

LEGISLATIVE #

120129A

ORDINANCE NO. 120129

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 House Bill 503, now known as Chapter 2012-205, Laws of Florida; providing a severability clause; and providing an immediate effective date.

WHEREAS, the Governor of the State of Florida signed House Bill 503, now known as Chapter 2012-205, Laws of Florida, into law on May 4, 2012 and it became effective July 1, 2012 (“HB 503”); and

WHEREAS, Section 24 of HB 503 provides for a two-year extension and renewal of development orders or building permits with an expiration date of January 1, 2012 through January 1, 2014; and

WHEREAS, HB 503 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, 2012, 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, HB 503 further provides that permits that receive an 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

WHEREAS, HB 503 further provides that the local government may continue to require the owner/holder to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances; and

1 **WHEREAS**, HB 503 limits the total extensions granted under SB 360, SB 1752, HB 7207,
2 and HB 503 to a total of four years; and

3 **WHEREAS**, HB 503 states that the owner/holder “is not required to make a payment to the
4 authorizing agency for use of an extension;” and

5 **WHEREAS**, due to the broad and imprecise language in HB 503, there is a need to provide
6 clarity and effectuate the intent of HB 503 within the City of Gainesville, by establishing
7 administrative procedures to properly administer and document the requests for the extensions
8 granted under HB 503; and

9 **WHEREAS**, in order to carry out the administrative procedures and process the requests
10 made in accordance with this ordinance under HB 503, it is necessary to authorize the Director of the
11 Planning and Development Services Department, or his designee, to draft and execute the
12 appropriate documents to implement HB 503 and grant the extensions identified herein; and

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

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

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

20 **Section 1. Purpose.** The purpose of this ordinance is to enable the City of Gainesville to
21 timely and efficiently process and properly document extensions granted pursuant to HB 503. The
22 City will not take any action on any application, will not recognize any request for or issue any

1 extension of a development order or permit pursuant to HB 503, except as provided in this
2 Ordinance.

3 **Section 2. Definitions.** For purposes of this ordinance, the following terms shall have the
4 meanings indicated below. If a specific type of development order or permit is not expressly
5 included in the definitions herein, it is excluded from and not eligible for a HB 503 extension by the
6 City.

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

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

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

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

1 **Section 3. Authorizations.** The Planning and Development Services Department Director,

2 or designee, is authorized to:

3 (a) promulgate form(s) for requests for Building Permit extensions and Development
4 Order extensions under this ordinance pursuant to HB 503;

5 (b) accept and process requests for extensions properly made in accordance with this
6 ordinance pursuant to HB 503; and

7 (c) execute the appropriate documents to implement the extension upon written request
8 made in accordance with this ordinance pursuant to HB 503.

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

10 (a) Any Holder of a Building Permit or Development Order with an expiration date of
11 January 1, 2012 through January 1, 2014, may apply for a HB 503 (Section 24) extension on the
12 application form(s) provided by the Planning and Development Services Department. In order to be
13 processed, a completed application must be received by the Planning and Development Services
14 Department on or before 5:00 p.m. on Monday, December 31, 2012.

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

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

- 1 (1) Submittal of incomplete application;
- 2 (2) Failure to adhere to the requirements of this ordinance or HB 503;
- 3 (3) The Building Permit or Development Order is determined to be in significant
4 noncompliance with the conditions of the Building Permit or Development
5 Order, as established through the issuance of a warning letter or notice of
6 violation, the initiation of formal enforcement, or other equivalent action by
7 the City, prior to the date of the application for extension;
- 8 (4) If granting an extension to the Building Permit or Development Order would
9 delay or prevent compliance with a court order; or
- 10 (5) If an extension granted pursuant to this ordinance, when added to extensions
11 granted pursuant to SB 360 under Ordinance No. 090228 (adopted September
12 17, 2009), pursuant to SB 1752 under Ordinance No. 100097 (adopted
13 September 16, 2010), and pursuant to HB 7207 under Ordinance No. 110106
14 (adopted October 20, 2011) would exceed 4 years in total.

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

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

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

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

8 (d) If Holder is eligible for an extension of a Building Permit or Development Order
9 under this ordinance pursuant to HB 503, the HB 503 extension shall be the exclusive extension
10 available to the Holder and shall operate in lieu of, and not in addition to, any other extension that
11 may be available under the terms and conditions of the Development Order, Building Permit or City
12 Code of Ordinances. By way of example, if a Holder of a PD development order that expires on
13 September 2, 2012 and which order provides that it may be extended for one year upon request of
14 owner/developer, applies for and receives a HB 503 extension under this ordinance, the PD
15 development order will expire on September 2, 2014. The Holder cannot request the one-year
16 extension as provided in the PD Development Order. This ordinance shall supersede and control
17 over any ordinance or City Code of Ordinance provision that permits or allows an extension of time
18 for a Development Order or Building Permit.

19 (e) As stated in HB 503, extensions granted pursuant to HB 503, SB 360, SB 1752 and
20 HB 7207 cannot exceed a total of four years. By way of example, a Holder of a PD development
21 order that expired on September 2, 2009, who received an SB 360 extension (new expiration date of
22 September 2, 2011) and received an SB 1752 extension (new expiration date of September 2, 2013)
23 is not eligible to receive a HB 503 extension because the extensions granted total 4 years.

1 Alternatively, the Holder of a PD development order that expired on September 2, 2010, who
2 received an SB 1752 extension (new expiration date of September 2, 2012), but did not receive a HB
3 7207 extension, could now apply for a HB 503 extension to extend the expiration date to September
4 2, 2014.

5 **Section 6. Effect of invalidation of HB 503.**

6 (a) In the event all of HB 503 or the provisions thereof relating to extensions of building
7 permits or development orders are invalidated by a court of law or by future act of the legislature,
8 any extensions granted under this ordinance shall likewise be deemed to be invalid and of no further
9 force or effect as of the date of the court order or legislative action, unless an exception based on
10 extraordinary hardship is granted pursuant to (b) below. A timely appeal of such court order shall
11 stay the invalidation of any extension filed until final decision by the appellate court.

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

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

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

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

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

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

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

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

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

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

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8 **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.