



MEMORANDUM

Office of the City Attorney

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

TO: Mayor and City Commission

DATE: May 28, 2002

FROM: City Attorney

SECOND READING


SUBJECT: Ordinance No. 0-02-19

An Ordinance of the City of Gainesville, Florida, imposing a temporary moratorium on zoning permits, site plan approval and any other official action of the City of Gainesville permitting or having the effect of permitting the development or use of land, excluding approvals and permits for single-family dwellings, places of religious assembly, planned developments, educational services, day care centers, recreational areas, and the renovation or expansion of lawful existing buildings and uses; located within an area as more specifically described in this ordinance, generally bounded on the north by NE 39th Avenue, on the west by Waldo Road, S.E. 11th Street (South of E. University Avenue) and Williston Road, on the east and south by municipal boundaries of the City of Gainesville; providing a procedure for extraordinary hardship; providing a severability clause; and providing an immediate effective date.

Recommendation: The City Commission adopt the proposed ordinance as amended.

This ordinance imposes a temporary moratorium ending on Monday, March 10, 2003 in the East Gainesville area, as described in the ordinance. The City Attorney recommends a technical amendment to Section 4(a) of the ordinance to reflect the adoption date of the ordinance, i.e., Tuesday, May 28, 2002.

Prepared and
Submitted by:



Marion L. Radson, City Attorney

Passed as revised on first reading on May 13, 2002 by a vote of 5-0.

ORDINANCE NO. _____
0-02-19

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5 **An Ordinance of the City of Gainesville, Florida, imposing a temporary**
6 **moratorium on zoning permits, site plan approval and any other official**
7 **action of the City of Gainesville permitting or having the effect of permitting**
8 **the development or use of land, excluding approvals and permits for single-**
9 **family dwellings, places of religious assembly, planned developments,**
10 **educational services, day care centers, recreational areas, and the renovation**
11 **or expansion of lawful existing buildings and uses; located within an area as**
12 **more specifically described in this ordinance, generally bounded on the north**
13 **by N.E. 39TH Avenue, on the west by Waldo Road, S.E. 11th Street (South of**
14 **E. University Avenue) and Williston Road, on the east and south by**
15 **municipal boundaries of the City of Gainesville; providing a procedure for**
16 **extraordinary hardship; providing a severability clause; and providing an**
17 **immediate effective date.**

18 **WHEREAS**, the City of Gainesville, has adopted the Future Land Use Element of the
19
20 City of Gainesville 2000-2010 Comprehensive Plan which includes, among other matters, goals,
21 objectives and policies with respect to future land use; and

22 **WHEREAS**, it is the policy of the Comprehensive Plan that the City adopt land
23 development and zoning regulations to determine the appropriate scale of uses within each
24 zoning district; and

25 **WHEREAS**, the City of Gainesville and Alachua County have declared East Gainesville
26 to be a joint planning area for the County and the City; and

27 **WHEREAS**, the City of Gainesville has determined that the uses and character of that
28 certain area (the "Moratorium area") described more fully below in this Ordinance are
29 appropriate for study, for determination of a long-term plan for the character of the area, and for

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1 the identification of possible changes to the allowed uses within the Moratorium area in keeping
2 with that identified character; and

3 **WHEREAS**, a temporary moratorium on development will allow a study to be
4 undertaken that will result in identification of the most appropriate mix of uses for the
5 Moratorium area, the protection and enhancement to the adjacent residential uses, and the
6 adoption of a plan and necessary land use, zoning and regulatory ordinances, as appropriate; and

7 **WHEREAS**, the City Commission finds that it is essential to protect and preserve the
8 environment and the public health, welfare and safety of the City and its citizenry, that it is in the
9 City's best interest, and that it is consistent with the Comprehensive Plan for the City to study the
10 potential impact of uses and development within the Moratorium Area; and

11 **WHEREAS**, the City Commission is aware that some uses allowed within the zoning
12 districts in the Moratorium Area may contribute to the deterioration of the area and otherwise be
13 incompatible with the development of the area and surrounding land uses; and

14 **WHEREAS**, the City Commission, after hearing testimony of its professional planning
15 staff, finds that single-family dwellings, places of religious assembly, planned developments,
16 educational services, day care centers, recreational areas, and the renovation and expansion of
17 lawful existing buildings and uses are consistent with the City of Gainesville 2000-2010
18 Comprehensive Plan, and are compatible with the residential uses and character of the area; and

19 **WHEREAS**, the Board of County Commissioners of Alachua County adopted Ordinance
20 No. 02-19 on April 23, 2002, imposing a temporary moratorium in that certain unincorporated

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1 area that lies immediately to the east of the Moratorium area to allow a study to be undertaken for
2 the reasons stated therein; and

3 **WHEREAS**, a legal advertisement was placed in a newspaper of general circulation
4 notifying the public of this proposed Ordinance and of the Public Hearing to be held on the First
5 Floor, City Commission Meeting Room, City Hall, at least seven days after the day the first legal
6 advertisement was published; and

7 **WHEREAS**, a second legal advertisement was placed in the aforesaid newspaper
8 notifying the public of the second Public Hearing to be held five days after the day the second
9 legal advertisement was published; and

10 **WHEREAS**, the two Public Hearings were held pursuant to the published notices
11 described above at which hearing the parties in interest and all others had an opportunity to be
12 and were, in fact, heard.

13 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
14 **CITY OF GAINESVILLE, FLORIDA:**

15 **Section 1.** The City Commission adopts the foregoing findings.

16 **Section 2.** Purpose

17 (a) The purpose of this Ordinance is to enable the City of Gainesville sufficient time
18 to review, study, hold public hearings, and prepare and adopt an amendment or amendments to
19 the City of Gainesville Comprehensive Plan and Code of Ordinances, including the Land
20 Development Code, relating to the allowance or development of permitted uses within that
21 certain Moratorium area, as defined in Section 3 below. The City will not take any action on any

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1 application for development permit or issue any development order which has the effect of
2 allowing or permitting the development of uses within the moratorium area, except as provided
3 in this Ordinance.

4 (b) It is further the purpose of this Ordinance to fulfill the City's constitutional charge
5 and statutory obligations to protect and preserve the environment and the public health, welfare
6 and safety of the citizens of the City of Gainesville, and in particular to protect the public health,
7 welfare and safety of the citizens, and the value, use and enjoyment of real property in the City of
8 Gainesville during the interim period described in this Ordinance, and thus defer official
9 governmental action until the City of Gainesville has properly reviewed, studied, held public
10 hearings and adopted amendments, if any, to the City of Gainesville Comprehensive Plan and
11 Code of Ordinances, including the Land Development Code, as necessary.

12 **Section 3. Definitions**

13 (a) Application for development permit means any application for change of zoning,
14 preliminary or final development plan review, special use permit, or any other required
15 application of the City of Gainesville having the effect of permitting the use or development of
16 land.

*Concept
Plan
Review
Final
Approval
to
4/11/29,
2001*

17 (b) Development has the meaning given it in Section 380.04, Florida Statutes (2001).

18 (c) Development Order means any order granting, denying, or granting with
19 conditions an application for development permit.

20 (d) Development permit includes any petition for change of zoning, preliminary or
21 final development plan approval, special use permit, or any other official action of the City of

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1 Gainesville having the effect of permitting the use or development of land, but does not include
2 occupational licenses issued under the City of Gainesville Code of Ordinances.

3 (e) Moratorium area means all that real property that is specifically shown on the map
4 attached hereto as Exhibit A, which is made a part hereof as if set forth in full.

5 **Section 4. Imposition of Moratorium**

6 (a) For a period of ~~(283)~~ (285) days from and after 5:00 p.m. on ~~Monday, June 3,~~
7 ~~2002, Tuesday, May 28, 2002,~~ ending at 11:59 p.m. on Monday, March 10, 2003:

8 (1) No application for development permit may be filed, accepted, or
9 processed for any development other than applications for single-family dwellings, places of
10 religious assembly, educational services, day care centers, recreational areas and renovation and
11 expansion of lawful existing uses and zoning applications for planned development approval in
12 accordance with Chapter 30, City of Gainesville, Land Development Code, located in the
13 Moratorium area by any Department, Board, Commission, or Agency of the City of Gainesville,
14 except as provided in Paragraph (2) below and Section 5 of this ordinance.

15 (2) The imposition of the moratorium is not intended to affect nor does it
16 affect: (i) either the processing of any application for development permit or the issuance of
17 development orders, development permits, including building permits, within the Moratorium
18 area for which any application for development permit was properly filed with the City of
19 Gainesville on or before Monday, April 29, 2002; (ii) the processing of development
20 applications, such as *concept plan review filed on or after April 29, 2001, or* preliminary or final development plan approval, plat approval, construction
21 and building permits, for those developments that are the subject of a development order
22 approved because an application was properly filed on or before 5:00 p.m. on Monday, April 29,

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1 2002; (iii) the processing of any application for development permit or the issuance of
2 development orders, development permits, including building permits, for the renovation or
3 expansion of any lawful use or development in existence as of Monday, April 29, 2002; (iv) the
4 processing of any application for development permit or the issuance of development orders,
5 development permits, including building permits, for the renovation or expansion of any building
6 in existence as of Monday, April 29, 2002 as long as the proposed use conforms to current
7 zoning and future land use element; (v) any application for remediation or removal of
8 environmental contamination as long as said orders or permits do not change the use of the
9 property in lawful existence as of Monday, April 29, 2002.

10 **Section 5. Alleviation of Hardship**

11 (a) The City Commission may authorize exceptions to the moratorium imposed by
12 this ordinance when it finds, based upon substantial competent evidence presented to it, that
13 deferral of action on an application for development permit and the deferral of the issuance of a
14 development order for the duration of the moratorium would impose an extraordinary hardship
15 on a landowner or developer.

16 (b) A request for an exception based upon extraordinary hardship shall be filed with
17 the City Manager or designee, including a fee of \$300.00 by the landowner, or the developer with
18 the consent of the landowner, to cover processing and advertising costs, and shall include a
19 recitation of the specific facts that are alleged to support the claim of extraordinary hardship, and
20 shall contain such other information as the City Manager shall prescribe as necessary for the City
21 Commission to be fully informed with respect to the application.

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1 (c) A public hearing on any request for an exception for extraordinary hardship shall
2 be held by the City Commission at the first regular meeting of the City Commission that occurs
3 after the expiration of the period for publication of notice of the request for an exception.

4 (d) Notice of the filing of a request for an exception, and the date, time, and place of
5 the hearing thereon shall be published once at least 7 days prior to the hearing in a newspaper of
6 general circulation within limits of Gainesville, Florida.

7 (e) In reviewing an application for an exception based upon a claim of extraordinary
8 hardship, the City Commission shall consider, at a minimum, the following criteria:

9 (1) The extent to which the applicant has, prior to Monday, April 29, 2002,
10 received City of Gainesville permits or approvals for the proposed development.

11 (2) The extent to which the applicant has, prior to Monday, April 29, 2002
12 made a substantial expenditure of money or resources in reliance upon permits or other approvals
13 of the City of Gainesville directly associated with physical improvements on the land, such as
14 grading, installation of utility infrastructure or any other public improvements.

15 (3) Whether the applicant, prior to Monday, April 29, 2002, has contractual
16 commitments in reliance upon permits or other approvals of the City of Gainesville to complete a
17 structure(s).

18 (4) Whether the applicant, prior to Monday, April 29, 2002, has in reliance
19 upon permits or other approvals of the City of Gainesville incurred financial obligations to a
20 lending institution which, despite a thorough review of alternative solutions, the applicant cannot
21 meet unless development proceeds.

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1 (5) Whether the moratorium will expose the applicant to substantial monetary
2 liability to third persons; or would leave the applicant completely unable, after a thorough review
3 of alternative solutions, to earn a reasonable investment backed expectation on the property.

4 (f) At a minimum, the City Commission shall consider the following non-exclusive
5 factors under the criteria set forth in subsection (e) above:

6 (1) The history of the property;

7 (2) The history of any development on the property;

8 (3) The history of the property's Future Land Use Map classification;

9 (4) The history of the property's zoning;

10 (5) Any change in development when property ownership changed; and

11 (6) The present nature, size and use of the property.

12 (g) At the conclusion of the Public Hearing and after reviewing the evidence and
13 testimony placed before it, the City Commission shall act upon the request either to approve,
14 deny, or approve in part and deny in part the request made by the applicant.

15 **Section 6.** If any word, phrase, clause, paragraph, section or provision of this ordinance
16 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
17 finding shall not affect the other provisions or applications of the ordinance which can be given
18 effect without the valid or unconstitutional provisions or application, and to this end the
19 provisions of this ordinance are declared severable.

20 **Section 7.** This ordinance shall stand repealed as of 11:59 p.m. on Monday, March 10,
21 2003, unless sooner repealed; provided, however, that nothing herein shall prevent the readoption
22 or ratification of this ordinance in the same or similar form.

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1 **Section 8.** This ordinance shall become effective immediately upon final adoption.

2 **PASSED AND ADOPTED** this _____ day of _____, 2002.
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8 By: _____
9 Thomas D. Bussing, Mayor

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ATTEST:

APPROVED AS TO FORM AND LEGALITY

Kurt Lannon, Clerk of the Commission

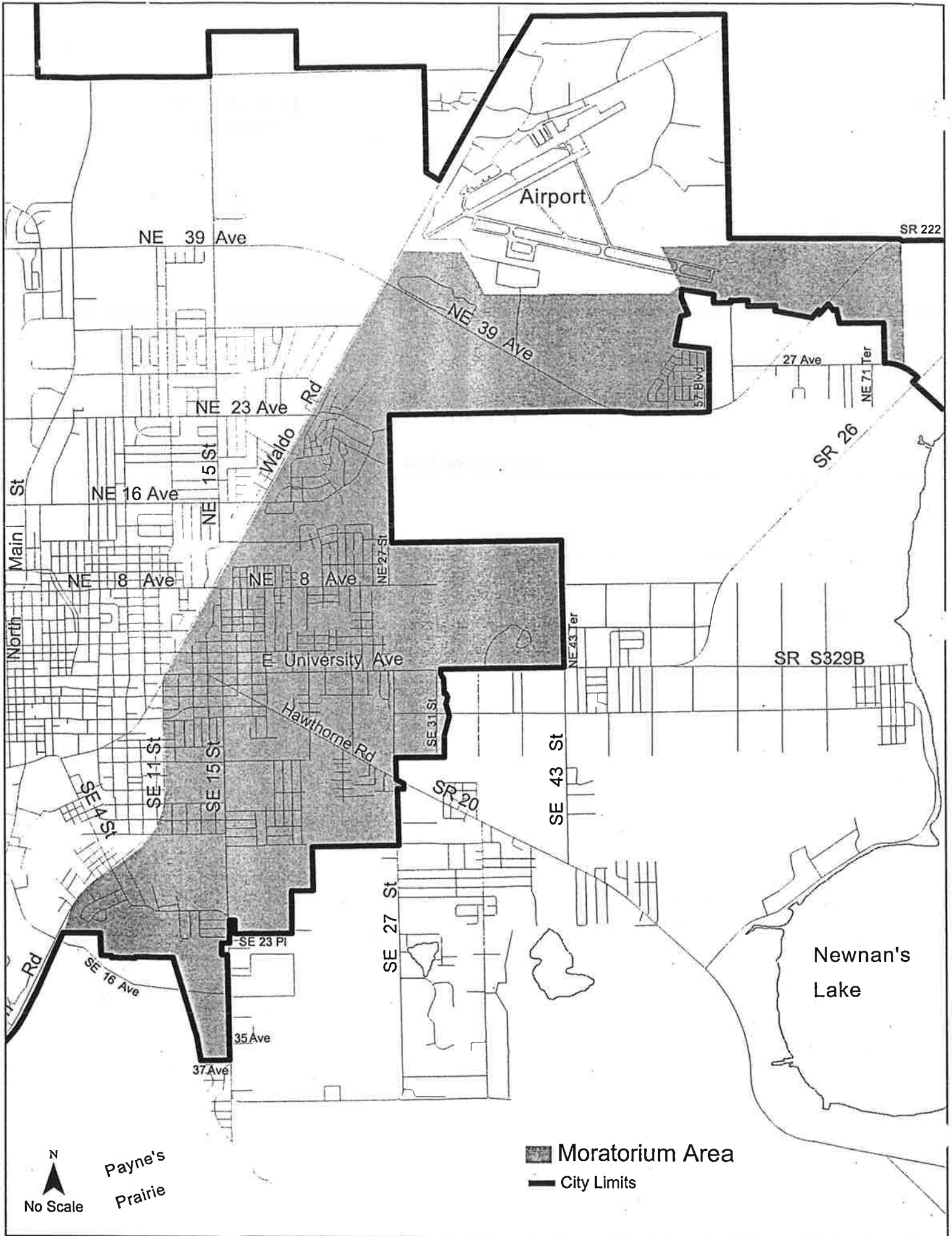
Marion J. Radson, City Attorney

This ordinance passed on first reading this _____ day of _____, 2002

This ordinance passed on second reading this _____ day of _____, 2002

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EXHIBIT A
Moratorium Area



Airport

SR 222

NE 39 Ave

NE 39 Ave

27 Ave

NE 71 Ter

NE 23 Ave

Waldo Rd

SR 26

Main St

NE 16 Ave

NE 15 St

NE 8 Ave

NE 8 Ave

NE 27 St

NE 43 Ter

SR S329B

E University Ave

Hawthorne Rd

SR 20

North St

SE 11 St

SE 15 St

SE 31 St

SE 43 St

SE 11 St

SE 16 Ave

SE 27 St

SE 23 PI

35 Ave

37 Ave

Newnan's Lake

N
No Scale

Payne's
Prairie

■ Moratorium Area
— City Limits