

12-0-0904

(Do Not Write Above This Line)

AN ORDINANCE  
BY COMMUNITY DEVELOPMENT/  
HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO FACILITATE THE  
DEPARTMENT OF WATERSHED  
MANAGEMENT'S COMPLETION OF THE  
PEACHTREE CREEK PROJECT ON THE  
SCHEDULE REQUIRED UNDER THE FIRST  
AMENDED CONSENT DECREE, CIVIL  
ACTION FILE NO. 1:98-CV-1956-TWT, BY  
WAIVING SECTION 158-104(a)(3) OF THE  
CITY OF ATLANTA CODE OF  
ORDINANCES; AND FOR OTHER  
PURPOSES.

ADOPTED BY

JUL 16 2012

COUNCIL  
substitute

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 7/2/12

Referred To: CD/HR

Date Referred

Referred To:

Date Referred

Referred To:

First Reading 09/11/12

Committee Date 7/10/12  
Chair Referred to  
Referred to

Committee Date 7/10/12  
Chair  
Action: Fav, Adv, Hold (see rev. side)  
Other: Subst

Members  
Refer To

Committee Date  
Chair  
Action: Fav, Adv, Hold (see rev. side)  
Other: Members

Refer To

FINAL COUNCIL ACTION

2nd  1st & 2nd  3rd

Readings

Consent  V Vote  RC Vote

CERTIFIED

JUL 16 2012

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED

JUL 16 2012

Rachel Dunbar  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

JUL 25 2012

WITHOUT SIGNATURE  
BY OPERATION OF LAW



12-O-0904

**A SUBSTITUTE ORDINANCE  
BY COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

**AN ORDINANCE TO FACILITATE THE DEPARTMENT OF WATERSHED MANAGEMENT'S COMPLETION OF THE PEACHTREE CREEK PROJECT ON THE SCHEDULE REQUIRED UNDER THE FIRST AMENDED CONSENT DECREE, CIVIL ACTION FILE NO. 1:98-CV-1956-TWT, BY WAIVING SECTION 158-104(a)(3) OF THE CITY OF ATLANTA CODE OF ORDINANCES; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta ("City") is the owner of certain property located at 2065 Liddell Drive ("Property"); and

**WHEREAS**, the City Department of Watershed Management ("Department") identified the Property as the recommended location for the South Fork Peachtree Creek Relief Storage and Pumping Station project ("Project") after considering several alternate locations; and

**WHEREAS**, the Project is mandated under the First Amended Consent Decree ("Consent Decree") and will protect water quality and the environment by reducing the risk of sanitary sewer overflows during periods of wet weather in the Peachtree Creek basin; and

**WHEREAS**, the proposed Second Amendment to the Consent Decree requires completion of this last remaining major project by July 1, 2014 as consideration to allow the City to amend the Consent Decree to extend the deadline for completion of the work required thereunder to July 1, 2027; and

**WHEREAS**, the Property is currently encumbered by a land lease agreement ("Lease") the City entered into with Intermart Broadcasting of Georgia, Inc. ("Intermart") that authorized the construction and use of an AM radio antenna and electronics hut ("Fixtures") on the Property, pursuant to Resolution 04-R-1220, adopted by the Atlanta City Council ("Council") on July 19, 2004 and approved by the Mayor on July 22, 2004; and

**WHEREAS**, the Lease allows Intermart to lease the Property from the City for an initial ten (10) year term commencing on October 7, 2004 and may be automatically renewed for up to two (2) successive five (5) year periods, unless terminated by the City upon written notice; and

**WHEREAS**, Intermart assigned their Lease to J.W. Broadcasting, Inc. ("Owner") with the consent and approval of the City by Resolution 06-R-1038, adopted by Council on May 1, 2006 and approved by the Mayor on May 8, 2006; and



**WHEREAS**, the City notified Owner of the City's intent to not renew the Lease, as required pursuant to Section 4 of the Lease, through Resolution 07-R-1813, adopted by Council on September 17, 2007 and approved by the Mayor on September 24, 2007, as such, the Lease will expire on October 6, 2014; and

**WHEREAS**, the Fixtures prevent commencement of the Project by the Department and the Owner must remove its Fixtures on the Property in order for the Department to complete work on the Project in compliance with the Consent Decree and the proposed Second Amendment to the Consent Decree; and

**WHEREAS**, due to the time sensitive nature of this Project and the necessity of the Owner removing its Fixtures from the Property before the Department can commence the Project, there is only one viable location for the relocation of Owner's Fixtures located at 2034 Lenox Rd. ("Site"); and

**WHEREAS**, the Site is located in a 100-year floodplain and contains a similar AM radio antenna the Owner can use to avoid any gaps in transmitting radio broadcasting signals and Owner recently purchased the Site for the specific purpose of relocating its Fixtures; and

**WHEREAS**, Owner is fully cooperating with the City and is willing to terminate the Lease early and relocate the Fixtures to the Site at no additional cost to the City; and

**WHEREAS**, the Site is the location of an existing AM radio tower, which, because of the lack of maintenance of the Site by its previous owner, contains a large number of trees that were permitted to grow up around the tower and must be removed so that the existing antenna located on the Site may operate properly; and

**WHEREAS**, a provision of the City's Tree Protection Ordinance contained in Section 158-104(a)(3) of the City of Atlanta Code of Ordinances states that a maximum of ten percent of the trees in a 100-year floodplain may be approved for removal or destruction; and

**WHEREAS**, Owner cannot relocate its Fixtures to the Site and have the antenna work in the required capacity without removing more than ten percent of the trees located thereon; and

**WHEREAS**, relocating the Fixtures to the Site is critical to complete the Project on the schedule as required by the Consent Decree, avoid suffering any further penalties or injunctive relief under the Consent Decree, and meeting the requirements of the proposed Second Amended Consent Decree; and

**WHEREAS**, since the Lease does not expire until October 6, 2014 and there is no early termination provisions, condemnation of the Owner's leasehold interests is the only available alternative to the relocation, which would be cost prohibitive to the City and likely cause the Department to not meet the scheduling requirements for the Project; and



**WHEREAS**, the Owner is working with the City to avoid adversely impacting the floodplain and related environmentally sensitive features on the Site; and

**WHEREAS**, it is in the City's best interest to authorize a one-time waiver of Section 158-104(a)(3) of the City of Atlanta Code of Ordinances to allow Owner to relocate its Fixtures to the Site at no cost to the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows,**

**Section 1:** That Section 158-104(a)(3) of the City of Atlanta Code of Ordinances is hereby waived to the extent needed to allow J.W. Broadcasting, Inc. to remove more than ten percent of trees located in a 100-year floodplain to accelerate the relocation of its Fixtures and other necessary appurtenances to the Site at no cost to the City.

**Section 2:** That J.W. Broadcasting, Inc. is authorized to remove any trees from the Site as may be necessary to relocate its Fixtures and other necessary appurtenances while continuing to work with the City to mitigate any adverse impacts to the floodplain and related environmentally sensitive features on the Site.

**Section 3:** That all ordinances or parts of ordinances in conflict herewith, including, but not limited to, Section 158-104(a)(3) of the City of Atlanta Code of Ordinances are waived to the extent of the conflict.

A true copy,

Deputy Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

July 16, 2012  
July 25, 2012

RCS# 2189  
7/16/12  
6:16 PM

Atlanta City Council

12-O-0904

FACILITATE DWM COMPLETEION OF PEACHTREE  
CREEK PROJ. FOR CONSENT DECREE  
ADOPT ON SUB

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 1  
ABSENT 0

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	E Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

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