The department of community development
2 shall be the custodian of all documents, including the application, the hearing officer's
3 decision, and the record of the proceedings.

4
5 ~~—(b) Appeals to board of adjustment. Appeals to the board of adjustment shall be~~
6 ~~conducted according to the provisions of section 30-354.~~

7
8 ~~—(c) Other appeals. Other appeals shall be conducted in accordance with the specific~~
9 ~~requirements of this chapter.~~

10
11 ~~(db) Judicial review. Any final order determination of the board~~ may be appealed to
12 the appropriate court within thirty (30) days of the ~~decision order~~ by an action in the
13 nature of a writ of certiorari.

14
15 **Section 13. Section 30-351, of the Gainesville Code of Ordinances is amended**
16 **to read as follows:**

17
18 Sec. 30-351. ~~Withdrawal of applications;~~ Notification procedures for petitions.

19
20 (a) Notice by newspaper. Unless otherwise provided by law, notice of a hearing
21 pursuant to this Division shall be provided in the legal notice section of a newspaper of
22 general circulation in Alachua County. ~~Withdrawal of applications. Any application for~~
23 ~~any action provided by this chapter may be withdrawn by the applicant. However if notice~~
24 ~~has been given, the application must be withdrawn by the applicant at a public hearing,~~
25 ~~and, for purposes of refiling a land use or zoning map petition, a withdrawn application~~
26 ~~shall be limited as if it were denied as prescribed in section 30-8. Fees paid shall not be~~
27 ~~refundable if any expense has been incurred by the city for public notice.~~

28
29 (b) Notice by mail. Unless otherwise provided by law, ~~regulation or decision,~~
30 addresses for a mailed notice required by this chapter shall be obtained from the latest ad
31 valorem tax records provided by ~~of the county property appraiser.~~ The failure of any
32 person to receive notice shall not invalidate an action if a good faith attempt was made to
33 comply with the notice requirements of this article.

34
35 (c) ~~Notice of hearings on proceedings on petitions before the city plan board and city~~
36 commission petitions before city plan board and city commission.

37
38 (1) ~~Text Adoption or amendments of~~ to the comprehensive plan or land
39 development code.

40
41 a. Notice of ~~hearings~~ proceedings before the city plan board and city commission
42 which amend the comprehensive plan or element or portion thereof or this chapter, ~~(not~~
43 including amendments to the actual list of permitted or conditional uses, as provided in
44 sub-paragraph (3) below) shall be published in a newspaper of general circulation in the

city at least fifteen (15) days prior to the date of the hearings. The notice shall specify the time and place of hearings and a general description of the matters to be considered at the hearings.

b. If the petition is filed by a private person or entity, the petitioners shall be given notice of the hearings by letter addressed to the petitioner at the address given in the petition and mailed at least fifteen (15) days prior to the date of the hearings.

(2) Zoning and land use map designation amendments. Rezoning and changes in land use categories.

a. Less than five (5) percent or more of the total land area of the city: Notice of hearing in which the petition changes the actual zoning and land use map designation for a parcel or parcels of land less than five (5) percent of the total land area of the city, the City shall mail each real property owner whose land will be redesignated and all owners of property within four hundred (400) feet of the land affected by the petition shall be given a notice of the hearing by mail as required by law. Changes involving less than five percent of total land area of city. If a proposed rezoning, or amendment to change a land use category, involves less than five (5) percent of the total land area of the city, all owners of property whose land will be affected and all owners of property within four hundred (400) feet of the land affected by the petition shall be given notice of the hearings by mail. The notice shall be mailed at least fifteen (15) days prior to the date of the hearings. For the purpose of this notification, an owner of property shall be deemed to be the person who, with his/her address, is shown on the most recent tax rolls of the county property appraiser. If any of the land within four hundred (400) feet is part of any common element of a condominium, notice shall be sent to all owner(s) of such common element as shown on the latest tax rolls.

b. Five (5) percent or more of the total land area of the city: Notice of hearing in which the petition changes the actual zoning and land use map designation for a parcel or parcels of land involving five (5) percent of the total land area of the city or more. Changes involving five (5) percent or more of total land area of city. If a proposed rezoning, or amendment to change a land use category involves five (5) percent or more of the total land of the city, all owners of property whose land will be affected by the petition shall be given notice of the hearings as required by law, by publication of a one-fourth page advertisement in a newspaper of general circulation. The notice shall appear in the newspaper at least fifteen (15) days prior to the date of the hearings.

(3) Amendment Changes to the list of in permitted use categories allowed by the zoning or land use.

a. Changes involving less than five (5) percent of total land area of city. If a change in a permitted use category involves less than five (5) percent of the total land

1 area of the city, all owners of property whose land will be affected by the petition shall be
2 given notice of the hearings by mail. The notice shall be mailed at least fifteen (15) days
3 prior to the date of the hearings. For the purpose of this notification, an owner of property
4 shall be deemed to be the person who, with his/her address, is shown on the most recent
5 tax rolls of the county property appraiser.

6
7 b. Changes involving five (5) percent or more of total land area of city. If a
8 change in a permitted use category involves five (5) percent or more of the total land of
9 the city, all owners of property whose land will be affected by the petition shall be given
10 notice of the hearings by a one-fourth-page advertisement in a newspaper of general
11 circulation. The notice shall appear in the newspaper at least fifteen (15) days prior to the
12 date of the hearings.

13
14 (d) Notice of development plan review.

15
16 (1) ~~Contents.~~ Notice of development plan review shall include:

17
18 a. Concept review;

19
20 b. Preliminary plan and final review for intermediate and major
21 development plans; and

22
23 ~~e. Preliminary and final review for major development plans.~~

24
25 (2) Mailed notice. Notice shall be mailed by the department to the owner of the
26 subject property, and the agent, if applicable, and all persons who, according to the ~~most~~
27 ~~recent~~ latest tax rolls provided to the city by the county property appraiser, own property
28 within four hundred (400) feet of the property proposed for development. The notice shall
29 be mailed at least fifteen (15) days before the hearing date.

30
31 (e) Posted notice. The property under consideration for a land use or zoning map
32 change, street vacation or development plan review shall also have a sign posted at least
33 fifteen (15) days prior to the hearing date. The sign shall specify that the property is under
34 consideration for ~~development plan~~ review and specify the time, date and place of the
35 public hearing.

36
37 ~~—(e) Notice requirements for adoption of ordinances.~~

38
39 ~~—(1) Rezoning.~~ In addition to the requirements of F.S. § 166.041, ordinances which
40 ~~rezone specific parcels of private real property shall be enacted pursuant to the following~~
41 ~~procedures:~~

42
43 ~~—a. Ordinances initiated by a petitioner which rezone specific parcels of private~~
44 ~~real property shall be noticed once in a newspaper of general circulation in the city at~~

1 least ten (10) days prior to the first advertised public hearing of the ordinance.
2 Additionally, the petitioner shall be given notice by U.S. mail at least ten (10) days prior
3 to the first advertised public hearing.

4
5 — b. — Ordinances initiated by the city which rezone specific parcels of private real
6 property shall be enacted pursuant to the procedures provided in F.S. § 166. 041(3)(c).

7
8 — (2) — Amendments to land development code. Ordinances initiated by the city or a
9 petitioner which change the text of this chapter, except ordinances which substantially
10 change permitted use categories in zoning districts, shall be noticed once in a newspaper
11 of general circulation in the city at least ten (10) days prior to the first advertised public
12 hearing of the ordinance. Additionally, the petitioner, if other than the city, shall be given
13 notice by U.S. mail at least ten (10) days prior to the first advertised public hearing.

14
15 — (3) — Changes in permitted use categories in zoning districts. Ordinances initiated by
16 the city or a petitioner which substantially change permitted use categories in zoning
17 districts shall be enacted pursuant to the procedures provided in F.S. § 166.041(3)(c).

18
19 — (4) — Comprehensive plan amendments. Ordinances which adopt or amend the
20 comprehensive plan or element, or any plan or plan amendment which changes the
21 permitted uses of land or changes land use categories, shall be enacted pursuant to the
22 procedures provided in F.S. Ch. 163, as applicable.

23
24 **Section 14. Section 30-351.1, of the Gainesville Code of Ordinances hereby**
25 **created to read as follows:**

26
27
28 **30-351.1 Notice requirements for adoption of ordinances.**

29
30 Notice of ordinances that implement petitions shall be provided as required by law.

31
32 **Section 15.** It is the intention of the City Commission that the provisions of Sections
33 1-14 of this ordinance shall become and be made a part of the Code of Ordinances of the
34 City of Gainesville, Florida and that the Sections and Paragraphs of this Ordinance may
35 be renumbered or relettered in order to accomplish such intentions.

1 **Section 16.** If any section, sentence, clause or phrase of this ordinance is held to be
2 invalid or unconstitutional by any court or competent jurisdiction, then said holding in no
3 way affects the validity of the remaining portions of this ordinance.

4 **Section 17.** This ordinance shall become effective immediately upon final
5 adoption.
6

7
8 **PASSED AND ADOPTED** this ____ day of _____, 1998
9

10
11
12 _____
13 PAULA M. DELANEY
14 MAYOR

15
16 ATTESTED BY: _____

17
18 KURT M. LANNON
19 CLERK OF THE COMMISSION
20

21 APPROVED AS TO FORM AND
22 LEGALITY:
23 MARION J. RADSON
24 CITY ATTORNEY

21 This Ordinance passed on first reading this ____ day of _____, 1998.

22
23 This Ordinance passed on second reading this ____ day of _____, 1998.
24