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ORDINANCE NO. _____
0-09-54

An Ordinance of the City of Gainesville, Florida, establishing administrative procedures, fees, requirements and limitations to carry out the development order and building permit extensions authorized by Senate Bill 360, now known as Chapter Law No. 2009-96; providing a severability clause; and providing an immediate effective date.

WHEREAS, the Governor of the State of Florida signed Senate Bill 360, now known as Chapter Law No. 2009-96, into law on June 1, 2009 (“SB360”); and

WHEREAS, Among other things, SB360 states that, in recognition of the 2009 real estate market conditions, it provides for a two-year extension of local government issued development orders and building permits that have an expiration date of September 1, 2008 through January 1, 2012; and

WHEREAS, the two-year extension provided for under SB360 extends and renews the development orders and building permits from the date the permit expired or will expire; and

WHEREAS, SB360 further provides that the holder of a valid development order or building permit or other authorization that is eligible for the two-year extension must notify the local government in writing no later than December 31, 2009, identifying the specific authorization(s) for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization; and

WHEREAS, SB360 further provides that permits that receive the two-year extension will continue to be governed by rules in effect at the time the permit was

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1 issued, except when it can be demonstrated that the rules in effect at the time the permit
2 was issued would create an immediate threat to public safety or health; and

3 **WHEREAS**, SB360 further provides that the local government may continue to
4 require the owner/holder to maintain and secure the property in a safe and sanitary
5 condition in compliance with applicable laws and ordinances; and

6 **WHEREAS**, due to the broad and imprecise language in SB360, there is
7 uncertainty and difference of opinion throughout the state regarding the interpretation of
8 many provisions within SB360, including the permit extension provisions; and

9 **WHEREAS**, a lawsuit has already been filed in Leon County, Florida, by a
10 coalition of local governments in the state challenging the constitutionality of SB360; and

11 **WHEREAS**, in order to provide clarity and effectuate the intent of SB360 within
12 the City of Gainesville, it is prudent to establish administrative procedures and fees to
13 properly administer and document the requests for the extensions granted under SB360;
14 and

15 **WHEREAS**, in order to carry out the administrative procedures and process the
16 requests made in accordance with this ordinance under SB360, it is necessary to
17 authorize the Director of Planning and Development Services Department, or his
18 designee, to draft and execute the appropriate documents to implement SB360 and grant
19 the extensions identified herein; and

20 **WHEREAS**, at least 10 days notice has been given once by publication in a
21 newspaper of general circulation notifying the public of this proposed ordinance and of a
22 public hearing to be held in the City Commission Auditorium, City Hall, City of

1 Gainesville; and

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

5 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
6 **OF THE CITY OF GAINESVILLE, FLORIDA:**

7 **Section 1. Purpose.** The purpose of this Ordinance is to enable the City of
8 Gainesville to timely and efficiently process and properly document extensions granted
9 pursuant to SB360. The City will not take any action on any application, will not
10 recognize any request for or issue any extension of a development order or permit
11 pursuant to SB360, except as provided in this Ordinance.

12 **Section 2. Definitions.** For purposes of this ordinance, the following terms shall have
13 the meanings indicated below. If a specific type of development order or permit is not
14 expressly included in the definitions herein, it is excluded from and not eligible for a
15 SB360 extension by the City.

16 (a) *“Building Permit”* means any permit issued by the building official, as provided
17 for in the current edition of the Florida Building Code as adopted by Florida Law,
18 authorizing performance of construction or alteration of a building or structure. In
19 addition, the term includes any site construction, electrical, gas, mechanical and
20 plumbing permits issued for a project that has a current valid building permit for the same
21 building or structure. The term building permit does not include site construction,

1 electrical, gas, mechanical or plumbing permits issued for projects that do not have a
2 current valid permit for the same building or structure.

3 (b) “*Development Order*” means any order granting or granting with conditions an
4 application for a development permit.

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

10 (d) “*Holder*” means the natural person or legal entity in whose name the development
11 order or building permit was issued, or his/her/its legally documented heirs, transferees,
12 successors or assigns, including but not limited to successors by virtue of foreclosure or
13 bankruptcy.

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

16 (a) promulgate form(s) for requests for building permit extensions and development
17 order extensions under this ordinance pursuant to SB360;

18 (b) accept and process requests for extensions properly made in accordance with this
19 ordinance pursuant to SB360;

20 (c) execute the appropriate documents to implement the extension upon written
21 request made in accordance with this ordinance pursuant to SB360; and

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

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

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

9 **Section 4. Procedures to request extension.**

10 (a) Any Holder of a Building Permit or Development Order with an expiration date
11 of September 1, 2008 through January 1, 2012, may apply for a SB360 extension on the
12 application form(s) provided by the Planning and Development Services Department. In
13 order to be processed, a completed application with payment of fee, must be received by
14 the Planning and Development Services Department on or before 4 p.m. on December 31,
15 2009.

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

1 (c) The written acknowledgement shall state whether the application is approved or
2 denied and, if denied, shall state the grounds for denial. Grounds for denial shall include,
3 but not be limited to:

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

6 (2) Failure to adhere to the requirements of this ordinance or SB360;

7 (3) The building permit or development order is determined to be in
8 significant noncompliance with the conditions of the building permit or
9 development order, as established through the issuance of a warning letter or
10 notice of violation, the initiation of formal enforcement, or other equivalent action
11 by the authorizing body, prior to the date of the application for extension.

12 (4) If granting an extension to the building permit or development order
13 would delay or prevent compliance with a court order.

14 **Section 5. Requirements and limitations on extension.**

15 (a) A Building Permit or Development Order extended under this ordinance shall
16 continue to be governed by the laws in effect at the time the Building Permit or
17 Development Order was issued, except when it can be demonstrated that the laws in
18 effect at the time the Building Permit or Development Order was issued would create an
19 immediate threat to the public safety or health.

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

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

6 (d) If Holder is eligible for an extension of a Building Permit or Development Order
7 under this ordinance pursuant to SB360, the SB360 extension shall be the exclusive
8 extension available to the Holder and shall operate in lieu of, and not in addition to, any
9 other extension that may be available under the terms and conditions of the Development
10 Order, Building Permit or City Code of Ordinances. By way of example, if a Holder of a
11 PD development order that expires on January 2, 2011 and which order provides that it
12 may be extended for one year upon request of owner/developer, is eligible for and
13 receives a SB360 extension under this ordinance, the PD development order will expire
14 on January 1, 2013. The Holder cannot request the one-year extension as provided in the
15 PD Development Order. This Ordinance shall supersede and control over any ordinance
16 or City Code of Ordinance provision that permits or allows an extension of time for a
17 Development Order or Building Permit.

18 **Section 6. Effect of invalidation of SB360.**

19 (a) In the event all of SB360 or the provisions thereof relating to extensions of
20 building permits or development orders are invalidated by a court of law or by future act
21 of the legislature, any extensions granted under this ordinance shall likewise be deemed
22 to be invalid and of no further force or effect as of the date of the court order or

1 legislative action, unless an exception based on extraordinary hardship is granted
2 pursuant to (b) below. A timely appeal of such court order shall stay the invalidation of
3 any extension filed until final decision by the appellate court.

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

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

14 (2) Whether the Holder, prior to the date of invalidation, has made contractual
15 commitments to third parties in reliance upon the extension to construct, operate
16 or erect development.

17 (3) Whether the Holder, prior to the date of invalidation, has in reliance upon
18 the extensions incurred financial obligations to a lending institution which,
19 despite a thorough review of alternative solutions, the Holder cannot meet unless
20 the extension remains in full force and effect.

21 (4) Whether the invalidation of the extension will expose the Holder to
22 substantial monetary liability to third persons; or would leave the Holder

1 completely unable, after a thorough review of alternative solutions, to earn a
2 reasonable investment backed expectation on the real property that is affected by
3 invalidation of the extension.

4 (c) A request for an exception to invalidation of an extension based upon
5 extraordinary hardship shall be filed by the Holder with the City Manager, or designee,
6 including a fee of \$350.00, to cover processing and advertising costs, and shall include a
7 recitation of the specific facts that are alleged to support the request, and shall contain
8 such other information as the City Commission shall prescribe as necessary to be fully
9 informed with respect to the request.

10 (d) A public hearing on the request shall be held by the City Commission after receipt
11 of a properly filed request.

12 (e) At the conclusion of the public hearing and after reviewing the evidence and
13 testimony placed on the record, the City Commission shall act upon the request and
14 either to approve or deny the request made by the Holder.

15 **Section 7.** 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
17 unconstitutional, such finding shall not affect the other provisions or applications of the
18 ordinance which can be given effect without the valid or unconstitutional provisions or
19 application, and to this end the provisions of this ordinance are declared severable.

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

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PASSED AND ADOPTED this ____ day of _____, 2009.

By: _____
PEGEEN HANRAHAN,
MAYOR

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 _____, 2009.

This ordinance passed on second reading this ____ day of _____, 2009.