

LEGISLATIVE #

110106A

ORDINANCE NO. 110106

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3 **An Ordinance of the City of Gainesville, Florida, establishing**
4 **administrative procedures, fees, requirements and limitations to carry**
5 **out the development order and building permit extensions authorized**
6 **by House Bill 7207, now known as Chapter 2011-139, Laws of Florida;**
7 **providing a severability clause; and providing an immediate effective**
8 **date.**
9

10 **WHEREAS**, the Governor of the State of Florida signed House Bill 7207, now
11 known as Chapter 2011-139, Laws of Florida, into law on June 2, 2011 (“HB 7207”); and

12 **WHEREAS**, Section 73 of HB 7207 provides for a two-year extension and renewal
13 of local government issued development orders and building permits that were granted a
14 SB360 extension; and

15 **WHEREAS**, Section 79 of HB 7207 provides for a two-year extension and renewal
16 of development orders or building permits with an expiration date of January 1, 2012 through
17 January 1, 2014; and

18 **WHEREAS**, HB 7207 further provides that the holder of a valid development order
19 or building permit or other authorization that is eligible for either of the two-year extensions
20 must notify the local government in writing no later than December 31, 2011, identifying the
21 specific authorization(s) for which the holder intends to use the extension and the anticipated
22 timeframe for acting on the authorization; and

23 **WHEREAS**, HB 7207 further provides that permits that receive either two-year
24 extension will continue to be governed by rules in effect at the time the permit was issued,
25 except when it can be demonstrated that the rules in effect at the time the permit was issued
26 would create an immediate threat to public safety or health; and

1 **WHEREAS**, HB 7207 further provides that the local government may continue to
2 require the owner/holder to maintain and secure the property in a safe and sanitary condition
3 in compliance with applicable laws and ordinances; and

4 **WHEREAS**, HB 7207 limits the total extensions granted under SB 360, SB 1752 and
5 HB 7207 to a total of four years; and

6 **WHEREAS**, due to the broad and imprecise language in HB 7207, there is a need to
7 provide clarity and effectuate the intent of HB 7207 within the City of Gainesville, by
8 establishing administrative procedures and fees to properly administer and document the
9 requests for the extensions granted under HB 7207; and

10 **WHEREAS**, in order to carry out the administrative procedures and process the
11 requests made in accordance with this ordinance under HB 7207, it is necessary to authorize
12 the Director of the Planning and Development Services Department, or his designee, to draft
13 and execute the appropriate documents to implement HB 7207 and grant the extensions
14 identified herein; and

15 **WHEREAS**, at least 10 days notice has been given once by publication in a
16 newspaper of general circulation notifying the public of this proposed ordinance and of a
17 public hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville;
18 and

19 **WHEREAS**, the Public Hearings were held pursuant to the published notice
20 described at which hearings the parties in interest and all others had an opportunity to be and
21 were, in fact, heard.

22 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF**
23 **THE CITY OF GAINESVILLE, FLORIDA:**

1 **Section 1. Purpose.** The purpose of this Ordinance is to enable the City of
2 Gainesville to timely and efficiently process and properly document extensions granted
3 pursuant to HB 7207. The City will not take any action on any application, will not
4 recognize any request for or issue any extension of a development order or permit pursuant to
5 HB 7207, except as provided in this Ordinance.

6 **Section 2. Definitions.** For purposes of this ordinance, the following terms shall
7 have the meanings indicated below. If a specific type of development order or permit is not
8 expressly included in the definitions herein, it is excluded from and not eligible for a HB
9 7207 extension by the City.

10 (a) “*Building Permit*” means any permit issued by the building official, as provided for in
11 the current edition of the Florida Building Code as adopted by Florida Law, authorizing
12 performance of construction or alteration of a building or structure; together with its
13 associated site construction, electrical, gas, mechanical and plumbing permits issued for the
14 same building or structure. The term Building Permit does not include site construction,
15 electrical, gas, mechanical or plumbing permits issued for projects that do not have a current
16 valid building permit for the same building or structure.

17 (b) “*Development Order*” means any order granting or granting with conditions an
18 application for a Development Permit.

19 (c) “*Development Permit*” includes final plat, Planned Development (PD) zoning
20 ordinance (and, to the extent necessary to effectuate the extension of the PD zoning
21 ordinance, its companion Planned Use Development land use ordinance), special exception,
22 variance, special use permit, final development plan, tree removal permits, driveway permits,
23 and certificates of appropriateness.

1 (d) “Holder” means the natural person or legal entity in whose name the Development
2 Order or Building Permit was issued, or his/her/its legally documented heirs, transferees,
3 successors or assigns, including but not limited to successors by virtue of foreclosure or
4 bankruptcy.

5 **Section 3. Authorizations.** The Planning and Development Services Department
6 Director, or designee, is authorized to:

7 (a) promulgate form(s) for requests for Building Permit extensions and Development
8 Order extensions under this ordinance pursuant to HB 7207;

9 (b) accept and process requests for extensions properly made in accordance with this
10 ordinance pursuant to HB 7207;

11 (c) execute the appropriate documents to implement the extension upon written request
12 made in accordance with this ordinance pursuant to HB 7207; and

13 (d) impose the following administrative processing fee for each extension requested, plus
14 recording costs, if any, in order to process the request:

15 (1) For Development Orders: \$48.75 per development project (regardless of the
16 number of Development Orders associated with the project). For projects within the
17 Enterprise Zone, the fee shall be \$24.38.

18 (2) For Building Permits: \$48.75 per development project (regardless of the
19 number of associated site construction, mechanical, gas, electrical, or plumbing
20 permits.)

21 **Section 4. Procedures to request either extension.**

22 (a) Any Holder of a Building Permit or Development Order that received an SB 360
23 extension from the City pursuant to Ordinance No. 090228 adopted September 17, 2009 and

1 did not receive an SB 1752 extension pursuant to Ordinance No. 100097 adopted September
2 16, 2010, may apply for a HB 7207 (Section 73) extension on the application form(s)
3 provided by the Planning and Development Services Department. In order to be processed, a
4 completed application with payment of fee, must be received by the Planning and
5 Development Services Department on or before 8 a.m. on January 3, 2012.

6 (b) Any Holder of a Building Permit or Development Order with an expiration date of
7 January 1, 2012 through January 1, 2014, may apply for a HB 7207 (Section 79) extension on
8 the application form(s) provided by the Planning and Development Services Department. In
9 order to be processed, a completed application with payment of fee, must be received by the
10 Planning and Development Services Department on or before 8 a.m. on January 3, 2012.

11 (c) Upon submission of a completed application and payment of the administrative fee,
12 the Planning and Development Services Department Director, or designee, shall process the
13 application and send a written acknowledgement to the Holder. In the event the Holder is not
14 the same person/entity as shown on the face of the Development Order or Building Permit,
15 the Holder shall provide all legal documentation necessary for the Planning and Development
16 Services Department Director, or designee, to verify that the Holder is eligible to apply for
17 the extension.

18 (d) The written acknowledgement shall state whether the application is approved or
19 denied and, if denied, shall state the grounds for denial. Grounds for denial shall include, but
20 not be limited to:

21 (1) Submittal of incomplete application or failure to pay the prescribed
22 administrative fee;

23 (2) Failure to adhere to the requirements of this ordinance or HB 7207;

1 (3) The Building Permit or Development Order is determined to be in significant
2 noncompliance with the conditions of the Building Permit or Development Order, as
3 established through the issuance of a warning letter or notice of violation, the
4 initiation of formal enforcement, or other equivalent action by the authorizing body,
5 prior to the date of the application for extension;

6 (4) If granting an extension to the Building Permit or Development Order would
7 delay or prevent compliance with a court order; or

8 (5) If an extension granted pursuant to this ordinance, when added to extensions
9 granted pursuant to SB 360 under Ordinance No. 090228 adopted September 17,
10 2009, or pursuant to SB 1752 under Ordinance No. 100097 adopted September 16,
11 2010, would exceed 4 years in total.

12 **Section 5. Requirements and limitations on extensions.**

13 (a) A Building Permit or Development Order extended under this ordinance shall
14 continue to be governed by the laws in effect at the time the Building Permit or Development
15 Order was issued, except when it can be demonstrated that the laws in effect at the time the
16 Building Permit or Development Order was issued would create an immediate threat to the
17 public safety or health. This provision applies to any modification of the plans, terms, and
18 conditions of the permit which lessens the environmental impact, except that any such
19 modification does not extend the time limit beyond 2 additional years.

20 (b) The Holder of an extended Building Permit or Development Order shall throughout
21 the term of the extension maintain and secure the property in a safe and sanitary condition in
22 compliance with all applicable laws and ordinances.

1 (c) The Holder of an extended Building Permit or Development Order shall, throughout
2 the term of the extension, have a continuing obligation to notify the Planning and
3 Development Services Department of any change in status of Holder as it relates to the
4 extension such as, but not limited to, change of entity name, transfer of property, death or
5 foreclosure.

6 (d) If Holder is eligible for an extension of a Building Permit or Development Order
7 under this ordinance pursuant to HB 7207, the HB 7207 extension shall be the exclusive
8 extension available to the Holder and shall operate in lieu of, and not in addition to, any other
9 extension that may be available under the terms and conditions of the Development Order,
10 Building Permit or City Code of Ordinances. By way of example, if a Holder of a PD
11 development order that expires on September 2, 2012 and which order provides that it may
12 be extended for one year upon request of owner/developer, applies for and receives a HB
13 7207 extension under this ordinance, the PD development order will expire on September 1,
14 2014. The Holder cannot request the one-year extension as provided in the PD Development
15 Order. This Ordinance shall supersede and control over any ordinance or City Code of
16 Ordinance provision that permits or allows an extension of time for a Development Order or
17 Building Permit.

18 (e) As stated in HB 7207, extensions granted pursuant to HB 7207, SB 360 and SB 1752
19 cannot exceed a total of four years. By way of example, a Holder of a PD development order
20 that expired on September 2, 2009, who received an SB 360 extension (new expiration date
21 of September 1, 2011) and received an SB 1752 extension (new expiration date of August
22 31, 2013) is not eligible to receive a HB 7207 extension because the extensions granted total
23 4 years. Alternatively, the Holder of a PD development order that expired on September 1,

1 2011, who received an SB 360 extension (new expiration date of September 1, 2011), but did
2 not receive a SB 1752 extension, could now apply for a HB 7207 extension to extend the
3 expiration date to August 31, 2013.

4 **Section 6. Effect of invalidation of HB 7207.**

5 (a) In the event all of HB 7207 or the provisions thereof relating to extensions of building
6 permits or development orders are invalidated by a court of law or by future act of the
7 legislature, any extensions granted under this ordinance shall likewise be deemed to be
8 invalid and of no further force or effect as of the date of the court order or legislative action,
9 unless an exception based on extraordinary hardship is granted pursuant to (b) below. A
10 timely appeal of such court order shall stay the invalidation of any extension filed until final
11 decision by the appellate court.

12 (b) Pursuant to the procedures in (c) through (e) below, the City Commission may
13 authorize exceptions to the invalidation of the extension imposed by (a) above when the
14 Commission finds, based upon substantial competent evidence presented to the Commission
15 that invalidation of the extension would impose an extraordinary hardship on the Holder.
16 Extraordinary hardship may be demonstrated by, but is not limited to:

17 (1) The extent to which the Holder has, prior to the date of invalidation, made a
18 substantial expenditure of money or resources in reliance upon the extension directly
19 associated with the construction, operation or erection of the development, such as
20 commencing construction, installing utility infrastructure or any other significant
21 improvements.

- 1 (2) Whether the Holder, prior to the date of invalidation, has made contractual
2 commitments to third parties in reliance upon the extension to construct, operate or
3 erect development.
- 4 (3) Whether the Holder, prior to the date of invalidation, has in reliance upon the
5 extensions incurred financial obligations to a lending institution which, despite a
6 thorough review of alternative solutions, the Holder cannot meet unless the extension
7 remains in full force and effect.
- 8 (4) Whether the invalidation of the extension will expose the Holder to
9 substantial monetary liability to third persons; or would leave the Holder completely
10 unable, after a thorough review of alternative solutions, to earn a reasonable
11 investment backed expectation on the real property that is affected by invalidation of
12 the extension.
- 13 (c) A request for an exception to invalidation of an extension based upon extraordinary
14 hardship shall be filed by the Holder with the City Manager, or designee, including a fee of
15 \$350.00, to cover processing and advertising costs, and shall include a recitation of the
16 specific facts that are alleged to support the request, and shall contain such other information
17 as the City Commission shall prescribe as necessary to be fully informed with respect to the
18 request.
- 19 (d) A public hearing on the request shall be held by the City Commission after receipt of
20 a properly filed request.
- 21 (e) At the conclusion of the public hearing and after reviewing the evidence and
22 testimony placed on the record, the City Commission shall act upon the request and either to
23 approve or deny the request made by the Holder.

