

ORDINANCE NO. 98-1

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA, IMPLEMENTING A TEMPORARY ABEYANCE OF TELECOMMUNICATION TOWER FINAL PERMITTING AND FINAL ZONING HEARINGS FOR ANY TELECOMMUNICATION TOWER APPLICATION NOT HAVING BEEN OFFICIALLY FILED WITH THE COUNTY ON OR BEFORE NOVEMBER 24, 1997; SAID TEMPORARY ABEYANCE PERTAINING TO THIS ORDINANCE TO CEASE ON FEBRUARY 28, 1998; PROVIDING GEOGRAPHIC APPLICATION; PROVIDING FINDING OF FACTS; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the federal Telecommunications Act of 1996 (hereinafter the "Act") was designed to remove regulatory barriers and encourage competition among all types of communications companies; and

WHEREAS, the Act ratifies the authority of local government to regulate telecommunications services and carriers, but also limits local governments' authority in certain respects; and

WHEREAS, the Act allows the Federal Communications Commission (hereinafter the "FCC") to preempt any local governmental regulation which prohibits, or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications services; and

WHEREAS, the County needs to review its ordinance sections pertaining to Telecommunication Towers in a comprehensive fashion to determine whether or not its existing regulations are consistent with the Act as implemented by FCC rules and proposed rules, and interpreted by State and federal courts, and to adopt new and amended Telecommunication Tower regulations in order to more adequately protect the public welfare of County citizens; and

WHEREAS, a recent influx of Telecommunication Towers has greatly escalated the number of towers in the County; and

WHEREAS, in the last three months there have been an unprecedented number of Telecommunication Tower applications within the County; and

WHEREAS, all or virtually all of recent tower building has been in the form of Telecommunication Towers, but other towers not primarily intended for that purpose also cause public concern; and

WHEREAS, numerous members of the public have recently expressed concern that existing regulations pertaining to Telecommunication Towers are not adequate to protect the public good;

and

WHEREAS, there are technological alternatives to Telecommunication Towers for the transmission of telecommunication signals; and

WHEREAS, the County is endeavoring to contract for the services of a radio frequency (hereinafter "RF") engineer to facilitate County planning and regulation of Telecommunication Towers; and

WHEREAS, a limited term abeyance of Telecommunication Tower final permitting and final zoning hearings for any Telecommunication Tower applications, while still conducting processing of any such applications, and gathering information to adequately plan and regulate, constitute a necessary and bona fide effort to act carefully in a field with rapidly changing technology and jurisprudence; and

WHEREAS, St. Johns County is known nationally and internationally as a desirable tourist location, and is the locale of numerous recognized historical sites which may be adversely affected by proliferation of Telecommunication Towers; and

WHEREAS, the unnecessary permitting of Telecommunication Towers in excess of minimum requirements creates visual clutter which detracts from the public good and the County's tourism attractions; and

WHEREAS, prior to November 25, 1997, the County has not previously implemented any formal abeyance of tower permitting in response to the Act; and

WHEREAS, the Board of County Commissioners of St. Johns County passed and enacted an emergency ordinance on December 9, 1997 pertaining to an abeyance of Telecommunication Towers, but wishes to provide ample public notice and opportunity for public hearing for said abeyance policy.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of St. Johns County, Florida as follows:

Section 1. Definitions. For the purposes of this Ordinance, the following definitions shall apply:

- (1) "Act" means the federal Telecommunications Act of 1996.
- (2) "Board" means the Board of County Commissioners of St. Johns County, Florida.
- (3) "County" means St. Johns County, Florida.

(4) "Permit" means any building permit, zoning permit, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

(5) "Telecommunications Tower" or "Communication Tower" means any tower including but not limited to: any tower, pole, platform, pedestal, or other similar structure, and its attendant antennas, electronics and other appurtenances, used or to be used to transmit, receive, distribute, provide or offer telecommunications or broadcast services. Telecommunication Towers shall not include towers used solely as amateur radio antennas as described in Section 125.561, Florida Statutes. Any structure not greater than 35 feet in height from ground level shall be deemed not a Telecommunications Tower under this Ordinance.

Section 2. Findings: All the Whereas clauses above are incorporated herein by reference and duly made findings of this Board.

Section 3. Purpose. The purpose of this abeyance is to allow the County adequate time to comprehensively study the Act, recent legal opinions, rules and proposed rules concerning the Act that have been promulgated since St. Johns County adopted its present regulations on Telecommunication Towers, and to determine whether the County's existing ordinances and codes are consistent with the Act as implemented and interpreted, and develop new ordinances to amend inconsistencies and/or cover situations not addressed by existing regulations.

Section 4. Abeyance Implemented. The Board hereby implements a temporary abeyance on Telecommunication Tower final Permitting and final zoning hearings for any Telecommunication Tower application not having been officially filed with the County on or before November 24, 1997. Any other provision of this Ordinance notwithstanding, there shall be no abeyance of the location or collocation of antennas, electronics, or other related appurtenances on any currently existing tower or structure, or any Telecommunication Tower given final approval as provided by this Ordinance.

Section 5. Duration of abeyance. The temporary abeyance pertaining to this ordinance is to cease on February 28, 1998.

Section 6. Geographic limits of abeyance. This abeyance shall apply to any unincorporated portion of St. Johns County, Florida where it is lawful for the Board to regulate towers.

Section 7. Nothing in this Ordinance shall be deemed to prohibit towers for government use such as fire, law enforcement, forest management, public works, or other bona fide governmental purposes. Nothing in this Ordinance shall prohibit County staff from processing Telecommunication Tower applications up to, but not including, final permitting and final zoning hearings.

Section 8. Public Purpose. The Board hereby declares that an urgent public purpose exists necessitating that this Ordinance be enacted. Numerous members of the public have recently

complained that existing regulations pertaining to Telecommunication Towers are not adequate to protect the public good. In the last three months there have been an unprecedented number of Telecommunication Tower applications within the County. The Board has a limited planning staff and the Planning Department has recently experienced a change in the position of Planning Director. The Board finds that the task of implementing Telecommunication Tower regulations that sufficiently protect the public good, and are compliant with federal and state law is very staff intensive. Furthermore, after determining that County staff does not have the resident expertise to advise the Board on RF issues relating to Telecommunication Tower siting and usage, County staff has been directed to contract with an RF engineer, but has not yet had an opportunity to complete such a contract procedure. Therefore, a temporary abeyance as described in this Ordinance is a necessary and proper action to enable the staff to properly fulfill its duty to protect the public. Without an immediate abeyance on the approval of permit and zoning Telecommunication Tower applications, a significant risk exists that further Telecommunication Tower permit and zoning approvals within the County could occur that harm the public welfare.

Section 9. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 10. Effective Date. This Ordinance shall take effect immediately upon filing with the Florida Department of State.

PASSED AND ENACTED by the Board of County Commissioners of St. Johns County, State of Florida, this 6th day of January, 1998.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: Moses A. Floyd
Moses A. Floyd, Chairman


ATTEST: CHERYL STRICKLAND, CLERK

By: Cheryl Strickland
Clerk

Effective Date: January 8, 1998

COPY OF ADVERTISEMENT

The St. Augustine Record

PUBLISHED EVERY AFTERNOON MONDAY THROUGH FRIDAY, SATURDAY AND SUNDAY MORNING
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared _____

Sandra D. Oliver who on oath says that she is

Accounting Clerk of the St. Augustine Record, a

daily newspaper published at St. Augustine in St. Johns County, Florida:

that the attached copy of advertisement, being a _____

Display Ad

in the matter of Notice of Public Hearing

in the _____ Court, was published in said newspaper in the

issues of Dec 16, 1997

Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in said St. Johns County, Florida, and that the said newspaper heretofore been continuously published in said St. Johns County, Florida, each day and has been entered as second class mail matter at the post office in the City of St. Augustine, in said St. Johns County, Florida, for a period of one year next preceding the first publication of the copy of advertisement; and affiant further says that she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing the advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 17 day of Dec, 1997,

by Sandra D. Oliver who is personally

known to me or who has produced _____ as

identification. (Type of Identification)



Zoe Ann Moss
MY COMMISSION # CC641814 EXPIRES
August 22, 2001
BONDED THRU TROY FAIN INSURANCE, INC.

Zoe Ann Moss
(Signature of Notary Public)
Zoe Ann Moss

(Seal)

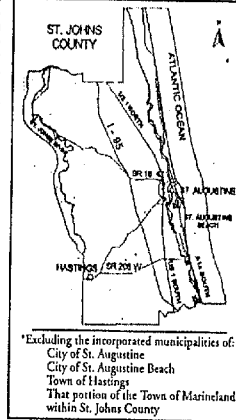
(Print, Type or Stamp Commissioned Name of Notary Public)

**NOTICE OF PUBLIC HEARINGS OF THE
ST. JOHNS COUNTY BOARD OF
COUNTY COMMISSIONERS ON
ESTABLISHMENT OR CHANGE OF A
REGULATION AFFECTING THE
USE OF LAND**

NOTICE IS HEREBY GIVEN that the Board of County Commissioners of St. Johns County, Florida, at special meetings on Tuesday, December 23, 1997 at 9:00 a.m. and on Tuesday, January 6, 1998 at 5:30 P.M., in the County Auditorium at the County Administrative Complex, 4020 Lewis Speedway (County Road 16-A and U.S. #1 North), St. Augustine, Florida, will hold public hearings to consider passage of the following ordinance.

ORDINANCE NO. 97-

AN ORDINANCE OF ST. JOHNS COUNTY, FLORIDA, IMPLEMENTING A TEMPORARY ABEYANCE OF TELECOMMUNICATION TOWER FINAL PERMITTING AND FINAL ZONING HEARINGS FOR (1) ANY TELECOMMUNICATION TOWER APPLICATION FOR A TOWER THAT IS PLANNED TO BE BUILT WITHIN 600 FEET OF THE SECTIONS OF STATE ROAD 13 AND COUNTY ROAD 13 IN ST. JOHNS COUNTY THAT ARE DESIGNATED AS THE WILLIAM BARTRAM SCENIC HIGHWAY, OR THE SECTION OF STATE ROAD A1A IN ST. JOHNS COUNTY, OR THE SECTION OF INTERNATIONAL GOLF PARKWAY DESIGNATED AS A SCENIC HIGHWAY; AND (2) ANY TELECOMMUNICATION TOWER APPLICATION NOT HAVING BEEN OFFICIALLY FILED WITH THE COUNTY ON OR BEFORE NOVEMBER 24, 1997; SAID TEMPORARY ABEYANCE PERTAINING TO THIS ORDINANCE TO CEASE FOR PART (1) WHEN ANY SUBSEQUENT ORDINANCE PERTAINING TO TELECOMMUNICATION TOWERS ALONG SCENIC HIGHWAYS IS PASSED, ENACTED AND BECOMES EFFECTIVE, AND TO CEASE FOR PART (2) ON FEBRUARY 28, 1998; PROVIDING GEOGRAPHIC APPLICATION; PROVIDING FINDING OF FACTS; PROVIDING DEFINITIONS; AND PROVIDING AN EFFECTIVE DATE.



The proposed ordinance is on file in the office of the Clerk of the Board of County Commissioners at the St. Johns County Administration complex, 4020 Lewis Speedway (CR 16A and U.S. #1), St. Augustine, Florida, and may be examined by parties interested prior to the said public hearings. Please take note that the ordinance is subject to revision prior to the hearings, or adoption of the ordinance. All parties having any interest in said ordinance will be afforded an opportunity to be heard at the public hearings. If a person decides to appeal any decision made with respect to any matter considered at these hearings, he/she will need a record of the proceeding, and for such purposes he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based.

NOTICE TO PERSONS NEEDING SPECIAL ACCOMMODATIONS AND TO ALL HEARING IMPAIRED PERSONS: In accordance with the Americans with Disabilities Act, persons needing a special accommodation or an interpreter to participate in these proceeding should contact ADA Coordinator, at (904) 823-2501 or at the County Administration Building, 4020 Lewis Speedway, St. Augustine, Florida 32095. For hearing impaired individuals: Telecommunication Device for the Deaf (TDD): 823-2501 or Florida Relay Service 1-800-955-8770, no later than 5 days prior to the dates of these hearings.

**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA
CHERYL STRICKLAND, ITS CLERK
By: Irma Pacetti, Deputy Clerk**

COPY OF ADVERTISEMENT

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ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,
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Before the undersigned authority personally appeared _____

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Display Ad

in the matter of Notice of Hearing
Establishment or Change of A Regulation
affecting the use of land

in the _____ Court, was published in said newspaper in the
issues of Dec 29, 1997

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Sworn to and subscribed before me this 29 day of Dec, 1997,

by Sandra D. Oliver who is personally

known to me or who has produced _____ as
Personally KNown
(Type of Identification)
identification.

Zoe Ann Moss
(Signature of Notary Public)



Zoe Ann Moss
MY COMMISSION # CC841814 EXPIRES
August 22, 2001
BONDED THRU TROY FAIR INSURANCE, INC.

(Seal)

Zoe Ann Moss

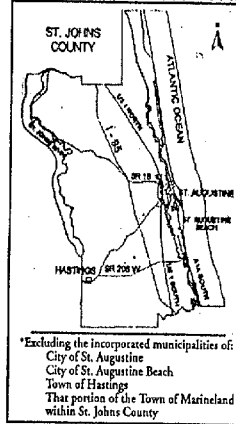
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**BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA
CHERYL STRICKLAND, ITS CLERK
By: Irma Pacetti, Deputy Clerk**

DIVISIONS OF FLORIDA DEPARTMENT OF STATE
Office of the Secretary
Office of International Relations
Division of Administrative Services
Division of Corporations
Division of Cultural Affairs
Division of Elections
Division of Historical Resources
Division of Library and Information Services
Division of Licensing



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State
DIVISION OF ELECTIONS

MEMBER OF THE FLORIDA CABINET
Historic Florida Keys Preservation Board
Historic Palm Beach County Preservation Board
Historic Pensacola Preservation Board
Historic St. Augustine Preservation Board
Historic Tallahassee Preservation Board
Historic Tampa/Hillsborough County
Preservation Board
Ringling Museum of Art

January 12, 1998

Honorable Cheryl Strickland
Clerk to Board of County Commissioners
St. Johns County
Post Office Drawer 300
St. Augustine, Florida 32085-0300

CHERYL STRICKLAND
CLERK OF COUNTY
ST. JOHNS COUNTY FL

98 JAN 15 P2:16

FILED

Attention: Yvonne Carter, Deputy Clerk

Dear Ms. Strickland:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge your letter dated January 6, 1998 and certified copy each of St. Johns County Ordinance Nos. 98-1, 98-2, and 98-3, which were filed in this office on January 8, 1998.

Sincerely,

Liz Cloud, Chief
Bureau of Administrative Code

LC/mw

Ordinance Book 20 Page 584-A