

Legislative #

110888

ORDINANCE NO. 110888

An ordinance of the City of Gainesville, Florida, establishing administrative procedures, requirements and limitations to carry out the development order and building permit extensions authorized by Section 252.363, Florida Statutes; providing a severability clause; and providing an immediate effective date.

WHEREAS, Section 252.363, Florida Statutes became law on July 1, 2011; and

WHEREAS, Section 252.363, Florida Statutes tolls the time remaining to exercise the rights under local government issued development orders and building permits during a state of emergency declared by the Governor of the State of Florida (the “Tolled Time”); and

WHEREAS, In addition to the Tolled Time, Section 252.363, Florida Statutes extends the development order and building permit for an additional six (6) months. The Tolled Time and additional 6-month period are collectively referred to herein as the “Extension”; and,

WHEREAS, Section 252.363, Florida Statutes further provides that the holder of a valid development order or building permit or other authorization that is eligible for the Extension must notify the local government in writing within ninety (90) days after the termination of the emergency declaration, identifying the specific permit(s) or authorization(s) for which the holder intends to use the Extension; and

WHEREAS, Section 252.363, Florida Statutes, further provides that the Extension is available only if the building, improvement or development is located within the geographic area for which the declaration of state of emergency applies; and

WHEREAS, Section 252.363, Florida Statutes further provides that permits that receive the Extension will continue to be governed by rules in effect at the time the permit was issued, except when it can be demonstrated that the rules in effect at the time the permit was issued would create an immediate threat to public safety or health; and

1 **WHEREAS**, Section 252.363, Florida Statutes further provides that the local government
2 may continue to require the owner/holder to maintain and secure the property in a safe and sanitary
3 condition in compliance with applicable laws and ordinances; and

4 **WHEREAS**, in order to carry out the administrative procedures and process the requests
5 made in accordance with this ordinance, it is necessary to authorize the Director of the Planning and
6 Development Services Department, or his designee, to draft and execute the appropriate documents
7 to implement Section 252.363, Florida Statutes; and

8 **WHEREAS**, at least 10 days notice has been given once by publication in a newspaper of
9 general circulation notifying the public of this proposed ordinance and of a public hearing to be held
10 in the City Commission Meeting Room, First Floor, City Hall, City of Gainesville; and

11 **WHEREAS**, the public hearings were held pursuant to the published notice described at
12 which hearings the parties in interest and all others had an opportunity to be 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. Purpose.** The purpose of this ordinance is to enable the City of Gainesville to
16 timely and efficiently process and properly document each Extension granted pursuant to Section
17 252.363, Florida Statutes. The City will not take any action on any application, will not recognize
18 any request for or issue any Extension of a development order or permit pursuant to Section 252.363,
19 Florida Statutes, except as provided in this ordinance.

20 **Section 2. Definitions.** For purposes of this ordinance, the following terms shall have the
21 meanings indicated below. If a specific type of development order or permit is not expressly
22 included in the definitions herein, it is excluded from and not eligible for a Section 252.363, Florida
23 Statutes Extension by the City.

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

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

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

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

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

18 (a) promulgate form(s) for requests for Building Permit Extensions and Development Order
19 Extensions under this ordinance pursuant to Section 252.363, Florida Statutes;

20 (b) accept and process requests for each Extension properly made in accordance with this
21 ordinance pursuant to Section 252.363, Florida Statutes; and

22 (c) execute the appropriate documents to implement the Extension upon written request made in
23 accordance with this ordinance pursuant to Section 252.363, Florida Statutes.

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

2 (a) Upon the termination of any declaration of a state of emergency issued by the Governor of
3 the State of Florida, any Holder of a Building Permit or Development Order for a project that is
4 within the geographic area for which the emergency declaration applied may apply for a Section
5 252.363, Florida Statute Extension on the application form(s) provided by the Planning and
6 Development Services Department. In order to be processed, the Holder must submit a completed
7 application together with a copy of the declaration of state of emergency issued by the Governor to
8 the Planning and Development Services Department within ninety (90) days after the termination of
9 the emergency declaration.

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

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

18 (1) Submittal of incomplete application;

19 (2) Failure to adhere to the requirements of this ordinance or Section 252.363, Florida
20 Statutes;

21 (3) The Building Permit or Development Order is for a building, improvement or
22 development that is located outside the geographic area for which the declaration of a state of
23 emergency applies;

1 (4) 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 initiation of
4 formal enforcement, or other equivalent action by the City, prior to the date of the application
5 for an Extension;

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

8 (6) If granting an Extension to the Building Permit or Development Order, operating
9 under the rules in effect at the time the permit was issued, would create an immediate threat
10 to public safety or health.

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

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

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

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

23 **Section 6. Effect of invalidation of Section 252.363, Florida Statutes.**

1 (a) In the event all of Section 252.363, Florida Statutes or the provisions thereof relating to
2 extensions of building permits or development orders are invalidated by a court of law or by future
3 act of the legislature, any extensions granted under this ordinance shall likewise be deemed to be
4 invalid and of no further force or effect as of the date of the court order or legislative action, unless
5 an exception based on extraordinary hardship is granted pursuant to (b) below. A timely appeal of
6 such court order shall stay the invalidation of any extension filed until final decision by the appellate
7 court.

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

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

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

21 (3) Whether the Holder, prior to the date of invalidation, has in reliance upon the
22 extensions incurred financial obligations to a lending institution which, despite a thorough

1 review of alternative solutions, the Holder cannot meet unless the extension remains in full
2 force and effect.

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

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

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

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

17 **Section 7.** If any word, phrase, clause, paragraph, section or provision of this ordinance or
18 the application hereof to any person or circumstance is held invalid or unconstitutional, such finding
19 shall not affect the other provisions or applications of the ordinance which can be given effect
20 without the valid or unconstitutional provisions or application, and to this end the provisions of this
21 ordinance are declared severable.

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

23 **PASSED AND ADOPTED** this _____ day of _____, 2012.

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By: _____
CRAIG LOWE
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 _____, 2012.

This ordinance passed on second reading this _____ day _____, 2012.