

RESOLUTION OF THE TOWN COUNCIL OF  
THE TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 09-30

A RESOLUTION OF THE TOWN IMPLEMENTING STATUTORY EXTENSIONS OF DEVELOPMENT ORDERS AND BUILDING PERMITS PURSUANT TO SENATE BILL 360, NOW KNOWN AS CHAPTER LAW NO. 2009-96; PROVIDING FOR TOWN MANAGER AUTHORITY; PROVIDING FOR EFFECT OF INVALIDITY OF SENATE BILL 360; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter empowers the Town Council to adopt, amend, or repeal such resolutions as may be required for the proper governing of the Town; and

**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 mandates 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, under certain circumstances and in recognition of the 2009 real estate market conditions; and

**WHEREAS**, the two-year extension provided for pursuant to 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 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**, SB360 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

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

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

**WHEREAS**, in order to provide clarity and effectuate the intent of SB360 within the Town of Fort Myers Beach, it is prudent to establish administrative procedures and fees to properly administer and document the requests for the extensions granted under SB360; and

**WHEREAS**, in order to carry out the administrative procedures and process the requests made in accordance with the requirements of SB360, it is necessary to authorize the Town Manager, or his designee, to draft and execute the appropriate documents to implement SB360 and grant the extensions identified herein.

IT IS HEREBY RESOLVED BY THE TOWN OF FORT MYERS BEACH, FLORIDA AS FOLLOWS:

**Section 1. WHEREAS Clause Incorporation.** The above recitals as set forth in the various "Whereas" clauses are hereby adopted and incorporated into the body of this Resolution.

**Section 2. Authorizations.** The Town Manager is authorized to:

(a) promulgate form(s) for requests for building permit extensions and development order extensions pursuant to SB360;

(b) accept and process requests for extensions properly made in accordance with this Resolution, Town Ordinances and Codes, SB360, and other applicable laws and regulations;

(c) execute appropriate documents to implement such extension(s) upon written request made in accordance with this Resolution and pursuant to SB360; and

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

(1) For Development Orders: one hundred (\$100.00) dollars per development project (regardless of the number of Development Orders associated with the project).

(2) For Building Permits: one hundred (\$100.00) dollars per development project (regardless of the number of associated site construction, mechanical, gas, electrical, or plumbing permits).

(3) The fee paid under Section 2(d)(1) and (2) shall be refundable if the SB 360 (as codified by Florida Statute) is declared unconstitutional by the Florida Courts.

**Section 3. Procedures to request extension.**

(a) Any holder of a Building Permit or Development Order with an expiration date of September 1, 2008 through January 1, 2012, may apply for a SB360 extension on the application form(s) provided by the Town Manager. In order to be processed, a completed application with payment of fee, must be received by the Town Manager or designee on or before 4 p.m. on December 31, 2009.

(b) Upon submission of a completed application and payment of the administrative fee, the Town Manager, or designee, shall process the application and send a written acknowledgement to the holder. In the event the holder is not the same person/entity as shown on the face of the Development Order or Building Permit, the holder shall provide all legal documentation necessary for the Town Manager or designee, to verify that the holder is eligible to apply for the extension.

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

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

(2) Failure to adhere to the requirements of this resolution, Town ordinances or codes, or SB360;

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

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

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

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

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

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

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

(a) In the event all of SB360 or the provisions thereof relating to extensions of building permits or development orders are invalidated by a court of law or by future act of the legislature, any extensions granted under this SB 360 as addressed in this Resolution shall likewise be deemed to be invalid and of no further force or effect as of the date of the court order or legislative action. A timely appeal of such court order shall stay the invalidation of any extension filed until final decision by the appellate court.

**Section 7. Effective Date.** This Resolution shall take effect immediately upon its adoption by the Town Council of the Town of Fort Myers Beach.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Babcock and seconded by Council Member List and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor aye  
Tom Babcock, Councilmember aye  
Bob Raymond, Councilmember aye

Herb Acken, Vice Mayor aye  
Jo List, Councilmember aye

DULY PASSED AND ADOPTED this 5<sup>th</sup> day of October, 2009.

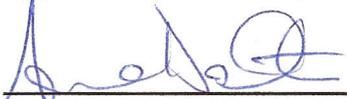
TOWN OF FORT MYERS BEACH

ATTEST:

By:   
Michelle D. Mayher, Town Clerk

By:   
Larry Kiker, Mayor

Approved as to form by:

  
Anne Dalton, Town Attorney