

Legislative #

120642

**ORDINANCE NO. 120642**

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**An ordinance of the City of Gainesville, Florida, amending the Land Development Code and the City Code of Ordinances related to regulated natural and archaeological resources; by amending Section 30-310 to create an optional binding resource determination process; by amending Section 30-353 to vest the plan board with the power to hear and be the final decision-making authority for binding resource determinations; amending Appendix A, Schedule of Fees, Rates and Charges to create fees for binding resource determinations; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.**

**WHEREAS**, publication of notice of a public hearing was given that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

**WHEREAS**, notice was given and publication made as required by law and a public hearing was then held by the City Plan Board on December 3, 2012; and

**WHEREAS**, notice was given and publication made as required by law and a public hearing was then held by the City Commission on February 7, 2013; and

**WHEREAS**, pursuant to law, an advertisement was placed in a newspaper of general circulation notifying the public of the public hearing to be held in the City Commission Meeting Room, First Floor, City Hall, in the City of Gainesville at least ten (10) days after the first advertisement was published; and

**WHEREAS**, public hearings were held pursuant to the published notice described above at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

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

1           Section 1. A new subsection (k) is created and added to Section 30-310 of the City  
2 Code of Ordinances to read as follows:

3   (k) Optional binding resource determination process. Prior to the submittal of any  
4   application listed in sec. 30-310 (c), an applicant may apply for an optional, binding  
5   resource determination of regulated natural and archaeological resources. The purpose of  
6   a resource determination is to assist the applicant in determining if and where regulated  
7   natural and archaeological resources are present on the planning parcel prior to the  
8   preparation of detailed development plans and site layouts. This determination does not  
9   vest the applicant for any development rights that will be conferred as part of the final  
10   development review and approval process, and any determinations made during the  
11   resource determination review shall not be construed as an approval or denial or  
12   agreement to approve or deny a development order associated with the planning parcel.

13   (1) Methodology Agreement. Prior to submitting an application for a binding  
14   resource determination, the applicant and the city shall execute a methodology  
15   agreement as set forth in Sec. 30-310(g) and establish specific calendar dates  
16   when the on-site resources assessment will be conducted.

17   (2) Requirements for a pre-application resource determination. Upon execution of  
18   the methodology agreement, the applicant may submit an application for a binding  
19   resource determination on the form provided by the city. The application shall  
20   include payment of the required review fee set forth in Appendix A of the city  
21   code of ordinances, and a resources assessment per the data requirements of sec.  
22   30-310.1 for a Level 1 review. Since the sole purpose of this binding resource

1 determination is to determine if and where natural and archaeological resources  
2 are present on the planning parcel, the applicant shall not submit information  
3 about proposed protection areas, impacts of proposed development, or proposed  
4 measures to avoid, minimize, or mitigate impacts on regulated natural and  
5 archaeological resources and the city will not review or make binding  
6 determinations on any of the foregoing matters.

7 (3) *Staff review.* The city manager or designee will review the application for  
8 completeness and request additional information as required if the application is  
9 deemed incomplete. After review of the application, which may include a site  
10 visit to the planning parcel, the city reviewer shall issue a written analysis of the  
11 application. The written analysis shall provide a verbal description and graphic  
12 depiction of the presence and location of significant natural communities, listed  
13 species or listed species habitat, strategic ecosystem resources, significant  
14 archaeological resources, Floridan aquifer high recharge areas, and significant  
15 geological features; any comments or conditions associated with the written  
16 analysis; and a recommendation to the city plan board.

17 (4) *Board review.* The planning and development services department shall submit  
18 the written analysis to the city plan board.

19 a. *Public hearing.* The city plan board shall hold a public hearing on the  
20 resource determination.

21 b. *Notice.* Notice shall be mailed at least ten days prior to the public hearing  
22 to all property owners within 400 feet of the planning parcel. For this

1 purpose, the owner of property shall be deemed to be the person whose  
2 name and address is listed in the latest ad valorem tax records provided by  
3 the county property appraiser.

4 c. *City plan board action.*

5 1. In considering whether to approve or deny a binding resource  
6 determination, the city plan board shall consider the evidence  
7 presented in the public hearing, including the written analysis of  
8 the city reviewer. The burden of presenting competent substantial  
9 evidence in support of the application shall be upon the applicant.

10 3. Action on the application shall be one of the following:

11 a. Approval;

12 b. Approval subject to conditions; or

13 c. Denial, with a statement of the reasons for denial.

14 d. *Appeal of decision.* Any affected party may appeal the city plan board's  
15 decision on an application for a binding resource determination to a  
16 hearing officer. The procedure for the appeal shall be the same as is  
17 provided in subsection 30-352.1(a) for appeals from decisions of the  
18 development review board. Judicial review shall be available as provided  
19 in section 30-352.1.

20 (5) *Approval length, expiration and resource preservation.* An approved resource  
21 determination is valid for a period of two (2) years from the date of the final  
22 decision of the plan board and is subject to the requirements set forth below. The

1 resource determination shall expire at the end of the two year period. No  
2 extension shall be granted.

3 a. The resources assessment will be updated at the time of  
4 development plan application review to determine the presence of  
5 regulated sinkholes or listed species. This update is subject to the  
6 payment of the update fee set forth in Appendix A of the city code  
7 of ordinances.

8 b. Updates will be required at the time of development plan review if  
9 changes have occurred on or adjacent to the planning parcel that  
10 could alter the resource assessment. These changes include, but  
11 are not limited to, flood, fire, major storm, or adjacent new  
12 development that might impact the planning parcel and the  
13 presence and location of the resources. This update is subject to  
14 the payment of the associated fee in Appendix A of the city code of  
15 ordinances.

16 c. During the two year period the resource determination is valid, the  
17 applicant shall use best practices to preserve and protect any  
18 regulated natural and archaeological resources on the planning  
19 parcel.

20 d. Approval of the resource determination establishes only the  
21 presence and location of the resources and does not exempt the

1 applicant from Level 1 review or Level 2 review, if applicable, at  
2 the time of submittal of any application listed in Section 30-310(c).

3 **Section 2.** Section 30-353(e) is amended to read as follows:

4 (e) *Decisions of the board.* The city plan board has final decision authority in granting  
5 special use permits, in accordance with Article VII, ~~and~~; making determinations for  
6 nonpresumptive vested rights and concurrency, in accordance with Article III- ; and  
7 making determinations on binding resource determinations in accordance with Section  
8 30-310. All other final actions of the board are advisory to the city commission.  
9 Advisory actions of the board shall not obligate the city.

10 **Section 3.** A new subsection is created and added to Section 30-353(f) to read as  
11 follows:

12 **Sec. 30-353. City plan board.**

13  
14 (f) *Functions, powers and duties.*

15 (16) The city plan board shall hear applications for optional binding resource  
16 determinations.

17 ~~(16)(17)~~The board shall perform other lawfully assigned duties.

18 **Section 4.** Subsection (6) within the Land Development Code portion of Appendix A.  
19 Schedule of Fees, Rates and Charges, of the City Code of Ordinances is amended as set forth  
20 below. Except as amended herein, the remainder of Appendix A remains in full force and effect:

- 1 (6) Review of Surface Waters and Wetlands (Sec. 30-300) and Review of Regulated Natural  
2 and Archaeological Resources (Sec. 30-310). Note: only one fee will be charged for reviewing  
3 both surface waters and wetlands and regulated natural and archaeological resources.
- 4 a. Basic review.....no fee
- 5 b. Level 1 review .....500.00
- 6 c. Level 2 review .....2,100.00
- 7 d. Optional binding resource determination of regulated natural and archaeological  
8 resources .....500.00
- 9 e. Optional binding resource determination update for regulated sinkholes and listed  
10 species .....\$125.00
- 11 f. Optional binding resource determination update for changes that could alter the  
12 presence and location of resources .....250.00

13 **Section 5.** It is the intention of the City Commission that the provisions of sections 1  
14 through 4 of this ordinance shall become and be made a part of the Code of Ordinances of the  
15 City of Gainesville, Florida, and that the sections and paragraphs of this ordinance may be  
16 renumbered or relettered in order to accomplish such intentions.

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



1 Section 7. All ordinances, or parts of ordinances, in conflict herewith are to the extent of  
2 such conflict hereby repealed.

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

4 PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014.

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7 \_\_\_\_\_  
EDWARD B. BRADDY, MAYOR

8 ATTEST:

APPROVED AS TO FORM AND LEGALITY:

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11 \_\_\_\_\_  
KURT M. LANNON,  
12 CLERK OF THE COMMISSION

13 \_\_\_\_\_  
NICOLLE M. SHALLEY,  
CITY ATTORNEY

14 This ordinance passed on first reading this \_\_\_\_ day of \_\_\_\_\_, 2014.

15 This ordinance passed on second reading this \_\_\_\_ day of \_\_\_\_\_, 2014.