

ORDINANCE NO. 100097

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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 Senate Bill 1752, now known as Chapter Law No. 2010-147, Laws of**
7 **Florida; providing a severability clause; and providing an immediate**
8 **effective date.**
9

10 **WHEREAS**, the Governor of the State of Florida signed Senate Bill 1752, now
11 known as Chapter 2010-147, Laws of Florida, into law on May 28, 2010 (“SB 1752”);
12 and

13 **WHEREAS**, among other things, SB 1752 provides for a two-year extension of
14 local government issued development orders and building permits that have an expiration
15 date of September 1, 2008 through January 1, 2012; and

16 **WHEREAS**, the two-year extension provided for under SB 1752 extends and
17 renews the development orders and building permits from the date the permit expired or
18 will expire; and

19 **WHEREAS**, SB 1752 further provides that the holder of a valid development
20 order or building permit or other authorization that is eligible for the two-year extension
21 must notify the local government in writing no later than December 31, 2010, identifying
22 the specific authorization(s) for which the holder intends to use the extension and the
23 anticipated timeframe for acting on the authorization; and

24 **WHEREAS**, SB 1752 further provides that permits that receive the two-year
25 extension will continue to be governed by rules in effect at the time the permit was
26 issued, except when it can be demonstrated that the rules in effect at the time the permit

1 was issued would create an immediate threat to public safety or health; and

2 **WHEREAS**, SB 1752 further provides that the local government may continue to
3 require the owner/holder to maintain and secure the property in a safe and sanitary
4 condition in compliance with applicable laws and ordinances; and

5 **WHEREAS**, SB 1752 states that the extension provided by SB 1752 is in
6 addition to the 2-year permit extension provided under section 14 of Chapter 2009-96,
7 Laws of Florida, (last years Senate Bill 360);

8 **WHEREAS**, due to the broad and imprecise language in SB 1752, there is a need
9 to provide clarity and effectuate the intent of SB 1752 within the City of Gainesville, by
10 establishing administrative procedures and fees to properly administer and document the
11 requests for the extensions granted under SB 1752; and

12 **WHEREAS**, in order to carry out the administrative procedures and process the
13 requests made in accordance with this ordinance under SB 1752, it is necessary to
14 authorize the Director of Planning and Development Services Department, or his
15 designee, to draft and execute the appropriate documents to implement SB 1752 and grant
16 the extensions identified herein; and

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

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

1 and were, in fact, heard.

2 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION**
3 **OF THE CITY OF GAINESVILLE, FLORIDA:**

4 **Section 1. Purpose.** The purpose of this Ordinance is to enable the City of
5 Gainesville to timely and efficiently process and properly document extensions granted
6 pursuant to SB 1752. The City will not take any action on any application, will not
7 recognize any request for or issue any extension of a development order or permit
8 pursuant to SB 1752, except as provided in this Ordinance.

9 **Section 2. Definitions.** For purposes of this ordinance, the following terms shall have
10 the meanings indicated below. If a specific type of development order or permit is not
11 expressly included in the definitions herein, it is excluded from and not eligible for a SB
12 1752 extension by the City.

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

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

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

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

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

12 (a) promulgate form(s) for requests for Building Permit extensions and Development
13 Order extensions under this ordinance pursuant to SB 1752;

14 (b) accept and process requests for extensions properly made in accordance with this
15 ordinance pursuant to SB 1752;

16 (c) execute the appropriate documents to implement the extension upon written
17 request made in accordance with this ordinance pursuant to SB 1752; and

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

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

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

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

5 (a) Any Holder of a Building Permit or Development Order with an expiration date of
6 September 1, 2008 through January 1, 2012, may apply for a SB 1752 extension on the
7 application form(s) provided by the Planning and Development Services Department. In
8 order to be processed, a completed application with payment of fee, must be received by
9 the Planning and Development Services Department on or before 8 a.m. on January 3,
10 2011.

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

18 (c) 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,
20 but not be limited to:

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

1 (2) Failure to adhere to the requirements of this ordinance or SB 1752;

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

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

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

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

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

21 (c) The Holder of an extended Building Permit or Development Order shall,
22 throughout the term of the extension, have a continuing obligation to notify the Planning

1 and Development Services Department of any change in status of Holder as it relates to
2 the extension such as, but not limited to, change of entity name, transfer of property,
3 death or foreclosure.

4 (d) Except as provided in (e) below, if Holder is eligible for an extension of a
5 Building Permit or Development Order under this ordinance pursuant to SB 1752, the SB
6 1752 extension shall be the exclusive extension available to the Holder and shall operate
7 in lieu of, and not in addition to, any other extension that may be available under the
8 terms and conditions of the Development Order, Building Permit or City Code of
9 Ordinances. By way of example, if a Holder of a PD development order that expired on
10 September 2, 2009 and which order provides that it may be extended for one year upon
11 request of owner/developer, the Holder is eligible for and receives a SB 1752 extension
12 under this ordinance, the PD development order will expire on September 1, 2011. The
13 Holder cannot request the one-year extension as provided in the PD Development Order.
14 This Ordinance shall supersede and control over any ordinance or City Code of Ordinance
15 provision that permits or allows an extension of time for a Development Order or
16 Building Permit.

17 (e) Notwithstanding (d) above, as stated in SB 1752, an SB 1752 extension is in
18 addition to the extension provided by the 2009 Senate Bill 360 (Section 14 of Chapter
19 2009-96, Laws of Florida). By way of example, a Holder of a PD development order that
20 expired on September 2, 2009, who received a Senate Bill 360 extension and now has an
21 expiration date of September 1, 2011, the Holder is eligible to receive a SB 1752
22 extension and extend the expiration date to August 31, 2013. Alternatively, using the

1 same example, if the Holder of the PD development order that expired on September 2,
2 2009, who did not apply for and receive a SB 360 extension, that Holder could now apply
3 for an SB 1752 extension to extend the expiration date to September 1, 2011.

4 **Section 6. Effect of invalidation of SB 360.**

5 (a) In recognition of the on-going litigation over SB 360, this section addresses the
6 effect of subsequent invalidation of SB 360 on those Development Orders and Building
7 Permits that receive both an SB 360 extension under Ordinance No. 090228 and an SB
8 1752 extension under this ordinance.

9 (b) For Development Orders or Building Permits that receive both SB 360 and SB
10 1752 extensions, in the event of the invalidation of the SB 360 extension and absent the
11 granting of extraordinary hardship exception as provided in Ordinance No. 090228, any
12 Senate Bill 1752 extension granted pursuant to this ordinance shall “fall back” and take
13 the place of the invalidated SB 360 extension.

14 **Section 7. Effect of invalidation of SB 1752.**

15 (a) In the event all of SB 1752 or the provisions thereof relating to extensions of
16 building permits or development orders are invalidated by a court of law or by future act
17 of the legislature, any extensions granted under this ordinance shall likewise be deemed
18 to be invalid and of no further force or effect as of the date of the court order or
19 legislative action, unless an exception based on extraordinary hardship is granted
20 pursuant to (b) below. A timely appeal of such court order shall stay the invalidation of
21 any extension filed until final decision by the appellate court.

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

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

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

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

18 (4) Whether the invalidation of the extension will expose the Holder to
19 substantial monetary liability to third persons; or would leave the Holder
20 completely unable, after a thorough review of alternative solutions, to earn a
21 reasonable investment backed expectation on the real property that is affected by
22 invalidation of the extension.

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

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

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

12 **Section 8.** If any word, phrase, clause, paragraph, section or provision of this ordinance
 13 or the application hereof to any person or circumstance is held invalid or unconstitutional,
 14 such finding shall not affect the other provisions or applications of the ordinance which
 15 can be given effect without the valid or unconstitutional provisions or application, and to
 16 this end the provisions of this ordinance are declared severable.

17 **Section 9.** This ordinance shall become effective immediately upon final adoption.

18
 19 **PASSED AND ADOPTED** this _____ day of _____, 2010.

20
 21
 22 By: _____
 23 CRAIG LOWE
 24 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 _____, 2010.

This ordinance passed on second reading this _____ day of _____,
2010.