Town of Fort Myers Beach
Agenda Item Summary Blue Sheet Number: **2009-128**

1. Requested Motion: **Meeting Date:**

Give direction to Town Staff and the Town Attorney regarding policy (and fee) aspects of Resolution 2009-30 which extends deadlines for building permits and development orders pursuant to the mandates of SB 360

October 5, 2009

Why the action is necessary:

This will enable staff and the Town Attorney to incorporate Council direction on the policy aspects of the state-mandated extension of permitting and development order deadlines.

What the action accomplishes:

This will provide necessary policy direction from the Town Council.

2. Agenda: 3. Requirement/Purpose: 4. Submitter of Information:

_ Consent	_ Resolution	_ Council
_ Administrative	_ Ordinance	_ Department:
x_ Town Attorney	x_ Other: Direction	_x_ Town Attorney

5. Background:

The Town is required to implement the provisions of SB 360 with regard to extension of development orders and building permits for a two-year period under certain circumstances. SB 360 contains various mandates which the Town is not at liberty to deviate from, so the thrust of the attached Resolution is the Town Manager's implementation of administrative procedures, including a fee, if Council so desires.

SB 360 contains many and various facets, only one of which is the extension referenced above. It was highly controversial upon passage and in fact litigation has been filed by Lee County and others for the court to rule on its constitutionality. Accordingly, the proposed Resolution contains language referencing the possibility of the Court's determination of validity/invalidity. Following adoption of a Town Resolution in this regard, it is recommended that the course of this litigation, as well as legislative review, be carefully monitored by the Town Manager and the Town consider additional action, whether by Resolution or Ordinance, depending on future events.

Attachments: Draft Resolution 09-30; Town Attorney Memo of 9/25/09; Copy of SB 360, Section 14; Statement by DCA Secretary Tom Pelham regarding Permit Extensions under SB 360; Copy of SB 360 Litigation filed by Lee County and others

6. Alternative Action:

Unknown.

7. Management Recommendations:

8. Recommended Approval:

Finance Director	Public Works Director	Comm. Development Director	Town Clerk	Town Attorney	Town Manager
				AD	

9. Council Action:

_ Approved _ Denied _Deferred _Other

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: (**STATE AMOUNT)** per development project (regardless of the number of Development Orders associated with the project).

(2) For Building Permits: (**STATE AMOUNT)** per development project (regardless of the number of associated site construction, mechanical, gas, electrical, or plumbing permits).

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 _____and seconded by Council Member _____ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor
Herb Acken, Vice Mayor
Tom Babcock, Councilmember
Jo List, Councilmember
Bob Raymond, Councilmember

DULY PASSED AND ADOPTED this ____ of October, 2009.

TOWN OF FORT MYERS BEACH

ATTEST:

By:_____ By:_____
Michelle D. Mayher, Town Clerk
Larry Kiker, Mayor

Approved as to form by:

_____
Anne Dalton, Town Attorney

Anne Dalton, Esquire
2044 Bayside Parkway
Fort Myers, Florida 33901
(239) 337-7900

Memorandum

To: Mayor, Vice Mayor, Councilmembers

CC: Town Manager, Town Clerk

Date: September 25, 2009

Subject: Extension of Permits and Development Order Pursuant to Mandates of Senate Bill 360

The passage earlier this year of Senate Bill 360 (also known as the "Community Renewal Act") has generated a great deal of controversy as well as engendered a declaratory judgment action which was filed by Lee County and seven other local government entities on July 7, 2009, in Leon County, Florida. The Court heard an argument on defendants' motion for summary judgment last week and its decision is still pending as of the date of this memo.

Senate Bill 360 Impact and Litigation

This litigation has been designated by the Circuit Court of Leon County as a "high profile" case and, as a result, various pleadings are available on the Court's website. As a courtesy to Council, enclosed in your packet is a copy of the Complaint as filed. However, all of the litigation documents are available through the website of the lead plaintiff, the City of Weston. The link is on the lower left hand corner of the home page – http://www.westonfl.org. The court challenge is based only on the perceived constitutional flaws in the enactment of the bill, i.e., single subject and unfunded mandate. In addition to the filed changed, there are also significant concerns with regard to the state's perceived usurpation of local government's home-rule powers in SB 360, but it was the decision of the coalition of plaintiffs to file only on the enactment issues.

As you may be aware, SB360 substantially revises concurrency and other growth management requirements within the State of Florida and specifically replaces transportation concurrency requirements in dense urban land areas (DULA's) with a mobility fee system. If SB 360 remains unchanged by the courts or the Florida legislature, Comprehensive Plan changes will be required by the Town. However, it has been widely speculated that this law will be revised in the upcoming legislative session. In addition, the Town has not yet been given final DCA approval of the previously legislated Comprehensive Plan amendments under the EA/R process. Therefore, the Town's comprehensive review of other SB 360 provisions is premature at this time.

Town Implementation of SB 360 Mandates Regarding Extensions of Time

The matter before the Town at this time concerns Section 14 of SB 360. This Section provides that "any local government-issued development order or building permit" which had an expiration date of September 1, 2008 through January 1, 2012, may be extended upon application of owner or owner's representative for a period of two (2) years from the date of expiration. The application must be filed with the Town no later than December 31, 2009, and must identify the specific authorization for which the holder intends to use the extension as well as the anticipated timeframe for acting on the authorization.

There has been widespread confusion about implementation of these mandates, most of which concerns the scope of allowable application. Enclosed with this memo is a statement from Department of Community Affairs Secretary Tom Pelham, issued in response to various inquiries for clarification of the statute. Secretary Pelham also addressed this matter in his recent appearance at Harborside Convention Center, and I'm advised that his comments should be available shortly through Fowler, White.

However, until and unless SB 360 is declared unconstitutional or is amended by further action of the Florida legislature, the Town is required to follow its mandates. Accordingly, attached is a draft resolution for Council consideration. Most of the language contained in the Resolution is mandated by SB 360. Accordingly, the bulk of the resolution gives the Town Manager (or designee) the authority to implement this statute. However, Town Council attention is respectfully directed to the section regarding the fee, if any, to be charged to the applicant for extension.

Attachments: Senate Bill 360, Section 14 (extension)
Draft Town Resolution for implementation of SB 360
Complaint by City of Weston et al. v. Governor Crist et al.
Statement by DCA Secretary Tom Pelham Regarding Permit Extensions Under Senate Bill 360

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DCA's Statement Regarding Permit Extensions Under Senate Bill 360

Section 14(1) of Senate Bill 360 provides in part as follows:

Except as provided in subsection (4), and in recognition of 2009 real estate market conditions, any permit issued by the Department of Environmental Protection or a water management district pursuant to Part IV of Chapter 373, Florida Statutes, that has an expiration date of September 1, 2008, through January 1, 2012, is extended and renewed for a period of two years following its date of expiration. This extension includes any local government-issued development order or building permit. The two-year extension also applies to build-out dates including any build-out date extension previously granted under Section 380.06(19)(c), Florida Statutes.

The Department has received numerous inquiries about the agency's interpretation of the above-quoted provisions. The extension of permits issued by the Department of Environmental Protection, water management districts, and local governments for non-Developments of Regional Impact (DRI) related development orders and building permits are not within the jurisdiction of the Department of Community Affairs. Accordingly, the Department has no authority to issue binding interpretations of the statutory language pertaining to permits issued by those agencies. Local governments will have to determine the scope of the statutory extension for local government-issued development orders or building permits except for those that pertain to developments of regional impact.

The Department of Community Affairs does have jurisdiction over local development orders that pertain to DRIs, including local actions which approve extension of build-out dates pursuant to Section 380.06(19)(c), Florida Statutes. The Department interprets the above-quoted statutory provisions as granting a two-year extension of the expiration date and build-out date for any local government-issued DRI development order and related building permits which have an expiration date of September 1, 2008, through January 1, 2012.

Secretary Tom Pelham
June 16, 2009

Senate Bill 360, Section 14

Section 14. (1) Except as provided in subsection (4), and in recognition of 2009 real estate market conditions, any permit issued by the Department of Environmental Protection or a water management district pursuant to part IV of chapter 373, Florida Statutes, that has an expiration date of September 1, 2008, through January 1, 2012, is extended and renewed for a period of 2 years following its date of expiration. This extension includes any local government-issued development order or building permit. The 2-year extension also applies to build out dates including any build out date extension previously granted under s. 380.06(19)(c), Florida Statutes. This section shall not be construed to prohibit conversion from the construction phase to the operation phase upon completion of construction.

(2) The commencement and completion dates for any required mitigation associated with a phased construction project shall be extended such that mitigation takes place in the same timeframe relative to the phase as originally permitted.

(3) The holder of a valid permit or other authorization that is eligible for the 2-year extension shall notify the authorizing agency in writing no later than December 31, 2009, identifying the specific authorization for which the holder intends to use the extension and the anticipated timeframe for acting on the authorization.

(4) The extension provided for in subsection (1) does not apply to:

(a) A permit or other authorization under any programmatic or regional general permit issued by the Army Corps of Engineers.

(b) A permit or other authorization held by an owner or operator determined to be in significant noncompliance with the conditions of the permit or authorization 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 agency.

(c) A permit or other authorization, if granted an extension, that would delay or prevent compliance with a court order.

(5) Permits extended under this section shall 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. This provision shall apply to any modification of the plans, terms, and conditions of the permit that lessens the environmental impact, except that any such modification shall not extend the time limit beyond 2 additional years.

(6) Nothing in this section shall impair the authority of a county or municipality to require the owner of a property, that has notified the county or municipality of the owner’s intention to receive the extension of time granted by this section, to maintain and secure the property in a safe and sanitary condition in compliance with applicable laws and ordinances.

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

CASE NO.

CITY OF WESTON, FLORIDA; VILLAGE OF KEY BISCAYNE, FLORIDA; TOWN OF CUTLER BAY, FLORIDA; LEE COUNTY, FLORIDA; CITY OF DEERFIELD BEACH, FLORIDA; CITY OF MIAMI GARDENS, FLORIDA; CITY OF FRUITLAND PARK, FLORIDA, and CITY OF PARKLAND, FLORIDA,

Plaintiffs,

vs.

THE HONORABLE CHARLIE CRIST, Governor of the State of Florida; HONORABLE KURT S. BROWNING, Secretary of State, State of Florida; THE HONORABLE JEFF ATWATER, President of the Senate, State of Florida; THE HONORABLE LARRY CRETUL, Speaker of the House, State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, City of Weston, Florida; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida, and City of Parkland,

Florida (collectively, the "Local Governments"), sue The Honorable Charlie Crist, Governor of the State of Florida, The Honorable Kurt S. Browning, Secretary of State, The Honorable Jeff Atwater, President of the Senate, and The Honorable Larry Cretul, Speaker of the House, each in his official capacity only, and state as follows:

Overview

1. This is an action by a coalition of local governments challenging the recent enactment of a bill that was passed in the waning hours of the legislative session through the improper combination of several bills dealing with several subjects. The enactment violated the Florida Constitution because the bill contained more than "one subject and matters properly connected therewith" and because it constituted an improper "unfunded mandate" on local governments.

Jurisdiction, Venue and Parties

2. This is a cause of action for declaratory and related injunctive relief, pursuant to Chapter 86, Florida Statutes, seeking to declare that the enactment of Senate Bill 360, entitled "An Act Relating to Growth Management" ("SB 360" or the "Bill") (now Chap. 2009-96, Laws of Fla.), violated Art. III, Sec. 6 and Art. VII, Sec. 18 of the Florida Constitution. The Court has jurisdiction to grant declaratory relief. *See* Sections 86.011, Florida Statutes; *Martinez v. Scanlan*, 582 So. 2d 1167 (Fla. 1991) (the constitutionality of a statute may be challenged in an action for declaratory judgment in circuit court).

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3. Venue is proper in Leon County inasmuch as the defendants are all Constitutional officers of the State of Florida.

4. All conditions precedent to the institution of this lawsuit have been, or will be, satisfied or waived.

5. The Local Governments are all incorporated municipalities or counties existing under the laws of the State of Florida. Each of the Local Governments is subject to and must comply with the provisions of Chapters 163 and 380, Florida Statutes.

6. The Honorable Charlie Crist is the Governor of the State of Florida and as head of the Executive branch of government, is charged with administering and executing the laws of the State. Governor Crist signed SB 360 into law.

7. The Honorable Kurt S. Browning is the Secretary of State of the State of Florida, and is responsible for registering, indexing, segregating and classifying all acts of the Legislature, including SB 360. *See* Sections 15.01, 15.155, Florida Statutes.

8. The Honorable Jeff Atwater served as the President of the Senate during the 2009 legislative session during which SB 360 was enacted. As such, he was responsible for ensuring that all procedural requirements, including those set forth in the Florida Constitution, were observed by the Senate.

9. The Honorable Larry Cretul served as the Speaker of the House during the 2009 legislative session during which SB 360 was enacted. As such, he

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was responsible for ensuring that all procedural requirements, including those set forth in the Florida Constitution, were observed by the House.

BACKGROUND

The History of SB 360

10. On February 26, 2009, the first version of SB 360 was filed, entitled "An Act Relating to the Department of Community Affairs." In the ensuing months, SB 360 was subjected to various revisions and a change of title. Until the closing moments of the legislative session, however, the House and Senate had difficulty coming to consensus on the legislation.

11. At approximately 6:30 p.m., on May 1, 2009, the last day of the regular legislative session, the Senate passed an amendment to SB 360 that doubled the size of the bill by adding numerous provisions relating to affordable housing, which had been drawn from other House and Senate bills. Approximately one hour later, the House approved SB 360, as amended by the Senate.

12. Senator Mike Bennett, the sponsor of SB 360, has stated publicly that the purpose of the bill is to "encourage urban infill and redevelopment by removing costly and unworkable state regulations in urban areas."

13. Despite significant opposition (and requests for veto) from local governmental entities throughout the state, Governor Crist signed SB 360 into law on June 1, 2009. SB 360 became effective immediately.

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The Substance of SB 360

14. The first half of SB 360 includes sweeping revisions to the State's growth management laws, which will change the face of planning and growth management within the State.

15. Some of the changes related to growth management contained in SB 360 affect all local governments in Florida (including the Local Governments), while other apply to only some local governments (including some of the Local Governments).

16. SB 360 creates the new term "dense urban land area" or "DULA." A DULA is defined as (a) a municipality that has an average population density of at least 1,000 people per square mile of land area and a minimum population of 5,000; or (b) a county – including the municipalities within its boundaries – that has an average population density of at least 1,000 people per square mile of land area *or* a population of at least 1 million.

17. Approximately 245 local governments will likely qualify as DULAs, which include approximately half of the State's 18.3 million residents. Many of the Local Governments will qualify as DULAs.

18. In general, development of land within DULAs will no longer be subject to state-mandated transportation concurrency or Development of Regional Impact ("DRI") review. Other significant growth management changes within the first half of SB 360 relate to school concurrency requirements, extension of certain

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permits for two years, extension of the deadline for financial feasibility for capital improvements schedules, and notice requirements for impact fee increases.

19. Unrelated to growth management, SB 360 also includes a provision that prohibits local governments from adopting business regulations for security cameras in private businesses.

20. Also unrelated to growth management, the entire second half of SB 360, which was appended in the closing minutes of the legislative session, consists of substantial revisions to several Florida statutes relating to affordable housing. Among the revised provisions are additional tax exemptions, methods for valuing community land trust property, discretionary sales surtaxes, and the powers ascribed to the Florida Housing Finance Corporation.

21. Many of the provisions of SB 360 will require local governments, including the Local Governments, to spend funds or take actions requiring the expenditure of funds. However, the Legislature did not appropriate any such funds or create any new funding sources for local governments to obtain such funds. In addition, SB 360 was not approved by a two-thirds vote in each house of the Legislature, does not apply to all persons similarly situated and was not needed to comply with a federal requirement.

The Need for Expedited Consideration

22. SB 360 became effective on June 1, 2009, when it was signed by Governor Crist. Since then, as noted below, there have been significant

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disagreements as to the meaning of various provisions in the Bill, which is poorly worded and ambiguous.

23. Local governments throughout the State, including the Local Governments, as well as the Department of Community Affairs, are struggling to interpret and administer SB 360, and it is anticipated that numerous lawsuits will soon be filed throughout the State regarding the application and interpretation of the Bill. If it is found to be unconstitutional, these expenditures and efforts would be unnecessary, and the Legislature could clarify these provisions and attempt to enact legislation (in conformance with Constitutional requirements) in the next legislative session (if there are sufficient votes to do so).

24. In fact, when informed of the Local Governments' impending lawsuit to challenge the constitutionality of SB 360, the bill's sponsor, Senator Bennett, was quoted in the press as saying: "I'll get the last laugh because [the Legislature] will be back in session before they get a court date. *Now that I know what their objections are, we'll fix it.*"

25. Section 86.111, Florida Statutes, provides for expedited consideration of actions for declaratory relief, and such consideration is hereby requested by the Local Governments.

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COUNT I

VIOLATION OF THE SINGLE SUBJECT PROVISION

26. The Local Governments reallege and incorporate by reference the allegations contained in paragraph 1 through 25 inclusive, as if fully set forth herein.

The History of the Single Subject Provision – Art. III, Sec. 6, Fla. Const.

27. In Florida, the single subject provision has a long history, being a part of the Florida Constitution since 1868. It is codified in Article III, Section 6 of the Florida Constitution and provides, in part, that "every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

28. The Florida Supreme Court has observed, in *State v. Thompson*, 750 So. 2d 643 (Fla. 1999), that the underlying purpose of the single subject provision is to: (i) prevent hodge-podge or "log rolling" legislation (i.e., putting two unrelated matters in one act, and thus forcing legislators to vote for one item in order to get another); (ii) prevent surprise or fraud by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted; and (iii) apprise the people fairly of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon.

29. The *Thompson* Court has also observed the most common single subject provision violations frequently occur when a bill is amended several times, the title

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of the bill is changed, and the bill is passed near the end of the legislative session, as occurred with this enactment.

The Enactment of SB 360 Violated Art. III, Sec. 6, Fla. Const.

30. In this instance, although SB 360's title is "An Act Relating to Growth Management," it is readily apparent that SB 360 addresses a number of subjects unrelated to the single subject of "growth management."

31. SB 360 includes a provision that prohibits the Local Governments from adopting business regulations for security cameras that would require lawful businesses to expend money to enhance local police services. There is no logical or functional connection between managing growth and regulating security cameras at private places of business.

32. Additionally, approximately half of SB 360 was appended at the last minute by the Senate and summarily approved by the House. This "other half" of the bill related to affordable housing. The provisions in SB 360 relating to tax exemptions, methods for valuing community land trust property, discretionary sales surtaxes and amendments to the powers of the Florida Housing Finance Corporation do not relate to managing growth within the State or the sponsor's stated purpose of encouraging urban infill and redevelopment by removing costly and unworkable state regulations (such as transportation concurrency and DRI review).

33. Therefore, SB 360 addresses three separate and distinct subjects: growth management, security cameras and affordable housing. These three

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subjects were improperly combined in the last hour of the session, presumably to "logroll" and obtain sufficient votes for passage. Thus, this is the classic case of a violation of the single subject provision of the Florida Constitution.

34. As such, the Court should declare that the enactment of SB 360 violated Art III, Sec. 6 of the Florida Constitution, and enjoin the enforcement of its requirements.

35. All elements necessary to support a cause of action for declaratory relief are present:

a. There is a bona fide, actual, present need for a declaration of whether the enactment of SB 360 violated Art. III, Sec. 6 of the Florida Constitution.

b. The declaration sought deals with a present controversy as to an ascertainable set of facts.

c. Constitutionally provided rights and privileges of the Local Governments are dependent upon the law applicable to the facts.

d. The Local Governments and the defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.

e. The antagonistic and adverse interests are all before this Court.

f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

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Prayer for Relief

WHEREFORE, the Local Governments respectfully request that judgment be entered in their favor:

A. Declaring that the enactment of SB 360 violated the single subject provision in Article III, Section 6 of the Florida Constitution;

B. Enjoining the enforcement of SB 360; and

C. Granting such other relief as this Court deems just and proper.

COUNT II

VIOLATION OF UNFUNDED MANDATE PROVISION

36. The Local Governments reallege and incorporate by reference the allegations contained in paragraphs 1 through 25, inclusive, as if fully set forth herein.

History of the Unfunded Mandate Provision – Art. VII, Sec. 18(a), Fla. Const.

37. In the late 1970s, the Florida Legislature repeatedly adopted legislative measures that imposed costly requirements on local governments without providing funds for (or methods for funding) compliance with the requirements. In 1977, after public outcry, the Florida Legislature created the Florida Advisory Council on Intergovernmental Relations in order to examine the effect of state mandates on municipalities and counties.

38. In 1978, the Legislature passed a statute that required any bill that would require additional expenditures by local governments be accompanied by an economic statement explaining the resulting costs of implementing the bill. This

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legislation did not solve the problem, however, and the Florida Legislature adopted 362 unfunded mandates between the years of 1981 through 1990.

39. As a result, by 1988, local governments started a petition drive to enact a constitutional amendment that would restrict the ability of the Legislature to adopt unfunded legislative mandates. In 1989, the Florida Legislature adopted House Joint Resolutions 139 and 40, which proposed the adoption of Article VII, Section 18 of the Constitution. On November 6, 1990, Article VII, Section 18(a) of the Constitution was ratified by the electorate, which provides, in relevant part, as follows:

> No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the legislature has determined that such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

40. One of the primary legislative intents underlying the unfunded mandate provision was, in fact, to preclude unfunded *growth management* mandates.

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The Enactment of SB 360 Violated Art. VII, Sec. 18(a), Fla. Const.

41. SB 360 requires the Local Governments "to spend funds or to take an action requiring the expenditure of funds" in many ways. These expenditures, individually and cumulatively, will be highly significant and will force local governments throughout Florida, including the Local Governments, to raise taxes.

42. The specific "unfunded mandates" imposed by SB 360 include, but are not limited to, the following:

a. SB 360 requires that, within two years, those Local Governments designated as transportation concurrency exception areas ("TCEAs"), by virtue of their being defined as DULAs, "shall" adopt comprehensive plan amendments and transportation strategies "to support and fund mobility." This amendment process requires that consultants be retained, studies commissioned, legislation drafted, plan amendments printed, and hearings advertised and conducted, at an expense of at least $30,000 per local government.

b. SB 360 removes the primary state-mandated procedures and mechanisms by which developers are currently required to address transportation impacts of their projects, known as "transportation concurrency." SB 360, however, is unclear as to whether the elimination of state-mandated transportation concurrency in the affected areas also means that those local governments must also eliminate local transportation requirements. Development interests, as

well as the sponsors of SB 360, have argued that this is the case; local government lawyers have contended to the contrary. Thus, at a minimum, affected local governments will be forced to spend funds determining how to interpret and apply this aspect of SB 360, including possible litigation expenses. In addition, if the broader interpretation is accepted, then the affected Local Governments will lose the ability to require developers to pay their proportionate share (through concurrency fees) of the roadway improvements necessitated by their development. These transportation costs associated with roadway improvements will be shifted to the Local Governments, which will have no alternative but to spend the funds or risk being in violation of level of service standards in their comprehensive plans.

c. SB 360 also extends certain permits for two years in all local governments in Florida, including the Local Governments. Again, this provision is very poorly worded and susceptible to different interpretations. Development interests and the sponsors of SB 360 contend that this extension applies to all building permits and local development orders, while many local government interests contend that it applies only to water management district and Department of Environmental Protection (and related local) permits. Thus, once again, the Local Governments will be forced to spend funds determining how to interpret and apply this aspect of SB 360,

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including possible litigation expenses. Regardless of which interpretation prevails, Local Governments will be forced to expend funds implementing and administering the permit extensions (and no provision was contained in SB 360 authorizing that cost to be charged to developers).

d. SB 360 also eliminates the previously available option for local governments to use whatever process (formal or informal) they chose to resolve intergovernmental coordination disputes. Instead, local governments will be required to use the formal regional process and engage in mediation. This formal process will also entail the additional expenditure of funds.

e. SB 360 eliminates the DRI process in DULAs. This process allows all local governments that are affected by a large project (including those that do not have direct approval authority, such as contiguous cities and counties), to have developers mitigate impacts inside and outside the boundaries of the city or county where the project is located. The elimination of this process will allow developers to ignore cross-jurisdictional impacts, thus passing the cost of mitigating such impacts on to local governments and their taxpayers.

f. SB 360 also creates a new requirement that "increases" in impact fees require a 90 day notice. Previously, many local governments automatically increase impact fees through CPI adjustments without

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additional notices and hearings each year. This will create additional costs for annual publication and mailing of notices, drafting of resolutions, and hearings.

g. SB 360 includes a provision that preempts local governments from adopting business regulations for security cameras for "lawful businesses that require the expenditure of money to enhance local police services." At least on Local Government has adopted, and several local governments were considering adopting, such requirements in order to deter crime and prevent expenditures for police services. This transfer of costs from business owners to taxpayers also will cause the Local Governments to expend funds.

43. The significant costs of SB 360 on local governments throughout Florida were well-known to (but ignored by) the Legislature. During the legislative session, Senate staff reviewed SB 360 and issued on March 19, 2009, its Analysis and Fiscal Impact Statement. Senate staff observed that SB 360 "will have a negative fiscal impact on local governments that are designated TCEAs by requiring updated comprehensive plans."

44. The State's Department of Community Affairs ("DCA") also reviewed SB 360 and observed on May 20, 2009, as part of its policy analysis, that meeting the bill's requirements would be "a *very onerous and expensive* task. However, *no financial support or new revenue sources have been provided for the local governments* to undertake this planning." (emphasis added). DCA further

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noted that "the fiscal impact on local governments is *extensive* but the full effects are indeterminate." (emphasis added).

45. In its policy analysis, DCA addressed this shifting of the burden and observed that "the reduced control of the timing of development, *loss of transportation mitigation*, and *reduction in other sources of revenues to support transportation* facilities will have a *serious impact* on local governments and ultimately force choices between *severe transportation congestion* and increased taxes."

46. While the Legislature made a conclusory finding – presumably to avoid the consequences of the unfunded mandate provision – that SB 360 fulfills an important state purpose, SB 360 nonetheless violates Art. VII, Sec. 18 of the Florida Constitution because the Legislature failed to comply with the requirements for such an exception:

a. No funds were appropriated in SB 360 to allow the Local Governments to implement the law's new requirements;

b. No new funding source was created or even identified that would be sufficient to cover the expenditures of the Local Governments;

c. The Legislature failed to obtain a two-thirds vote of each house in approving SB 360 (obtaining only 78 out of 120 votes in the House of Representatives);

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d. SB 360 does not apply the same to all similarly situated persons, including the state and local governments (in fact, it is directed *only* at local governments); and

e. SB 360 was not enacted to comply with any federal requirement.

47. As such, the Court should declare that the enactment of SB 360 violated Art VII, Sec. 18 of the Florida Constitution, and enjoin the enforcement of its requirements.

48. All elements necessary to support a cause of action for declaratory relief are present:

a. There is a bona fide, actual, present need for a declaration of whether the enactment of SB 360 violated Art. VII, Sec. 18 of the Florida Constitution.

b. The declaration sought deals with a present controversy as to an ascertainable set of facts.

c. Constitutionally provided rights and privileges of the Local Governments are dependent upon the law applicable to the facts.

d. The Local Governments and the defendants have an actual, present, adverse and antagonistic interest in the subject matter of this Complaint.

e. The antagonistic and adverse interests are all before this Court.

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f. The relief sought is not merely the giving of legal advice or providing the answer to a question propounded from curiosity, but stems from an actual controversy.

Prayer for Relief

WHEREFORE, the Local Governments respectfully request that judgment be entered in their favor:

A. Declaring that the enactment of SB 360 violated the unfunded mandate provision in Article VII, Section 18 of the Florida Constitution;

B. Enjoining the enforcement of SB 360; and

C. Granting such other relief as this Court deems just and proper.

Dated this 7th day of July, 2009.

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LEON COUNTY CIRCUIT COURT
CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Section 25.075, Florida Statutes.

I. **CASE STYLE**

PLAINTIFF: City of Weston; Village of Key Biscayne, Florida; Town of Cutler Bay, Florida; Lee County, Florida; City of Deerfield Beach, Florida; City of Miami Gardens, Florida; City of Fruitland Park, Florida; and City of Parkland, Florida

CASE #: _____

JUDGE: _____

vs.

DEFENDANT: The Honorable Charlie Crist; Honorable Kurt S. Browning, Honorable Jeff Atwater; and Honorable Larry Cretul

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II. **TYPE OF CASE** *(Place an X in one box only. If the case fits more than one type of case, select the most definitive)*

1. □ Professional Malpractice (PRMP)	2. □ Products Liability (PROL)
3. □ Auto Negligence (AUNG)	4. □ Other Negligence (OTNG)
5. □ Condominium (COND)	6. □ Contract & Indebtedness (CONT)
7. □ Real Property (RPMF) □ Mortgage Foreclosure (MTFC)	8. □Eminent Domain (EMDO)
9. □ Appeal from County Court (APCO)	
10. **Other:**	
a. □ Discrimination (DISC)	b. □ Equitable Relief (EQRL)
c. □ Foreign Judgment (FRJU)	d. □ Writ of Habeas Corpus (HBCP)
e. □ Insurance Receiverships (INRC)	f. □ Jimmy Ryce (RYCE)
g. □ Writ of Mandamus(WRMA)	h.□ Challenge to Proposed Constitutional Amendment (CPCA)
i. ☒ Other: (OTHR) Challenge to Florida Law	

III. **Is Jury Trial Demanded In Complaint?**

□ Yes

☒ No

Date: July 7, 2009

FL Bar #: 768103

Signature of Attorney for Party Initiating Action