

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

CASE NO. 2025 CA 001876

City of Destin, Florida, *et al.*,

Plaintiffs,

v.

Honorable J. Alex Kelly,
Secretary of Commerce, State of Florida,
et al.,

Defendants.

**PLAINTIFFS' EXPEDITED MOTION FOR PRELIMINARY
INJUNCTION AND INCORPORATED MEMORANDUM OF LAW**

Plaintiffs,¹ pursuant to Florida Rule of Civil Procedure 1.610, file this expedited motion for preliminary injunction as to their six-count Complaint for Declaratory and Injunctive relief.

INTRODUCTION

This is an action brought by a large number of counties and municipalities challenging a recently enacted law, SB 180, that represents the largest incursion into local home rule authority in the history of Florida since the adoption of the 1968 Florida Constitution. Claiming to be “[a]n act relating to emergencies,” SB 180 purportedly intends to assist with hurricane resiliency, preparedness, and recovery, by, among other things, helping owners of property rebuild properties damaged by a hurricane. However, SB 180 goes much further than its stated purpose because

¹ This Motion is made by the Plaintiffs in the Amended Complaint filed in this action, as well as all additional counties and municipalities that may join as Plaintiffs through potential amendments to the Amended Complaint. Defined terms used herein are the same as used in the Amended Complaint.

Sections 18 and 28 of the Bill freeze all Planning and Zoning Regulations across that entirety of Florida—for all of Florida’s 67 counties and 411 municipalities, including the Local Governments.

The plain language of Sections 18 and 28 of SB 180 violate the Florida Constitution and Florida law because (1) they contain more than “one subject and matter properly connected therewith,” (2) have defective titles, (3) are provisions of a general law that classify counties and municipalities on a basis not reasonably related to the subject of the law, (4) constitute an improper unfunded mandate on the Local Governments, (5) conflict with Florida’s Community Planning Act, and (6) improperly intrude on Home Rule Powers.

Because the Local Governments are likely to prevail on the merits of their claims, the Local Governments are being irreparably harmed, there are no adequate remedies at law, and SB 180 disserves the public interest, the Local Governments respectfully request that this Honorable Court enter an order preliminarily enjoining the enforcement of Sections 18 and 28 of SB 180 during the pendency of this action.

FACTUAL BACKGROUND

A. The Parties

1. Plaintiffs are municipalities and counties located throughout the State of Florida.
2. Defendants are the respective secretaries or directors of their State Agencies, sued in their official capacities, who have roles in administering subject matters over which SB 180 affects or who have undertaken enforcing certain provisions of SB 180.

B. Changes Prescribed by Sections 18 and 28 of SB 180

3. SB 180 freezes all Planning and Zoning Regulations across the entirety of Florida—for all of Florida’s 67 counties and 411 municipalities—in two ways.

4. First, Section 18 of SB 180 is a statutory provision that freezes all Planning and Zoning Regulations if counties and municipalities are located within a certain distance of the track of a future hurricane for a one-year period after the hurricane. Specifically, if *any* part of a county is located within 100 miles of the track of a storm, the *entire* county *and all of its municipalities* have such Regulations frozen, meaning that many geographic areas outside of 100 miles of the track of the storm are precluded from enacting or enforcing all Planning and Zoning Regulations.

5. Second, Section 28 of SB 180 is a non-statutory provision that implements the same freezing of all Planning and Zoning Regulations that are determined to be “more restrictive or burdensome,” both retroactively to August 1, 2024—deeming such Regulations as “null and void *ab initio*” even though they were enacted under a legal grant of authority at the time—and prospectively until October 1, 2027. These limitations exist despite SB 180 not defining or providing a framework on how to determine if such Regulations are “more restrictive or burdensome,” and these new limitations neither arise from nor explain a logical framework for the applicable timeframe. Section 28 states that it applies only to counties (and all municipalities therein) listed in the Federal Disaster Declarations for Hurricanes Debby, Helene, or Milton. But taking these three Federal Disaster Declarations together, every county (and thus every municipality) in the State is listed, meaning Section 28 effectively prohibits all Planning and Zoning Regulations deemed “more restrictive or burdensome” for all local governments in the entire State from August 1, 2024, to October 1, 2027.

6. To enforce these freezes, SB 180 creates a private right of action that allows private parties to sue any and all of Florida’s 67 counties and 411 municipalities, including the Local Governments, for alleged noncompliance with SB 180. Worse, SB 180 mandates that Florida’s counties and municipalities, including the Local Governments, pay costs and attorneys’ fees to

prevailing plaintiffs, meaning SB 180 forces taxpayers to pay for the defense of such lawsuits (even where the lawsuit is meritless) and for attorneys’ fees and costs to prevailing plaintiffs (even where a plaintiff challenges a Planning and Zoning Regulation that was enacted under a valid grant of authority before the enactment of SB 180, but which has now purportedly been deemed “null and void *ab initio*” by SB 180).

C. Results of Sections 18 and 28 of SB 180

7. As a result of Section 18 of SB 180, the Home Rule Powers of every county and municipality across the state, including the Local Governments, are being violated by the mandatory freezing of their Planning and Zoning Regulations caused by hurricanes within a certain geographic distance, even if only the smallest portion of a county is located within a 100-mile track of a storm and the specific municipality was outside of the 100 mile area and had no impacts from a hurricane.

8. As a result of Section 28 of SB 180, every county and municipality across the state has already had their Home Rule Powers violated by the freezing of their Planning and Zoning Regulations retroactively—and declared “null and void *ab initio*”—from August 1, 2024, and prospectively to October 1, 2027. As a result, counties and municipalities throughout the state, including the Local Governments, have been reviewing their Planning and Zoning Regulations to evaluate compliance with Section 28’s “more restrictive or burdensome” standard, have ceased moving forward with already studied and drafted Planning and Zoning Regulations for the fear of them being deemed “more restrictive or burdensome” despite no clear criteria defining this term, or have worked towards repealing Planning and Zoning Regulations that, when passed, were done so under a proper grant of Home Rule Authority. Additionally, many counties and municipalities, including several of the Local Governments, have received letters from FloridaCommerce

determining that certain Planning and Zoning Regulations violate Section 28 and/or have been threatened with or named as defendants in a lawsuit brought by private landowners pursuant to Section 28. In some cases, certain of the Local Governments have received both.

9. Section 28 has halted, and Section 18 will halt, all Planning and Zoning Regulations indiscriminately, including those that increase resiliency in advance of, and in response to, emergencies, and those completely unrelated to emergencies.

D. Necessity for an Expedited Temporary Injunction

10. Section 28 has deemed that certain existing Planning and Zoning Regulations that were valid when enacted are “null and void *ab initio*”, and thus certain forthcoming Planning and Zoning Regulations have been halted. These include Planning and Zoning Regulations related, generally, to emergencies and other Planning and Zoning Regulations completely unrelated to emergencies.

11. Section 28 has also forced counties and municipalities, including certain of the Local Governments, to defend lawsuits related to Planning and Zoning Regulations that were legal when enacted.

12. From this, the constitutionality of this act must be decided in an expedited manner before counties and municipalities, including the Local Governments, continue to expend public funds in defense of such suits, judgments are rendered in pending lawsuits (triggering additional expenditure of public funds), additional lawsuits are filed, Planning and Zoning Regulations that were valid when enacted are repealed, and development permits are issued based upon the assumption that certain Planning and Zoning Regulations are “null and void *ab initio*,” or could not be enacted, as a result of SB 180 (thereby creating vested rights that could not be taken away, even if the Court ultimately rules that SB 180 is invalid).

13. Likewise, valid Planning and Zoning Regulations must be restored and confirmed and the Local Governments must know, in an expedited way, how to act so as to not violate the Community Planning Act.

14. In all, the Local Governments should have their Home Rule Powers, which have been infringed by Sections 18 and 28, restored during the pendency of this lawsuit, particularly where the Local Governments have a high likelihood of success on the merits.

15. Further, though Section 28 has already had its intended chilling effect while Section 18 is triggered by future hurricanes, the two provisions must be considered together because (1) they prohibit substantially similar actions and thus impede Home Rule Authority in the same ways, (2) they create the same causes of action for private landowners, thereby obligating and burdening costs to taxpayers in the same ways, and (3) if this Honorable Court were to only grant a temporary injunction as to Section 28, individual injunctions would need to thereafter be sought pursuant to Section 18 following each potential hurricane—in the midst of recovering from said hurricanes—even though the impetus, logic, reasoning, and conclusions from which prior injunctions were granted are identical.

MEMORANDUM OF LAW

I. LEGAL STANDARD

“[T]he purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought.” *State, Dep’t of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018) (quoting *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017)). “To obtain a preliminary injunction, the movant must prove: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public

interest.” *Scott v. Trotti*, 283 So. 3d 340, 343 (Fla. 1st DCA 2018). “The movant must prove each element with competent, substantial evidence.” *Bayfront*, 236 So. 3d at 472 (quoting *SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC*, 78 So. 3d 709, 711 (Fla. 1st DCA 2012)). “Clear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a preliminary injunction.” *Bayfront*, 236 So. 3d at 472 (quoting *City of Jacksonville v. Naegele Outdoor Advert. Co.*, 634 So. 2d 750, 754 (Fla. 1st DCA 1994)). “If the movant fails to prove any of these requirements, the motion must be denied.” *Scott*, 283 So. 3d at 343.

Further, if the trial court enters a temporary injunction, its ruling is subject to an abuse of discretion standard. *Bay N Gulf, Inc. v. Anchor Seafood, Inc.*, 971 So. 2d 842, 843 (Fla. 3d DCA 2007). “Moreover, the trial court's order must contain ‘[c]lear, definite, and unequivocally sufficient factual findings [to] support each of the four conclusions necessary to justify entry of a preliminary injunction.’” *Liberty Fin. Mortg. Corp. v. Clampitt*, 667 So. 2d 880, 881 (Fla. 2d DCA 1996) (quoting *Naegele Outdoor Advert. Co.*, 634 So. 2d at 754). Further, the trial court's discretionary ruling should not be disturbed on appeal unless it is unreasonable. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980).

II. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

“A substantial likelihood of success on the merits is shown if good reasons for anticipating the result are demonstrated.” *Naegele Outdoor Advert. Co.*, 634 So. 2d at 753. Plaintiff must illustrate “a clear legal right to relief requested.” *Mid-Florida At Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357 (Fla. 5th DCA 1988). Here, the Local Governments are likely to succeed on each of their six claims, specifically in regard to Sections 18 and 28 of SB 180.

Importantly, a showing of likelihood of success on the merits of Section 18 and Section 28 on one or some of the causes of actions, but not all, should result in the Court granting a temporary injunction because such a result means there is a likelihood of success on the merits in the applicable counts, and thus a temporary injunction should be granted to preclude current enforcement of Sections 18 and 28. In other words, the Local Governments need only show success on the likelihood of the merits in one cause of action for each of Section 18 and 28, and need not be the same cause of action for each Section, for a temporary injunction to be entered because each Section's violation of just one of the provisions outlined in the six causes of action is sufficient to enter the temporary injunction. *See, e.g., Banco Indus. de Venezuela, C.A. v. Mederos Suarez*, 541 So. 2d 1324, 1327 (Fla. 3d DCA 1989) (plaintiff filed a four-count complaint and the court granted a temporary injunction upon plaintiff's fulfilling the elements for one count).

A. Sections 18 and 28 violate the single-subject provision.

Pursuant to Article III, Section 6, of the Florida Constitution, “[e]very law shall embrace but one subject and matter properly connected therewith[.]” Art. III, § 6, Fla. Const. The underlying purpose of the single subject provision is to: (1) prevent hodgepodge 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); (2) 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 (3) apprise the people fairly of the subjects of legislation that are being considered, in order that they may have an opportunity of being heard thereon. *State v. Thompson*, 750 So. 2d 643 (Fla.1999).

There are multiple instances where Florida statutes were declared unconstitutional due to violating the single-subject provision. For example, in *State v. Johnson*, the Florida Supreme Court

found that a bill changing certain sentencing guidelines was unconstitutional for violating the single-subject rule because the bill “addresse[d] two very separate and distinct subjects, the first being the habitual offender statute, and the second being the licensing of private investigators and their authority to repossess personal property.” 616 So. 2d 1, 4 (Fla. 1993). In *Thompson*, a law that (1) created the violent career criminal sentencing category and (2) created a cause of action for damages related to domestic violence was found to violate the single-subject rule because the bill addressed these two distinct subjects, and “the Legislature has not identified a broad crisis encompassing both career criminals and domestic violence.” 750 So. 2d at 648. In *Florida Dept. of Highway Safety & Motor Vehicles v. Critchfield*, the Florida Supreme Court held that Chapter 98-223, Florida Law, was unconstitutional for violating the single-subject rule because while most of the law addressed privileges surrounding driver’s licenses, one provision discussed the presenting of checks related to debt collection. 842 So. 2d 782, 785 (Fla. 2003).

Applied here, Sections 18 and 28 are not limited to emergencies, which is the subject that SB 180 purports to embrace. The dramatic consequences of Sections 18 and 28—the repeal and freezing of local Planning and Zoning Regulations—occur in all instances and as to all properties, not just in the instance of emergencies and to properties damaged in hurricanes or other storms. Specifically, Section 18 is applicable to all municipalities within a county if any portion of the county is located within 100 miles of the track of a storm, including municipalities that have no actual impact from the storm. Moreover, the prohibition applies to all Planning and Zoning Regulations that hinder or burden development of any property, not merely to those that are being developed/redeveloped as a result of a storm.

Likewise, Section 28’s retroactive voiding of local Regulations applies to all counties (and all municipalities therein) listed in the Disaster Declarations of Hurricanes Debby, Helene, or

Milton. Taken together, Section 28 operates against such Regulations in *every* county and municipality in the State, regardless of whether that local government’s jurisdiction was actually impacted by any of Hurricanes Debby, Helene, or Milton.

Additionally, Sections 18 and 28 preclude all “more restrictive or burdensome” Planning and Zoning Regulations regardless of whether those Regulations are related to emergencies. In other words, while by freezing such Planning and Zoning Regulations Sections 18 and 28 preclude any of the Local Governments’ emergency-related provisions, they also preclude *every single other* “more restrictive or burdensome” Planning and Zoning Regulation the Local Governments have enacted or would enact. Thus, on their face, Sections 18 and 28 are not limited to emergencies.

Further, SB 180’s title beginning “An act relating to emergencies” and then listing summarized titles of all sections therein does not cure the single-subject deficiency by automatically relating each section to emergencies. A nearly identical situation was discussed in *State v. Leavins*, where the Fourth District Court of Appeal affirmed that Chapter 89-175 is unconstitutional for, among other reasons, violating the single subject requirement of the Florida Constitution. 599 So. 2d 1326, 1331 (Fla. 1st DCA 1992). The *Leavins* Court discussed how “the legislature . . . attempted to bundle together various matters . . . under the rubric ‘an act relating to environmental resources’” *Id.* at 1334. The Court concluded that “[t]his phrase is so broad, and potentially encompasses so many topics, as to lend little support to the state’s attempt to fend off a single subject challenge.” *Id.* The Court furthered that “[i]f a purpose of the [single subject] constitutional prohibition was . . . to insure, as nearly as possible, that a member of the legislature be able to consider the merit of each subject contained in the act independently of the political influence of the merit of each other topic, the reviewing court must examine each subject in light of the various other matters affected by the act, and not simply compare each isolated subject to

the stated topic of the act.” *Id.* at 1335. Thus, “[a]lthough each individual subject addressed might be said to bear some relationship to the general topic of [emergencies], such a finding would not, and should not, satisfy the test under Article III, Section 6.” *Id.* Applied here, these facts are substantially synonymous and thus dispositive in the Local Governments’ favor.

Thus, the Local Governments are likely to succeed on their claims that Sections 18 and 28 SB 180 violate the single subject provision of the Florida Constitution.

B. The Title as to Section 28 is Defective.

Pursuant to Article III, Section 6 of the Florida Constitution, a bill’s “subject shall be briefly expressed in the title.” Art. III, § 6, Fla. Const. “This provision imposes two related but distinct requirements[:] First, the title of the bill should be fair notice of its contents[:] Second, the various provisions of the bill must be germane to the subject as expressed in the title.” *Alterman Transp. Lines, Inc. v. State*, 405 So. 2d 456, 461 (Fla. 1st DCA 1981). “These requirements are designed to prevent surprise or fraud that would spring from hidden provisions not indicated in the title.” *Id.* (citing *Knight & Wall Co. v. Bryant*, 178 So. 2d 5 (Fla. 1965)). “The proper test is whether the title is worded so as not to mislead a person of average intelligence as to the scope of the law and whether it is sufficient to put that person on notice and cause him to inquire into the body of the statute itself.” *Alterman Transp. Lines, Inc.*, 405 So. 2d at 461 (citing *Williams v. State*, 370 So. 2d 1143 (Fla.1979)).

Multiple statutes have been successfully challenged on the grounds of their titles being misleading. In *State v. Physical Therapy Rehab. Ctr. of Coral Springs, Inc.*, 665 So. 2d 1127 (Fla. 1st DCA 1996), the First DCA affirmed that an act’s title was misleading because (1) it expressly referred to the imposition of a fee cap on radiation therapy providers only, creating the appearance that no other fee caps are encompassed within the act, and (2) the title expressly referred to certain

specific health care providers, and thus the title would not place anyone on notice that unnamed providers of unspecified health care services were also being made subject to the statute. *Id.* at 1132. In concluding so, the First DCA summarized other instances where statutes were found to have had misleading titles:

In *Mayo v. National Truck Brokers, Inc.*, 220 So. 2d 11 (Fla.1969) the court invalidated an act to the extent it increased license renewal fees, because the title stated the act related to “application fees, certificate fees, permit fees, and filing fees” and was therefore affirmatively misleading by omission of license renewal fees.

Similarly, in *County of Hillsborough v. Price*, 149 So. 2d 912 (Fla. 2d DCA 1963) the title stated that the act authorized the County “to dispose of stray untagged vicious dogs.” The appellate court agreed with the trial court's assessment that the subject of the law as expressed in the title was stray untagged vicious dogs, and that the law was unconstitutional for lack of title notice as applied to provisions governing vicious dogs which were neither strays nor untagged.

Again, in *Christensen v. Commercial Fishermen's Ass'n*, 137 Fla. 248, 187 So. 699 (1939), the title of the disputed local act limited its application to the inside salt waters of Martin County and to haul, seine or drag nets. The Florida Supreme Court found that “inside waters” and “haul seine or drag net” were words with definite meanings as used in connection with the fishing industry. Therefore, the provision prohibiting fishing with any kind of net except a common case net, within a radius of two miles of the center of St. Lucie Inlet, in either the inside or outside waters of Martin County, was unconstitutional because it was beyond the scope of the title.

Id. at 1131.

Applied here, the title of Section 28 of SB 180 is unconstitutionally misleading. The title of SB 180 begins “An act related to emergencies” followed by a seven-and-a-half-page list summarizing each of the Sections within the Bill. Within this list, the title provision relating to Section 28, rather than accurately stating that it applies to “*all counties and all municipalities*” instead says it applies only to “*certain counties*”:

“prohibiting *certain counties* from proposing or adopting certain moratoriums, amendments, or procedures for a specified timeframe.”

That portion of the title certainly could have been written to say it applies to “counties and municipalities” – in fact, the portions of the title related to seven other provisions do so state.

This is unconstitutionally misleading for two reasons. First, taking the three Federal Disaster Declarations listed in Section 28 together, the actual text of Section 28 in fact covers *all counties* in the entire state of Florida, not merely “certain counties.” The term “certain” used in this context means “specific but not explicitly named or stated” (*see* OXFORD LANGUAGES)² such that the title implies that these new prohibitions only apply in some “certain” counties, when in fact, they apply in all counties in the State. Second, and moreover, the *text* of Section 28 states that it applies to “each *municipality* within one of those counties”, but the portion of the *title* related to Section 28 does not mention municipalities at all. Rather, the portion of the title corresponding to Section 28 hides the ball—it fails to properly put municipalities on notice that municipalities will be impacted by its provisions. Accordingly, this case is similar to *Mayo, Price, Christensen*, and *Physical Therapy Rehab. Ctr. of Coral Springs, Inc.*—the portion of the title that relates to Section 28 is uncontrovertibly defective because it suggests that Section 28 applies to certain, but not all, counties, and that it does not apply to municipalities at all. Thus, the Local Governments are likely to succeed on their claim that the portion of the title that relates to Section 28 of SB 180 violates the title provision of the Florida Constitution.

C. Sections 18 and 28 are provisions of a general law that classify counties and municipalities on a basis not reasonably related to the subject of the law.

Pursuant to Article III, Section 11(b) of the Florida Constitution, “[i]n the enactment of general laws on other subjects, political subdivisions or other governmental entities may be classified only on a basis reasonably related to the subject of the law.” *See* Art. III, sec. 11(b), Fla.

² *See also* MERRIAM WEBSTER, defining “certain” as “of a specific but unspecified character, quantity, or degree,” available at <https://www.merriam-webster.com/dictionary/certain>.

Const. “The legislature may set classifications within a general law, but any such classification must bear a reasonable relationship to the primary purpose of the law.” *Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc.*, 731 So. 2d 21, 26 (Fla. 1st DCA 1999), *aff'd*, 793 So. 2d 899 (Fla. 2001). “A statutory criterion is not valid merely because it appears to promote the objective of the law.” *Id.* Further, the Florida Supreme Court has made clear that “[s]tatutes that employ arbitrary classification schemes are not valid as general laws.” *Dep't of Bus. Regulation v. Classic Mile, Inc.*, 541 So. 2d 1155, 1157 (Fla. 1989); *License Acquisitions, LLC v. Debary Real Estate Holdings, LLC*, 155 So. 3d 1137, 1143 (Fla. 2014).

SB 180 is a general law that makes unreasonable classifications in multiple provisions, specifically in Sections 18 and 28.

Section 18

Section 18 creates the term “impacted local government,” which is “a county listed in a federal disaster declaration located entirely or partially within 100 miles of the track of a storm declared to be a hurricane by the National Hurricane Center while the storm was categorized as a hurricane or a municipality located within such a county.” If just part of a county is within this range, the entire county and all of its municipalities are classified to be “impacted local governments” and are precluded from acting in certain ways regarding their own Planning and Zoning Regulations, even if they are not actually impacted by a hurricane. Thus, Section 18 plainly creates a classification by creating the term “impacted local governments”—some counties and municipalities are classified as “impacted local governments” and others are not. That classification is unreasonable.

The classification of local governments as being an “impacted local government” or not being an “impacted local government” is based solely upon location and fails to consider the actual

impact that a hurricane has on a specific county or municipality. Section 18 merely classifies counties and municipalities based upon whether they are located in a county that had any portion within 100 miles of a hurricane track, regardless of the actual size and impact of a storm. Thus, for example, when a hurricane is small and does not actually impact communities 100 miles beyond its path, then counties and municipalities not impacted at all by a hurricane would arbitrarily be classified as an “impacted local government” and be subject to Section 18’s preclusions merely because of the storm’s track. To the opposite, if there is a large hurricane that impacts communities well beyond 100 miles from its path, counties and communities actually impacted severely by such a hurricane would not be classified as “impacted local governments.” Thus, the classification is unreasonable because it is both over-inclusive and under-inclusive.

In addition, using county lines as the demarcation for determining whether a municipality is an “impacted local government” is itself arbitrary. For example, in South Florida, a storm track could graze 80 miles north of Palm Beach County. The arbitrary classification system of Section 18 would classify the entire county, including the southern-most Palm Beach County municipality (Boca Raton) as an “impacted local government”, but would not classify Boca Raton’s neighbor to the south (Deerfield Beach, the northernmost Broward County municipality) as being an “impacted local government” (because the storm did not track within 100 miles of Broward County). But, most likely, as neighboring municipalities, Boca Raton and Deerfield Beach would have suffered roughly the same amount of impact from the storm, and thus be similarly situated as to whether the protections from SB 180 are necessary. Storms do not recognize county boundaries and thus the use of such lines to classify counties and municipalities is wholly unreasonable.

Thus, the classification of counties and municipalities created by Section 18 is clearly unreasonable because in some instances it will not include counties and municipalities that should

be included (because they were, in fact, impacted), and in other instances will include some counties and municipalities that should not be included (because they were, in fact, not impacted).

Section 28

Section 28 also creates an unreasonable classification. Section 28 states that each county (and the municipalities therein) listed in one of three Federal Disaster Declarations across the state cannot propose or adopt “more restrictive or burdensome” Planning and Zoning Regulations. Each of the three Declarations creates a classification, and taken together as listed in Section 28, creates another, new classification. Taken together, the new classification combines these three Declarations to blanket the entire state. In this instance, a classification that appears narrow on its face is unreasonably applied to the entire state.

Section 28 is unreasonable because it fails to describe why those three specific Federal Disaster Declarations are the standard bearers, as opposed to referencing Federal Disaster Declarations from other hurricanes that have impacted Florida in a similar time frame.

Further, Section 28 is also an unreasonable classification because it fails to provide any methodology for the timeframe applied therein. There is no explanation as to why Section 28 applies retroactively back to the specific date, August 1, 2024. If August 1, 2024, had some meaning based upon a given hurricane, then only those counties (and municipalities within those counties) that were actually impacted by that specific hurricane should be implicated by such a date. However, that is not the case here, because, while the incident period for Hurricane Debby began August 1, 2024, the incident period for Hurricane Helene began on September 23, 2024, and the incident period for Hurricane Milton began on October 5, 2024.³ It is arbitrary to classify all

³ Plaintiffs request that the Court take judicial notice of the public records of the Florida Legislature and the Federal Disaster Declarations of Hurricanes Debby, Helene, and Milton, whose contents are readily available and whose accuracy cannot reasonably be questioned. §§90.202, 90.203, Fla.

counties and municipalities in one class subject to the August 1, 2024, date if only some were impacted by a subject storm on that date but others were not. There is also no explanation as to why Section 28 applies prospectively to October 1, 2027.

Thus, the Local Governments are likely to succeed on their claims that Sections 18 and 28 are unreasonable classifications in violation of the Florida Constitution.

D. SB 180 constitutes an improper unfunded mandate on the counties and municipalities.

Pursuant to Article VII, Section 18(a) of the Florida Constitution, “[n]o 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[.]” Art. VII, § 18(a), Fla. Const. The Section then lists exceptions to this rule.

No Important State Interest Exception

The first exception states that this provision does not apply if (1) “the legislature has determined that such law fulfills an important state interest”, and (2) one of a set of listed items is also fulfilled. Failure to fulfill either element means the exception does not apply. Importantly, *nowhere in SB 180 is there a finding that the law fulfills an important state interest*. Thus, the elements of this exception are not fulfilled and this exception does not apply.

Significant Fiscal Impact Exception

Additionally, Article VII, Section 18 of the Florida Constitution contains a further exception, stating that “. . . laws having insignificant fiscal impact . . . are exempt from the requirements of this section.” Art. VII, § 18(d), Fla. Const. An “insignificant fiscal impact” is the amount not greater than the average statewide population for the applicable fiscal year multiplied

Stat. The incident periods for Hurricanes Debby, Helene, and Milton can be noticed from the online Disaster Declaration.

by \$0.10; for the fiscal year 2025-26, this is estimated to be approximately \$2.4 million.⁴ This amount is determined on an aggregate basis for all municipalities and counties in the state.⁵

Sections 7, 16, 18, 24 and 28 require the expenditure of public funds. The aggregate amount of these forced expenditures for all municipalities and counties in the state far exceeds \$2.4 million, which equates to just over \$5,000 per county and municipality, on average.

Section 7 requires the expenditure of public funds by requiring expanded participation in training programs and conferences.

Section 16 requires the expenditure of public funds by imposing a plethora of new pre- and post-storm event recovery requirements, all of which impose upfront and ongoing costs on counties and municipalities, including updating local government websites, creating preparedness and recovery guides, and creating and implementing post-storm permitting plans which must operate for at least 40-hours a week during post-storm recovery.

Section 24 imposes on each county and municipality new requirements to comply for pre-authorization of and creation of at least one debris management site within its jurisdiction and related ongoing maintenance requirements. Alternatively, municipalities may retain the services of a county they are adjacent to for access to a debris management site. Creating and obtaining approval for the operation of a debris management site, or, in the alternative, obtaining permission to utilize a county debris management site will require a significant expenditure of funds. It also does not take into account whether eligible sites exist within the municipality or county, and may require leasing or purchasing of property to create a debris management site. Importantly, not only does obtaining and preparing a debris management site cost money, but its ongoing upkeep and

⁴<https://www.flsenate.gov/Session/Bill/2025/176/Analyses/2025s00176.ap.PDF> at page 10.

⁵<https://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> at page 2.

recertification process will continue to impose financial obligations on local governments. Section 24 also prohibits counties and municipalities from utilizing existing solid waste providers or debris management service providers from collecting storm-generated yard trash, debris, or waste, thereby requiring counties or municipalities to separately procure such services, increasing debris removal costs that would otherwise be negotiated on a greater economy of scale

Additionally, Sections 18 and 28 require the Local Governments to expend public funds to review, amend, repeal, defend challenges to, and pay prevailing plaintiffs' attorneys' fees and costs arising from a successful lawsuit challenging Planning and Zoning Regulations. Specifically, Sections 18 and 28 require a significant expenditure of public funds by forcing Local Governments to analyze Planning and Zoning Regulations for potential non-compliance in order to avoid potential liability. Sometimes a repeal is simply targeted to a single ordinance; in other instances, the ordinance adopted a whole code or regulatory regime and thus repealing same is more nuanced. In both instances, and all variations between, this in turn leads to the further expenditure of costs to repeal any potentially non-compliant Regulations, including advertising of governing body meetings where measures will be heard and the costs of drafting and passing ordinances with the necessary effect. Likewise, the expenditure of public funds is further triggered by forcing the Local Governments to defend all lawsuits (even those which are meritless) and to pay prevailing plaintiffs' attorneys' fees and costs, which are significant expenses.

As a matter of law, upon a showing that the aggregate amount of forced expenditures exceeds \$2.4 million, SB 180 would have a significant fiscal impact, and thus this exception to the unfunded mandate provision also does not apply. *See* declaration of Julian Perez attesting to expenditure of funds, attached hereto as Exhibit A; *see* affidavit of Leonard G. Rubin, Village

Attorney of the Village of North Palm Beach, attesting to expenditure of funds, attached hereto as Exhibit B.⁶

Thus, because SB 180 requires the expenditure of public funds and none of the unfunded mandate exceptions apply, the Local Governments are likely to succeed on their claims that SB 180 is an unfunded mandate in violation of the Florida Constitution.

E. Sections 18 and 28 conflict with Florida’s Community Planning Act.

Fifty years ago, Florida started down the path of establishing its innovative and influential system of managing growth.⁷ First encouraging comprehensive planning, and then mandating it along with requiring regulation and development approvals consistent with the plan, Florida has long determined the framework for municipal and county Planning and Zoning Regulations. In its current form, the Community Planning Act of 2011, enshrined in Sections 163.3161 through 163.3248, Florida Statutes, expresses the Legislature’s multi-prong intentions and purposes.

The purpose of the act is to help guide and manage local governments’ present and future land use and development by overcoming present handicaps and dealing effectively with future problems. *See* § 163.3161, Fla. Stat.

From this purpose, municipalities and counties have the power and responsibility to plan for their future development and growth by adopting, amending, implementing, and maintaining

⁶ The Local Governments may provide supplemental affidavits and/or declarations after the filing of this Motion in support thereof.

⁷ Regarding the 1985 Growth Management Act, *see* Thomas G. Pelham, William L. Hyde, and Robert P. Banks, “Managing Florida’s Growth Toward an Integrated State, Regional and Local Comprehensive Planning Process,” 13 Fla. St. U. L. Rev. 515 (1985).

Regarding the 2011 Community Planning Act, *see* Rhodes, Robert M. (2020) “Florida’s Growth Management Odyssey: Revolution, Evolution, Devolution, Resolution,” Journal of Comparative Urban Law and Policy: Vol. 4 : Iss. 1 , Article 11, 56-69. Available at: <https://readingroom.law.gsu.edu/jculp/vol4/iss1/11>; and Nancy Stroud, A History and New Turns in Florida’s Growth Management Program, 45 J. Marshall L. Rev. 397 (2012).

comprehensive plans. § 163.3167, Fla. Stat. In doing so, the Community Planning Act mandates the interval (every 7 years) by which counties and municipalities must evaluate their comprehensive plans for potential updates. *See* §163.3191(1)-(2), Fla. Stat. There are consequences for failing to comply. *See* §163.3191(4)-(5), Fla. Stat. The Community Planning Act also mandates that counties and municipalities update their plans to address changed local conditions. *See* §163.3191(3), Fla. Stat. Likewise, the Community Planning Act mandates the timeframe (within 1 year) in which after a comprehensive plan is enacted or amended that the local government must adopt or amend its local land development regulations to ensure they are consistent with the comprehensive plan. *See* § 163.3202, Fla. Stat.

Critically, the Community Planning Act also makes clear that in the event the Act conflicts with any other provision of law related to land use regulations, it is the Community Planning Act that shall prevail:

Where this act may be in conflict with any other provision or provisions of law relating to local governments having authority to regulate the development of land, the provisions of this act shall govern unless the provisions of this act are met or exceeded by such other provision or provisions of law relating to local government, including land development regulations adopted pursuant to chapter 125 or chapter 166. Nothing in this act is intended to withdraw or diminish any legal powers or responsibilities of state agencies or change any requirement of existing law that local regulations comply with state standards or rules.

See § 163.3211, Fla. Stat. (emphasis added)

By precluding and freezing “more restrictive or burdensome” Planning and Zoning Regulations, SB 180 is in direct conflict with the Community Planning Act. The Community Planning Act makes clear that local governments (1) have a continuing obligation to amend, implement, and maintain their comprehensive plans, (2) must evaluate their comprehensive plans every 7 years and amend their plans if necessary to comply with state law, (3) must amend their plans at any time necessary to address changed local conditions,, and (4) within one year of

enacting or amending a comprehensive plan, must adopt or amend local land development regulations to ensure consistency with the amended comprehensive plan. Section 28 actively prevents the ability to fulfill all of these items for three years, and the landfall of a hurricane triggers Section 18 to enact the identical preclusions in one-year increments.

Because of these sections of SB 180, the local governments cannot fulfill their obligations to (1) amend and maintain their comprehensive plans, (2) evaluate their comprehensive plans every 7 years if that interval either falls between August 1, 2024, and October 1, 2027, or within the one year after a hurricane if within the 100-mile demarcation of the track of the storm, and (3) adopt or amend local land use regulations within the one year after adopting or amending a comprehensive plan if that interval either falls between August 1, 2024, and October 1, 2027, or within the one year after a hurricane if within the 100-mile demarcation of the track of the storm. By the very language of SB 180 and the Community Planning Act, Sections 18 and 28 of SB 180 on their face conflict with the Community Planning Act because Sections 18 and 28 preclude counties and municipalities, including the Local Governments, from being able to fulfill the obligations and mandates of the Community Planning Act.

This conflict is further compounded by the Community Planning Act which states plainly that it prevails in the face of any conflict, meaning that the Local Governments have to choose between either (1) violating Sections 18 and 28 of SB 180, thereby opening them to liability and the tax payers to expend public funds arising from a potential lawsuit, or (2) not fulfilling the obligations and mandates of the Community Planning Act.

Because the Community Planning Act makes clear that it prevails over any conflicting provision of law, and these provisions of SB 180 clearly conflict with the Community Planning

Act, the Local Governments are likely to succeed on their claims that Sections 18 and 28 of SB 180 violate the Community Planning Act.

F. Sections 18 and 28 intrude on Home Rule Powers.

In 1968, the Florida Constitution was amended to grant local home rule powers to municipalities. *See* Fla. Const., Art. VIII, §1. The 1968 Florida Constitution also set out two forms of county government structure: charter counties and non-charter counties. *See* Fla. Const., Art. VIII, §2.

Thereafter, the Florida Legislature enacted the Municipal Home Rules Power Act, guaranteeing 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 may exercise any power for municipal services, except when expressly prohibited by law.” *See* §166.021(1), Fla. Stat.

The Legislature has also guaranteed home rule powers to Florida’s counties, chartered and non-chartered. *See* §125.01(1), (3), Fla. Stat. (“(1) The legislative and governing body of a county shall have the power to carry on county government.”; “(3)(a) The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated (b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.”).

Florida Courts recognize two types of preemptions: express and implied preemption. There is no suggestion in SB 180 of implied preemption – the state did not, through SB 180, enact a regulatory scheme that is so pervasive and comprehensive as to show an intent to occupy the

regulatory field of land use and zoning leaving no room for local governments to legislate. Rather, SB 180 allows local governments to continue regulating, but not in a manner that is “more restrictive or burdensome.” As to express preemption, statutory express preemptions must be clear as to the particular subject that local governments are precluded from regulating. *See Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014) (“Preemption of local ordinances by state law may, of course, be accomplished by express preemption—that is, by a statutory provision stating that a *particular subject* is preempted by state law or that local ordinances on a *particular subject* are precluded.”); *Hillsborough County v. Florida Restaurant Ass’n, Inc.*, 603 So. 2d 587, 590 (Fla. 2d DCA) (“To find a subject matter expressly preempted to the state, the express preemption language must be a specific statement; express preemption cannot be implied or inferred.”).

As to express preemption, SB 180 violates the Florida Constitution in two ways: (1) Section 28 is an impermissible express preemption, purporting to declare “null and void *ab initio*” prior actions of Local Governments taken under their (at the time not preempted) Constitutional home rule authority; and (2) the purported express preemptions under Sections 18 and 28 are impermissible because they are unclear and ambiguous as to the particular subject and scope. For these reasons, the Legislature’s attempt to vitiate the Home Rule Authority granted under Sections 1 and 2 of Article VIII of the Florida Constitution and further codified at law through Sections 18 and 28 are impermissible.

SB 180 Is An Impermissible Express Preemption Of Past Regulations That The Local Governments Had Authority To Propose And Adopt

As to Section 28, the Florida Legislature impermissibly enacted the express preemption provided under Section 28 because it attempts to render ordinances “null and void *ab initio*” even if they were duly enacted, at the time. Any Planning and Zoning Regulations enacted by any of the Local Governments between August 1, 2024, and the effective date of SB 180 were done so

pursuant to a clear grant of constitutional and statutory Home Rule Authority. By retroactively rendering legally enacted Planning and Zoning Regulations “null and void *ab initio*” (thereby invalidating the very enactment of such regulations and implementation while valid), Section 28 violates the plain meaning of the Florida Constitution because it purports to go back in time to remove a then-existing grant of Home Rule Power at the time of the regulation’s enactment pursuant to Sections 1 and 2 of Article VIII of the Florida Constitution, as applicable.

The Local Governments do not dispute that the Florida Legislature can, if done clearly, preempt local governments pursuant to general law and, in so doing, declare prior enactments invalid and unenforceable *prospectively*. But the Constitution does not give the Florida Legislature the power to time travel and declare previously (and properly) enacted ordinances “null and void *ab initio*” as if they never existed in the first place and thus were not in place during the prior time period. Prior statutes that preempted local governmental powers have never gone that far—the most that they have done was to declare local laws invalid and unenforceable from that point forward (not “null and void *ab initio*”).⁸ Likewise, where Section 28 creates a private cause of action for Planning and Zoning Regulations proposed or adopted during this period, it potentially (and impermissibly) opens the Local Governments to liability for acts that were legally proposed or adopted at the time. Thus, Section 28 does not just preempt prospective acts and then create a

⁸ See, e.g., § 790.33(1), Fla. Stat. (declaring any existing ordinances, rules, or regulations regulating firearms and ammunition “null and void” prospectively); § 509.032(7)(b), Fla. Stat. (precluding the adoption of local laws, ordinances, or regulations prohibiting vacation rentals or regulating duration or frequency of rentals of vacation rentals prospectively and grandfathering such laws adopted on or before June 1, 2011); § 386.209, Fla. Stat. (preempting regulation of smoking to the state and “supersed[ing] county or municipal ordinance[s] on the subject” prospectively); § 500.90, Fla. Stat. (preempting the use or sale of polystyrene products prospectively and providing for a limited grandfathering of local ordinances enacted before January 1, 2016).

private right of action for violation of such a preemption, but also does so for acts already taken under a grant of Constitutional authority that existed at the time. This could allow private landowners to pursue their grievances of past Planning and Zoning Regulations in court, forcing the taxpayers to pay to defend such grievances. This ultimately has the potential to leave both local governments and private parties in unsolvable dilemmas.

For example, assume that in September 2024, a municipality passed an ordinance reducing the allowable height in a zoning district from 120 feet to 100 feet. In October 2024, based upon this ordinance, a developer's application for a 120-foot-high building was denied and the developer had no choice but to submit an application for a 100-foot-high building, which was approved. After construction commenced on the less tall (and less profitable) building and it was too late to change the plans, SB 180 was enacted, meaning that the ordinance that resulted in the municipality's denial of the 120-foot-high building was void at the time the 120-foot-high building was denied. The implications of this are unclear, but it could potentially result in municipal liability or other consequences. Can the developer sue the municipality for the lost opportunity for additional height? Is the approval of the 100-foot building itself invalid because it implements a regulation that is "null and void *ab initio*"? Thus, SB 180 could result in chaos or liability for projects that were considered under Planning and Zoning Regulations that were valid when applied but were later declared "null and void *ab initio*" by SB 180.

SB 180 Is An Impermissible Express Preemption Because It Is Ambiguous

Further, Sections 18 and 28 constitute an impermissible express preemption because the subject matter of the preemption is ambiguous. *See Masone*, 147 So. 3d at 495 ("Preemption of local ordinances by state law may, of course, be accomplished by express preemption—that is, by a statutory provision stating that a *particular subject* is preempted by state law or that local

ordinances on a *particular subject* are precluded.”); see *Florida Restaurant Ass’n, Inc.*, 603 So. 2d at 590 (“To find a subject matter expressly preempted to the state, the express preemption language must be a specific statement; express preemption cannot be implied or inferred.”).

Sections 18 and 28 of SB 180 purport to preempt counties and municipalities from enacting Planning and Zoning Regulations that are “more restrictive or burdensome,” but fails to define the terms or dictate how they are to be applied. The undefined “more restrictive or burdensome” standard will wreak havoc with many of the modern planning tools that the Local Governments now lawfully employ because the Local Governments have no way of determining whether a particular Planning and Zoning Regulation is “more burdensome or restrictive.” Thus, the Local Governments cannot determine what laws that they passed after August 1, 2024, remain valid (and which are “null and void *ab initio*”), and cannot determine whether new proposed regulations are “more burdensome or restrictive.”

For example, in determining whether a Planning and Zoning Regulation that increases a setback requirement is allowed under SB 180, should Local Governments determine whether the regulation is “more burdensome or restrictive” based on its impact on neighboring properties? Or is a Planning and Zoning Regulation “more burdensome or restrictive” only if it is projected to impose additional costs or limitations on developers seeking to maximize the intensity and density of a development? Should Local Governments determine whether a Planning and Zoning Regulation is “more burdensome or restrictive” based on its projected impact on concurrency requirements, such as the availability of water, sewer, solid waste, and other infrastructure capacity levels? Are Planning and Zoning Regulations that create new zoning schemes “more restrictive or burdensome” if they implement various more stringent development parameters but also increase permissible development intensity and density as a whole? If a Planning and Zoning Regulation

with multiple subparts has one provision that could be considered “more restrictive or burdensome” while all other provisions increase permissible development, is the regulation viewed as a whole or must each individual provision be evaluated? The Local Governments have no answer to these questions because the attempted preemptions under Sections 18 and 28 are ambiguous and fail to clearly articulate the particular subject that the Legislature sought to preclude.

As another example, a vital tool for urban planning are zones that contain a variety of uses, sometimes referred to as “regional activity centers”. To reduce vehicular traffic, encourage shared use of infrastructure, reduce urban sprawl, and create vibrant urban areas, these land use/zoning categories permit a variety of uses of varying densities and intensities. These centers contain specific allotments of residential units (of varying types) and commercial buildings of varying intensity. Thus, one may find allotments for single family detached units, townhomes, and condominium/apartments along with a specific square footage of permissible commercial spaces. There may also be regulations on how these uses will be arranged. If a local government wished to rearrange the mix of units and commercial density—for example, increasing single family and commercial but decreasing multi-family and industrial,—would that be considered “more restrictive or burdensome” even though the overall density remains the same, with some uses being increased and others decreased? Or is the relevant inquiry how this change impacts a particular property owner, even though invalidating the change might result in greater restrictions on other property owners?

With no definition of “more restrictive or burdensome”, there is no understanding as to who and what the Planning and Zoning Regulation can and cannot restrict or burden. Thus, the “more restrictive or burdensome” language is undefined, hopelessly unworkable, and could be

creatively applied to almost any change because it is an undefined term. This undefined term improperly preempts the Constitutional powers of the Local Governments with a standard that has no meaning.

SB 180 Unlawfully Infringes On Home Rule Authority

Sections 18 and 28 preempt the Local Governments from exercising Home Rule Authority in one of the most fundamental functions of local government: planning and zoning. Sections 18 and 28 are the largest infringement of Home Rule Power in the history of Florida and strip the Local Governments' ability to enact the very Powers they have been empowered with under the Florida Constitution and statutory law. In doing so, the Florida Legislature circumvents and renders meaningless the grants of Home Rule Authority provided in the Florida Constitution by legislative act.

In all, though SB 180 does not state plainly that it expressly preempts, nor in effect impliedly preempts, *all* Planning and Zoning Regulations, it does plainly preempt *many*, if not *most*, ways all local governments can act in their own best interests pursuant to such regulations. SB 180 (1) makes certain actions that were allowed at the time null and void *ab initio* pursuant to Section 28, (2) prohibits certain prospective changes pursuant to Section 28 up until October 1, 2027, and (3) provides that prospective changes are not allowed for a period of one year following landfall of all future hurricane pursuant to Section 18.

From this, it is not clear when and/or what Planning and Zoning Regulations are permitted, therefore frustrating, confusing, and obfuscating the Local Governments' abilities to operate (1) in ways expressly preempted by SB 180, which are ways they should otherwise be able to act if not for their Home Rule Powers being intruded upon, and (2) in the spaces left between SB 180 and Florida general law because of SB 180's conflicts thereto.

The prospective application has also had a chilling effect, pausing certain of the Local Governments from finalizing Local Regulations that have been years in the making and were mere moments away from crossing the finish line. This is the case even where those Local Regulations would serve the public good and strengthen resiliency necessary for the emergencies SB 180 seeks to address.

Likewise, and as discussed regarding the Community Planning Act, *see supra*, Sections 18 and 28 of SB 180 plainly conflict with the Community Planning Act, which is also part of general law. To determine the propriety of local action, it must be determined whether that action “expressly prohibited by law.” In so doing, a Court would need to look at general law as a whole, including Sections 18 and 28 and also the Community Planning Act. If the local action is consistent with the Community Planning Act but expressly prohibited by Sections 18 or 28, that conflict would be resolved by Section 163.3211, Fla. Stat., in favor of the Community Planning Act and not SB 180.

Plainly, Sections 18 and 28 improperly limit the Local Government’s Home Rule Powers (1) retroactively, by deeming improper local regulations that were legal when adopted, and (2) prospectively, by not clearly stating the subject matter of the preemption. Thus, the Local Governments are likely to succeed on their claims that Sections 18 and 28 SB 180 unconstitutionally infringe on the Local Governments’ Home Rule Powers.

III. PLAINTIFFS HAVE ESTABLISHED THAT THE REMAINING ELEMENTS JUSTIFY THE ISSUANCE OF A PRELIMINARY INJUNCTION

The remaining elements of the preliminary injunction standard are “(2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest.” *Scott*, 283 So. 3d at 343.

Florida Courts have made clear that “[t]he concepts of irreparable harm and no adequate legal remedy are distinct prongs of the temporary injunction test, but they are related to one another.” *Florida Ass’n of Realtors v. Orange Cnty.*, 350 So. 3d 115, 130 (Fla. 5th DCA 2022); *see, e.g., Corp. Mgmt. Advisors, Inc. v. Boghos*, 756 So. 2d 246, 247 (Fla. 5th DCA 2000) (citations omitted) (“The question of whether the injury is ‘irreparable’ turns on whether there is an adequate remedy available.”). Likewise, the Eleventh Circuit of the United States Court of Appeals—considering the constitutionality of local Florida ordinances and applying the Federal temporary injunction legal standard mirrored by the Florida standard—found that the “damage to the opposing party” and “public interest” requirements “can be consolidated”. *Otto v. City of Boca Raton*, 981 F.3d 854, 870 (11th Cir. 2020). Accordingly, these three elements are appropriately considered together.

A. Plaintiffs will be irreparably injured.

“[T]he law recognizes that a continuing constitutional violation, in and of itself, constitutes irreparable harm.” *Bd. of Cnty. Commissioners, Santa Rosa Cnty. v. Home Builders Ass’n of W. Florida, Inc.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (citation omitted). Here, the Local Governments’ claims allege constitutional violations. Specifically, Counts 1, 2, 3, 4, and 6 allege direct violations of Florida Constitutional provisions. Additionally, Count 5 regarding conflict with the Community Planning Act involves violation of constitutional provisions because the Community Planning Act regulates the Local Governments’ Home Rule Powers, and those powers are constitutionally derived. In other words, where Sections 18 and 28 of SB 180 clearly conflict with the Community Planning Act because they preclude actions obligated and mandated by the Community Planning Act, and where those precluded Community Planning Act actions are regulations of Home Rule Powers, Sections 18 and 28 impeded on Home Rule Powers (which are

Constitutionally derived) by attempting to preclude the regulations set forth by the Community Planning Act.

Further, compliance with Sections 18 and 28 of SB 180 requires dismantling of all “more restrictive or burdensome” Planning and Zoning Regulations and related Regulatory Schemes, which includes emergency-related Regulations and non-emergency regulations. There is no redress from such dismantling, which constitutes irreparable harm. *See, e.g., Planned Parenthood of Sw. & Cent. Florida v. Philip*, 194 F. Supp. 3d 1213, 1223 (N.D. Fla. 2016) (in granting a temporary injunction to 2016 amendments to Florida’s abortion statute, the court found that “if an injunction does not issue, the plaintiffs will be forced for unconstitutional reasons to dismantle programs unrelated to abortions and will be required to submit to unconstitutional inspections of their abortion clinics. They will have no redress. This is irreparable harm.”).

There is also no redress for projects that are, but should not have been, approved in the time frame affected by SB 180’s enforcement. SB 180 could result in chaos or liability for projects that were considered prior to the enactment of SB 180 under Planning and Zoning Regulations that were valid when applied but were later declared “null and void *ab initio*” by SB 180. Such an example was already discussed regarding a hypothetical, September 2024 municipal ordinance reducing the allowable height in a zoning district from 120 feet to 100 feet, which led to the denial of a developer’s pre-SB 180 application for a 120-foot-high building and thus the developer had no choice but to submit an application for a 100-foot-high building, which was approved and construction began, only for SB 180 to deem “null and void *ab initio*” the basis of the municipality’s denial of the 120-foot-plan. In such circumstances, there is no redress for the local governments or the private parties involved.

This also works in the opposite for projects approved during the enforcement of SB 180 while Planning and Zoning Regulations are deemed “null and void *ab initio*”. For example, arising from the same hypothetical September 2024 municipal ordinance reducing the allowable height in a zoning district from 120 feet to 100 feet, pursuant to Section 28 of SB 180, a developer might claim that this ordinance is “null and void *ab initio*”. However, differing from the above example, assume that developer, after enactment and concurrent with the active enforcement of Section 28, proposes a project that is 120 feet tall, is approved for that project and begins construction. If no injunction is issued but the Local Governments ultimately succeed in invalidating SB 180, the 100-foot ordinance goes back into place, and now, mid-construction, the pre-approved 120-foot project would be in conflict with the 100-foot ordinance with no redress (because the developer would assert vested rights).

Both examples illustrate how there is no redress, and thus such injuries would be irreparable. Further, many of the Local Governments have had to pause proposed Planning and Zoning Regulations that were years in the making, amounting to waste of the public dollars spent to further such Regulations and leaving the public unable to benefit from the proposed Regulations. Other of the Local Governments have had certain of their Planning and Zoning Regulations deemed “more restrictive or burdensome” by FloridaCommerce with no clear reasoning why, which has in turn deemed such Regulations “null and void *ab initio*” despite the absence of any showing that FloridaCommerce has jurisdiction to make such a determination.

Likewise, an injunction will not damage the Defendants because granting the injunction returns them and the Local Governments to the status quo of Planning and Zoning Regulations as they existed prior to the enactment of SB 180, which has existed for decades and still provides for State-level oversight of certain Planning and Zoning Regulations. In fact, granting the injunction

will benefit Defendants by (1) ensuring Florida taxpayer money is not wasted defending meritless Section 28 lawsuits, (2) ensuring that the Local Governments can fulfill their obligations under the Community Planning Act, which exists, in part, to protect Florida's land regarding future development, and (3) allowing the Local Governments to maintain existing and adopt other Planning and Zoning Regulations that increase resiliency from hurricanes and other emergencies. In short, by not intruding on the Local Governments Home Rule Authority or complicating their compliance with the Community Planning Act, the Local Governments will not be hindered in their ability to prepare for emergencies, which is the entire stated purpose of SB 180.

B. There is a lack of an adequate remedy at law.

The test for unavailability of an adequate remedy at law, under these requirements, is “whether a judgment can be obtained, not whether, once obtained, it will be collectible.” *Lopez-Ortiz v. Centrust Sav. Bank*, 546 So. 2d 1126, 1127 (Fla. 3d DCA 1989) (quoting *Mary Dee's, Inc. v. Tartamella*, 492 So. 2d 815, 816 (Fla. 4th DCA 1986)). In other words, “[t]he true test is, could a judgment be obtained in a proceeding at law” *Oxford Intern. Bank & Tr., Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 374 So. 2d 54, 56 (Fla. 3d DCA 1979) (quoting *Stewart v. Manget*, 132 Fla. 498, 181 So. 370, 374 (1938)).

Here, without injunctive relief, there is no judgment that the Local Governments can obtain in a proceeding at law if the Local Governments ultimately are successful in this lawsuit. Properties could be developed and wrongfully obtain vested rights that cannot be taken without compensation. Thus, the Local Governments clearly face irreparable injury.

C. Injunctive relief will serve the public interest.

“It is clear that neither the government nor the public has any legitimate interest in enforcing an unconstitutional [law].” *Otto*, 981 F.3d at 870. “Vindicating constitutional rights is

itself a public interest.” *Planned Parenthood*, 194 F.Supp.3d at 1223. Additionally, avoiding the disruption that would come from terminating programs that would later be reinstated serves the public interest. *Id.*

Here, issuing this temporary injunction is certainly in the public interest. Currently, the Local Governments have either repealed, are considering repealing, or have paused moving forward with nearly finalized Planning and Zoning Regulations that may be considered “more restrictive or burdensome.” Such Regulations exist in the public interest generally because they rise from the Local Governments’ being regulated by the Community Planning Act to protect the interests of their citizenry and land under their jurisdiction. More specifically, certain of these Regulations are intended to protect people and land from emergencies, which is the stated purpose of SB 180, even though Section 18 and 28 have the opposite effect. By granting this temporary injunction, the Local Governments can maintain existing, push forward pending, and consider new Planning and Zoning Regulations aimed at emergency preparedness without doubt over whether they will be considered “more restrictive or burdensome,” which is in the public interest. Likewise, Sections 18 and 28 preclude all such Planning and Zoning Regulations, including those unrelated to emergencies, and thus it is in the public interest for such Regulations to not be intruded upon.

Even more, Sections 18 and 28 create a private right of action which obligates taxpayer money to defend lawsuits and pay prevailing plaintiff attorneys’ fees and costs. It is in the public interest for taxpayers to not have to spend such costs, particularly if the Local Governments succeed on the merits, which would deem any such lawsuits meaningless and would amount to waste of taxpayer money.

There are further considerations. If the Local Governments are successful on their claims but a temporary injunction is not granted, then buildings and projects planned and approved in the

period of time where Planning and Zoning Regulations were precluded would be subject to different Planning and Zoning Regulations upon a judgment in the Local Governments' favor. For example, if there is a Planning and Zoning Regulation that limits building height which is precluded by Sections 18 and 28, buildings approved during that preclusion would be planned and approved during a time when this Regulation does not exist and could surpass the building height limit. However, mid-construction (at any phase), if a judgment is rendered for the Local Governments, this building would be subject to the renewed Planning and Zoning Regulations even though planned, and potentially mid-build, based on different Regulations. There is no remedy here for the Local Governments or the developer of this project.

In all, injunctive relief serves the public interest, does not burden the Defendants, and returns the Local Governments and the State to the status quo that pre-existed the enactment of SB 180 for decades.

IV. PLAINTIFFS SHOULD NOT BE REQUIRED TO POST AN INJUNCTION BOND.

The Local Governments request that this Honorable Court waive the bond requirement set out in Florida Rule of Civil Procedure 1.610(b). "Florida's cities are frequently called upon to protect the public interest via temporary injunctions and are presumed to be financially responsible." *Provident Mgmt. Corp. v. City of Treasure Island*, 718 So. 2d 738, 740 (Fla. 1998). "The reason for allowing a city to forego the posting of a surety bond is to save the municipality the expense, inconvenience, and delay in obtaining such a bond." *Id.* Accordingly, here, where all of the plaintiffs are local governments, the bond requirement should be waived for two additional reasons. One, each of the Plaintiffs would need to go through the bond process. Two, each Plaintiff is a local government, and as discussed above, local governments are allowed to forego posting a surety bond. *See id.* Additionally, Defendants would not be damaged if a preliminary injunction

were entered returning the parties to the status quo that existed prior to SB 180, where the Plaintiff's Home Rule Powers were preserved and their ability to act in accordance with the Community Planning Act not impeded.

CONCLUSION

For the reasons stated above, Plaintiffs request that the Court enter a preliminary injunction enjoining Defendants, along with their officers, agents, employees, attorneys, and all other persons in active concert or participation with them, from enforcing SB 180 until further order from this Court, and award any other relief that the Court deems just and proper.

CERTIFICATE OF SERVICE

The undersigned certify that a true and correct copy of the foregoing was served using the Florida Courts e-Filing Portal on November 7, 2025.

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
*Attorneys for Plaintiffs, the Local
Governments*
200 East Broward Boulevard, Ste. 1900
Fort Lauderdale, Florida 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

By: /s/ Jamie A. Cole
JAMIE A. COLE
Florida Bar No.: 767573
Primary: jcole@wsh-law.com
Secondary: msarraff@wsh-law.com
RICHARD B. ROSENGARTEN
Florida Bar No.: 0106169
Primary: rosengarten@wsh-law.com
Secondary: szavala@wsh-law.com
AARON L. GRAUBERT
Florida Bar No. 1028119
Primary: agraubert@wsh-law.com
Secondary: jvasquez@wsh-law.com

EXHIBIT

“A”

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

CASE NO. 2025 CA 001876

City of Destin, Florida, *et al.*,

Plaintiffs,

v.

HONORABLE J. ALEX KELLY,
Secretary of Commerce, State of Florida,
et al.,

Defendants.

_____ /

**DECLARATION OF JULIAN H. PEREZ IN SUPPORT OF THE LOCAL
GOVERNMENTS' MOTION FOR TEMPORARY INJUNCTION**

1. I am over the age of eighteen (18), and I have personal knowledge of the facts contained herein.

2. I am a Certified Floodplain Manager (CFM) with a certificate from the Association of State Floodplain Managers (ASFM).

3. I am also a Certified Planner with a certificate from the American Institute of Certified Planners.

4. I also have certificates from the FEMA Certified Incident Command System and the National Incident Management System.

5. I am a member of the American Planning Association and a former member of the Florida Floodplain Managers Associations Board of Directors.

6. Currently, I am the Planning and Zoning Director for the Town of Cutler Bay. I have held this role for 2 months.

7. My responsibilities as the Town Planning and Zoning Director include, but are not limited to, mixed-use redevelopment projects, Live Local Art mixed-use residential development, strategic planning, water supply planning, site plan review and approval, implementation of the floodplain management ordinance, plating, brownfield redevelopment, and project management.

8. Prior to this role, I worked in municipal planning and zoning and other similar fields for over fifteen years, including with the City of South Miami, Village of Palmetto Bay, City of Doral, City of Coral Gables, and the Town of Cutler Bay.

9. I also spent the first twenty years of my career in the private sector as a program manager.

10. On June 26, 2025, Governor Ron DeSantis signed into law Senate Bill 180 (“SB 180”).

11. SB 180 requires all of the municipalities and counties in Florida, including the Town of Cutler Bay, to take certain actions, many of which require significant expenditure of public funds.

12. From my experience, I have calculated and estimated the cost of numerous of the expenditures corresponding to the required actions. These costs are estimated for the Town of Cutler Bay and other small towns who will perform the work in-house, small to mid-size municipalities who will hire outside consultants to perform the work, and large municipalities and counties. A detailed memorandum of my calculations and estimates is attached to this declaration as Exhibit 1.

13. For example, I estimate that it will cost Cutler Bay and other small municipalities \$10,000 to \$25,000 to develop a template for comprehensive emergency management plans, as required by SB 180. *See* Ex. 1.

14. I also estimate that it will cost Cutler Bay and other small municipalities \$25,000 to \$75,000 to prepare Natural Disaster Plans, as required by SB 180. *See* Ex. 1.

15. Likewise, I estimate that basic guidance for developing Mutual Aid Agreements will cost at least \$5,000 to \$15,000, as required by SB 180. *See* Ex. 1.

16. Further, I have calculated the cost for public officials responsible for the construction and maintenance of public infrastructure to attend continuous training programs, the amount of hours of which are to be determined by the State. *See* Ex. 1. Estimating the State mandates 40 hours of training, costs will be between \$15,000 and \$23,000 depending on which City staff attends. *See* Ex. 1.

17. Likewise, I have also calculated the cost for the same staff to attend a mandated readiness training session, which amounts to just shy of \$5,000. *See* Ex. 1.

18. I have also estimated the cost of developing a newly required web page related to emergency preparedness and response as required by SB 180, which varies based on the complexity of the website. *See* Ex. 1.

19. Lastly, I have estimated the cost for counties and municipalities to operate a post-storm permitting office for at least 40 hours per week, as required by SB 180 if a county or municipality is directly impacted by a hurricane, to be \$470,000. *See* Ex. 1.

20. None of these required actions and their corresponding expenditures have funding mechanisms in SB 180 or elsewhere at Florida law.

Under penalties of perjury, I declare that I have read the foregoing declaration and that the facts stated in it are true to the best of my knowledge and belief.

Executed this 5th day of November, 2025.



JULIAN H. PEREZ

EXHIBIT 1



DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM
Planning & Zoning Director

TO: File

FROM: Julian H. Perez, AICP, CFM
Planning and Zoning Director

DATE: October 27, 2025

SUBJECT: SB180 – Preliminary Cost Analysis for Unfunded Mandates

The following provides a preliminary cost analysis for several unfunded mandates in SB 180.

#1 Emergency Management Section 7(C)

Type of Activity(ies):

1. Assistance to local governments to prepare a template development of a template for comprehensive emergency management plans, including plans for natural disasters, and guidance on the development of mutual aid agreements.

Costs:

2. FDEM is responsible for development of templates.
3. Local government will be responsible for the preparation, implementation and monitoring the plans.

Est. Potential Unfunded Costs: (Estimated Cost Ranges)

4. Comprehensive Emergency Management Plan (CEMP)
 - (a) In-house preparation by small town – \$10,000 – \$25,000 (staff time, training, material, etc.).
 - (b) Consultant-prepared (small to mid-size municipality) – \$30,000 - \$75,000; and
 - (c) Large city or county-level plan with extensive stakeholder engagement and hazard modeling – \$75,000 - \$200,000.

(Examples: The following are a few successful CEMP of interest in Florida: Miami-Dade County, City of Orlando, Leon County, and Monroe County)

5. Natural Disaster Plans (NDPs)
 - (a) Basic Plan (Small Municipality) – \$25,000 - \$75,000
 - (b) Moderate Plan (mid-size city or county) – \$75,000 - \$200,000





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM

Planning & Zoning Director

- (c) Comprehensive Plan plus Implementation (large county or coastal city) – \$200,000 - \$1.0M

(Examples: The following are a few successful NDPs of interest in Florida: Florida State Hazard Mitigation Plan, Miami-Dade Count Local Mitigation Strategy, City of St. Petersburg Resilience Master Plan, and Broward County Climate Change Action Plan)

6. Guidance Document for Mutual Aid Agreements (MAA)
- (a) Basic guidance document (template and legal review) – \$5,000 - \$15,000
 - (b) Moderate scope (multi-agency coordination, annexes, legal vetting) – \$15,000 - \$40,000
 - (c) Comprehensive regional mutual aid framework (multi-jurisdictional, workshops, legal negotiation) – \$40,000 - \$100,000+

(Examples: The following are a few successful MAAs of interest in Florida: Florida Statewide Mutual Aid Agreement (SMAA), Miami-Dade Count Mutual Aid Agreement, South Florida Regional Domestic Task Force (RDSTF) Agreements)

(Methodology: The cost estimates were derived from a literature review, including information from the internet, M365 search, and professional experience.)

#2

Emergency Management Section 7(n)

Type of Activity(ies):

1. Continuous training program for agencies and individuals who will be called on to perform key roles in state and local post-disaster response and recovery efforts and for local government personnel on federal and state post-disaster response and recovery strategies and procedures.
2. Florida Department of Emergency Management (FDEM) needs to determine the minimum number of training hours

Participants:

3. County or municipal administrators, county or city managers, county or municipal emergency management directors, and county or municipal public works directors or other officials responsible for the construction and maintenance of public infrastructure must complete biennially in addition to the training required pursuant to s. 473 252.38(1)(b).

Cost Assumption(s):

4. Assume 40 hours of training annually.





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM
Planning & Zoning Director

Potential Unfunded Cost:

- Need to calculate the cost of having: (1) Emergency Manager; (2) Public Works Director; (3) Construction Manager; (4) Town Manager; Planning and Zoning Director (5) Chief of Police.
- Estimated Cost: \$15,000 - \$23,000

Emergency Management			
Annual Training			
(Estimate Cost - 40 Hours)			
No.	Professional Discipline	Hourly Rate	Est. Cost
1	Emergency Manager	\$ 61.08	\$ 2,443.20
2	Public Works Director	\$ 85.00	\$ 3,400.00
3	Construction Manager	\$ 65.38	\$ 2,615.20
4	Town Manager	\$ 165.18	\$ 6,607.20
5	Planning and Zoning Director	\$ 57.69	\$ 2,307.60
6	Police Chief or Designee	\$ 138.31	\$ 5,532.40
	Estimated Cost		\$ 22,905.60
Source: Town of Cutler Bay.			

(Methodology: The hourly cost estimates were derived from the Town of Cutler, Finance Department)

#3

Emergency Management Section 7(dd)

Type of Activity(ies):

- Annual hurricane readiness session in each region designated by the division to facilitate coordination between all emergency management stakeholders.

Participants:

- Each county emergency management director or his or her designee shall, and other county and municipal personnel may, attend the session for his or her region.

Cost Assumption(s):

- One (1) day event annually. Assume a full day (8 hours) of training.

Potential Unfunded Cost:

- Emergency Manager, Town Manager, Police Chief, Public Works Director





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM
Planning & Zoning Director

5. Estimated Cost: \$5,000

Hurricane Readiness			
Annual Event			
(Estimate Cost - Only One (1) Day Session)			
No.	Professional Discipline	Hourly Rate	Est. Cost
1	Emergency Manager	\$ 61.08	\$ 488.64
2	Public Works Director	\$ 85.00	\$ 680.00
3	Construction Manager	\$ 65.38	\$ 523.04
4	Town Manager	\$ 165.18	\$ 1,321.44
5	Planning and Zoning Director	\$ 57.69	\$ 461.52
6	Police Chief or Designee	\$ 138.31	\$ 1,106.48
	Estimated Cost		\$ 4,581.12

Source: Town of Cutler Bay.

(Methodology: The hourly cost estimates were derived from the Town of Cutler, Finance Department)

#4

Information Related to Natural Emergencies Section 16(1)(a through e)

Type of Activity(ies):

1. Development of a web page related to natural emergency response, emergency preparedness, and public relief for residents following an emergency.

Participants:

2. In-house IT Department or outside IT consulting firm.

Cost Assumption(s):

3. The cost will depend on the amount of information and capacity of the webpage. The proposed webpage capacity, complexity, and staff availability will be some of the driving factors that are going to determine the timeline for completing the webpage. Potential average timeline 3 to 6 months.

Potential Unfunded Cost:

4. IT Director and assigned staff, IT Consult (only if the project is outsourced), City Manager,

Preliminary Cost:

- (a) Basic Static Page (Informational, no interactivity) – \$2,000 - \$5,000





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM

Planning & Zoning Director

- (b) Moderate Page (Responsive design, basic interactivity, CMS integration) – \$5,000 - \$12,000
- (c) Advanced Page (Interactive maps, real-time alerts, multilingual, ADA-compliant) – \$12,000-\$25,000

(Examples: The following are a few successful government websites focused on emergency management, disaster response, and public relief of interest in Florida: Florida Disaster.org, Miami-Dade County Emergency Management, Ready.gov (Federal), Pinellas County Emergency Management, City of St. Petersburg Emergency Management)

(Methodology: The cost estimates were derived from a literature review, including information from the internet, M365 search, and professional experience.)

#5

Information Related to Natural Emergencies Section 16(3)(a)

Type of Activity(ies):

1. By May 1 annually, each county and municipality shall publish on its website a hurricane and tropical storm recovery permitting guide for residential and commercial property owners.

Participants:

1. In-house IT or building staff.

Cost Assumption(s):

1. This scope will require preparing and regular updates of the hurricane and tropical storm recovery permitting guide (residential and commercial properties), information on the type of permits and fees, what type of repair(s) will require permits v. repair that don't require permits, alternative location where permitting services will be provided, and information related to the requirement for rebuilding consistent with the floodplain management ordinance.
2. There is going to be a one-time cost for creating the page. Then, there is annual maintenance cost to annually update the information prior to the start of hurricane season.

Potential Unfunded Cost:

1. IT Director and assigned staff, or IT Consultant (only if the project must be outsourced).

Preliminary Cost:

1. Average Project Pricing \$10,000 – \$50,000 (Estimate)





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM
Planning & Zoning Director

(Methodology: The estimated average project pricing was derived from an article in Forbes, entitled "Best Web Design Companies," dated July 25, 2025)

#6

Information Related to Natural Emergencies Section 16(6)

Type of Activity(ies):

1. As soon as reasonably practicable following the landfall and passage of a hurricane or tropical storm, each county and municipality that has experienced a direct impact from a natural emergency must use its best efforts to open a permitting office at which residents can access government services for at least 40 hours per week.

Participants:

2. Building Department

Cost Assumption(s):

3. This scope will require the local government to open an on-site or off-site location to assist residents during the post-disaster phase. This office will be managed by the Building Director. The Building Official will be responsible for overseeing each trade representative (electrical, roofing, mechanical, plumbing, structural, building inspector, and clerical) and ensure that permits and inspection are expedited consistently with the requirements of the Florida Building Code and the Town's Floodplain Management Ordinance.
4. This office will be in operation for at least two (2) months depending on the magnitude of the event.

Potential Unfunded Cost:

5. Building Department will incur all the total costs.

Preliminary Cost:

6. The post-disaster office estimated operating cost is \$470,000.





DEPARTMENT OF PLANNING AND ZONING

Julian H. Perez, AICP, CFM
Planning & Zoning Director

Post-Disaster Building Department Office				
Annual Event				
(Estimate Cost - Two (2) Months)				
No.	Professional Discipline	Hourly Rate	No. of Working Days ¹	Est. Cost
1	Emergency Manager	\$ 61.08	54	\$ 26,386.56
2	Building Director	\$ 85.00	60	\$ 40,800.00
3	Building Official	\$ 117.64	60	\$ 56,467.20
	Plan Reviews:			
4	Roofing	\$ 93.45	54	\$ 40,370.40
5	Mechanical	\$ 105.00	54	\$ 45,360.00
6	Electrical	\$ 105.00	54	\$ 45,360.00
7	Plumming	\$ 105.00	54	\$ 45,360.00
8	Structural	\$ 150.00	54	\$ 64,800.00
9	Building Inspector	\$ 105.00	54	\$ 45,360.00
10	Clerical	\$ 57.75	60	\$ 27,720.00
11	Miscellaneous (additional personell, rental, insurance, utilities, etc.)			\$ 30,000.00
	Estimated Cost			\$ 467,984.16
Source: Town of Cutler Bay.				
Note:				
1. This office will be open for at least two (2) months depending on the magnitude of the event. It is anticipated that the Building Director, Building Official, and clerk will be 100% at the site. The Emergency Manager and trades are anticipated to be on-site assisting customers at least 90% of their time.				



EXHIBIT

“B”

AFFIDAVIT

STATE OF FLORIDA COUNTY OF PALM BEACH

Before me, the undersigned authority, personally appeared Leonard G. Rubin, who, being duly sworn, deposes and says:

1. I am over the age of eighteen years and am competent to make this Affidavit.
2. I currently serve as the Village Attorney for the Village of North Palm Beach and have served in that capacity since 2006. I have personal knowledge of the facts stated herein.
3. In October 2023, the Village retained a consultant, Chen Moore and Associates, to conduct an analysis of the Village's Comprehensive Plan to determine if amendments were required pursuant to the Evaluation and Appraisal Review ("EAR") requirements of Section 163.191, Florida Statutes. The Village was required to notify the State of Florida land planning agency, Florida Commerce, of its intent to amend the Plan by January 1, 2024. The consultant recommended revisions to virtually every element of the Comprehensive Plan (both the Goals, Objectives and Policies and the Data and Analysis), as well creating a separate map series to replace the maps embedded in each element.
4. The Village notified Florida Commerce of its intent to amend its Comprehensive Plan; consequently, pursuant to Section 163.3191(2), Florida Statutes, it was required to prepare and transmit the amendments within one year or by January 2025. If the Village failed to meet this deadline, it would be prohibited from initiating or adopting any Village-initiated amendments to its Comprehensive Plan until such time as the amendments were complete and approved.
5. The Village subsequently undertook a complete update and revision to its Comprehensive Plan to implement the EAR process. To ensure that it could complete the process within the statutory timeframe, the Village retained two consulting firms to work on various elements – Chen Moore and Associates worked on four elements and the maps at a cost of \$84,800 and JMorton Planning and Landscape Architecture worked on three elements at a cost of \$16,000. Village Staff drafted two elements.
6. As part of the EAR Comprehensive Plan Amendment process, the Village held three virtual stakeholder meetings and posted a survey for resident participation. Village Staff and its consulting team also attended various Village advisory board meetings for additional input.
7. The EAR Amendments were presented to the Village's Planning, Zoning and Adjustment Board, serving as the Local Planning Agency, at three separate meetings, with the final presentation for recommendation to the Village Council held on August 6, 2024. At its November 7, 2024 meeting, the Village Council conducted a public hearing, approved the Ordinance adopting the revised Comprehensive Plan on first reading, and authorized the transmittal of the amendments to Florida Commerce.

8. On January 17, 2025, the Village received its Objections, Recommendations, and Comment (ORC) Report from Florida Commerce. Thereafter, the Village was required to hold its adoption hearing within 180 days. Village Staff, with the assistance of the consulting firms, addressed the issues raised in the ORC Report. During this time, the Village's Community Development Director, who was overseeing the project, left the Village. Consequently, the Village's planning consultant, Chen Moore and Associates, worked with Florida Commerce and other government agencies to finalize the Comprehensive Plan Amendment.
9. On June 12, 2025, the Village's planning consultant presented the EAR Amendments to the Comprehensive Plan to the Village Council for final approval. The Council approved the revised document, which was transmitted to Florida Commerce on June 17, 2025.
10. Nine days later, on June 26, 2025, the Governor signed Senate Bill 180 (Chapter 2025-190, Laws of Florida) into law. On August 1, 2025, the Village received a letter from Florida Commerce acknowledging receipt of the Village's adopted Comprehensive Plan Amendment. In its letter, Florida Commerce represented that it had "identified conflicts with the application of Chapter 2025-190, Section 28, Laws of Florida, and the adopted comprehensive plan amendments," thereby rendering the entire amended Comprehensive Plan "null and void ab initio." Florida Commerce identified the policies, objectives, and tables in the Comprehensive Plan that it concluded "are more restrictive or burdensome and other requirements that are **potentially** more restrictive and/or burdensome than the Village's currently adopted Comprehensive Plan." **A copy of the Florida Commerce letter is attached as Exhibit 1.**
11. The Village's planning consultant subsequently met with representatives of Florida Commerce who confirmed that they considered the Village's amended Comprehensive Plan null and void. Florida Commerce also informed the Village that it must restart the entire Comprehensive Plan approval process and ensure that no goals, objectives, or policies are more restrictive or burdensome than the Comprehensive Plan in effect prior to the Village's initiation of the EAR process in 2023.
12. On August 28, 2025, the Village's Building and Zoning Director sought an amendment to its existing Professional Services Agreement with Chen Moore and Associates to increase the current purchase order by \$125,000 largely to cover the costs of reinitiating the EAR Comprehensive Plan Amendment Process. **A copy of the agenda item and Resolution is attached as Exhibit 2.**

FURTHER AFFIANT SAYETH NAUGHT.



Leonard G. Rubin, Village Attorney
Torcivia, Donlon, Goddeau & Rubin, P.A.
701 Northpoint Parkway, Suite 209
West Palm Beach, FL 33407

**STATE OF FLORIDA
COUNTY OF PALM BEACH**

Sworn to (or affirmed) and subscribed before me by means of ☒ *physical presence* or ☐ *online notarization*, this 30th day of October, 2025, by Leonard G. Rubin, as Village Attorney for the Village of North Palm Beach, who is personally known to me ☒ or has produced _____ as identification.

Allison King

Notary Public, State of Florida

(Print, Type, or Stamp Commissioned Name of Notary Public)

My Commission Expires: 1/25/26

Commission No.: HH198535

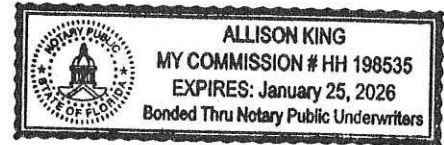


EXHIBIT 1

August 1, 2025

The Honorable Susan Bickel
Mayor, Village of North Palm Beach
501 U.S. Highway 1
North Palm Beach, Florida 33408

Village Clerk

AUG 01 2025

Received

Dear Mayor Bickel,

FloridaCommerce has reviewed the Village of North Palm Beach's adopted comprehensive plan amendment (Amendment No. 24-01ER), received on June 17, 2025, pursuant to the state coordinated review process in section 163.3184(2) and (4), Florida Statutes (F.S.). FloridaCommerce has identified conflicts with the application of Chapter 2025-190, Section 28, Laws of Florida (L.O.F.), and the adopted comprehensive plan amendment. These conflicts render the proposed and adopted comprehensive plan amendment null and void ab initio.

Chapter 2025-190 provides:

Section 28. (1) Each county listed in the Federal Disaster Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-4828), or Hurricane Milton (DR-4834), and each municipality within one of those counties, may not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by such hurricanes; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land redevelopment regulations; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2027, an any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to August 1, 2024.

For the reasons outlined herein, the Village of North Palm Beach's adopted amendment is more restrictive or burdensome, making it null and void ab initio, pursuant to Section 28 of Chapter 2025-190, L.O.F.

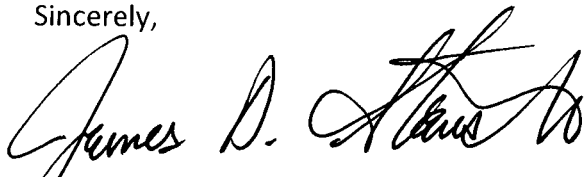
The Honorable Susan Bickel

August 1, 2025

Page Two

If you have any questions concerning this review, please contact me by telephone at (850)-717-8512 or by email at James.Stansbury@Commerce.fl.gov.

Sincerely,

A handwritten signature in black ink, reading "James D. Stansbury". The signature is fluid and cursive, with the first name "James" being the most prominent.

James D. Stansbury, Chief
Bureau of Community Planning and Growth

JDS/jc

cc: Caryn Gardner-Young, Community Development Director, Village of North Palm Beach
Thomas Lanahan, Executive Director, Treasure Coast Regional Planning Council

Chapter 2025-190, Section 28, Laws of Florida (L.O.F.), to provide:

Section 28. (1) Each county listed in the Federal Disaster Declaration for Hurricane Debby (DR-4806), Hurricane Helene (DR-4828), or Hurricane Milton (DR-4834), and each municipality within one of those counties, may not propose or adopt any moratorium on construction, reconstruction, or redevelopment of any property damaged by such hurricanes; propose or adopt more restrictive or burdensome amendments to its comprehensive plan or land redevelopment regulations; or propose or adopt more restrictive or burdensome procedures concerning review, approval, or issuance of a site plan, development permit, or development order, to the extent that those terms are defined by s. 163.3164, Florida Statutes, before October 1, 2027, an any such moratorium or restrictive or burdensome comprehensive plan amendment, land development regulation, or procedure shall be null and void ab initio. This subsection applies retroactively to August 1, 2024.

The Village of North Palm Beach's adopted Amendment 24-01ER adopts changes related to the following objectives, policies, and tables in the Comprehensive Plan that are more restrictive and/or burdensome and other requirements that are potentially more restrictive and/or burdensome than the Village's currently adopted Comprehensive Plan. The following identified objectives, policies, and tables are more restrictive or burdensome: Introduction (Sustainability), FLU Policy 1.9.2, FLU Policy 1.9.4, Housing Policy 1.1.4, Housing Policy 1.1.6, Transportation Policy 1.4.14, Capital Improvement Policy 1.3.7, CIE-1 Table North Palm Beach LOS Standards, INF Table North Palm Beach Utilities LOS Standards, Infrastructure Policy 1.1.6, Coastal Management Policy 1.9.1, Coastal Management Policy 1.9.2, Coastal Management Objective 1.10, Conservation Policy 1.3.2, Conservation Policy 1.4.4, Recreation & Open Space Policy 1.2.3, Recreation & Open Space Policy 1.5.1, and Recreation & Open Space Policy 1.9.3. The following policies and objective are potentially more restrictive or burdensome: FLU Policy 1.9.7, Transportation Objective 1.4, and Recreation & Open Space Policy 1.7.2.

FLORIDACOMMERCE

The Caldwell Building | 107 E. Madison Street, MSC 160 |
Tallahassee, Florida 32399-2100

FloridaJobs.org

The Honorable Susan Bickel
Mayor, Village of North Palm Beach
Village Hall
501 U.S. Highway 1
North Palm Beach, Florida 33408

Village Clerk

AUG 05 2025

Received



US POSTAGE
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EXHIBIT 2

**VILLAGE OF NORTH PALM BEACH
BUILDING & ZONING DEPARTMENT**

TO: Honorable Mayor and Council

THRU: Chuck Huff, Village Manager

FROM: Valentino Perez, Building & Zoning Director

DATE: August 28, 2025

SUBJECT: **RESOLUTION** – Approving a Fourth Amendment to the Professional Services Agreement with Chen Moore & Associates, Inc. to increase compensation for Fiscal Year 2025 to \$275,000

As a follow-up to the meeting held on August 18, 2025, and in accordance with the direction of Village Management, Chen Moore & Associates (CMA) will begin reviewing and updating the Evaluation and Appraisal Report (EAR)-based Comprehensive Plan to ensure compliance with SB 180, as required by the State.

Additionally, please note that the attached July invoice from CMA's Accounting Department requires additional funding under the current continuing planning services agreement. To ensure CMA can proceed without interruption, I am requesting an increase to the existing continuing services Purchase Order in the amount of \$125,000, bringing the total compensation for Fiscal Year 2025 to \$275,000.

Background:

On August 14, 2025, CMA met with Florida Commerce to discuss the Village's EAR-based Comprehensive Plan amendment. The following summarizes the key outcomes of that meeting:

- Per Senate Bill 180 (SB 180), the Village's proposed EAR amendments are deemed null and void (see attached letter from Florida Commerce). The Village must evaluate the Comprehensive Plan to confirm that no goals, objectives, or policies are more burdensome or restrictive than permitted under SB 180.
- The Village must restart the Comprehensive Plan approval process, which includes:
 - Local Planning Agency (LPA) review
 - Village Council Transmittal Hearing (First Reading)
 - Transmittal to the State and applicable agencies
 - Receipt of the Objectives, Recommendations, and Comment (ORC) report from the State (within 60 days of transmittal)
 - Adoption of the Comprehensive Plan within 180 days of receiving the ORC report
 - Village Council Adoption Hearing (Second Reading)
 - Submittal to the State
 - Notification of Intent (NOI) from the State within 45 days

Given these statutory requirements, it is necessary to secure additional funding to allow CMA to continue services without delay.

Attachments:

Letter from Florida Commerce

The attached Resolution and Fourth Amendment have been prepared/reviewed by your Village Attorney for legal sufficiency.

Account Information:

Fund	Department / Division	Account Number	Account Description	Amount
General Fund	Building & Zoning / Planning	A5206-33190	Professional Services	\$125,000

Recommendation:

Village Staff recommends Village Council consideration and approval of the attached Resolution approving a Fourth Amendment to the Professional Services Agreement with Chen Moore & Associates, Inc. to increase the total compensation for Fiscal Year 2025 from \$150,000 to \$275,000, to cover the costs of the required Comprehensive Plan Amendments and authorizing the Village Manager to execute the Amendment in accordance with Village policies and procedures.

RESOLUTION 2025-40

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA APPROVING A FOURTH AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH CHEN MOORE & ASSOCIATES, INC. TO INCREASE THE TOTAL AMOUNT OF COMPENSATION FOR FISCAL YEAR 2025 AND AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE FOURTH AMENDMENT; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, through the adoption of Resolution No. 2023-65, the Village Council authorized the Village Manager to execute an Agreement for Professional (Planning) Services with six firms, including Chen Moore & Associates, Inc., in an amount not to exceed \$50,000.00 during any single fiscal year; and

WHEREAS, through the adoption of Resolution No. 2024-01, the Village Council approved an Amendment to the Agreement with Chen Moore to increase the total amount of compensation for Fiscal Year 2024 to \$80,000; and

WHEREAS, through the adoption of Resolution No. 2024-60, the Village Council approved a Second Amendment to the Agreement with Chen Moore to again increase the total amount of compensation for Fiscal Year 2024 to \$125,000; and

WHEREAS, through the adoption of Resolution No. 2025-14, the Village Council approved a Third Amendment to the Agreement with Chen Moore to increase the total amount of compensation for Fiscal Year 2025 to \$150,000; and

WHEREAS, due to additional work performed by Chen Moore for interim planning services and readoption of the Village's EAR-based Comprehensive Plan Amendment, Village Staff is seeking an increase in the compensation paid during Fiscal Year 2025 to \$275,000, necessitating a Fourth Amendment to the Agreement; and

WHEREAS, the Village Council determines that the adoption of this Resolution is in the best interests of the residents of the Village of North Palm Beach.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF NORTH PALM BEACH, FLORIDA as follows:

Section 1. The foregoing recitals are ratified as true and incorporated herein.

Section 2. The Village Council hereby approves a Fourth Amendment to the Professional Services Agreement with Chen Moore & Associates, Inc. to increase the total amount of compensation during Fiscal Year 2025 to \$275,000.00, a copy of which is attached hereto and incorporated herein, and authorizes the Village Manager to execute the Fourth Amendment on behalf of the Village.

Section 3. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed to the extent of such conflict.

Section 4. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED THIS 28TH DAY OF AUGUST, 2025.




MAYOR

ATTEST:


VILLAGE CLERK

FOURTH AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
(Planning Services)

THIS FOURTH AMENDMENT is entered on this 28th day of August, 2025, by and between the **Village of North Palm Beach**, a Florida municipal corporation ("Village") and **Chen Moore & Associates, Inc.**, a Florida corporation ("Consultant").

RECITALS

WHEREAS, on August 24, 2023, the Village entered into a Professional Services Agreement with Chen Moore & Associates, Inc. ("Chen Moore") for general Planning Services ("Agreement") and capped the total amount of compensation at \$50,000 per fiscal year; and

WHEREAS, on January 11, 2024, the Village executed an Amendment to the Agreement to increase the total amount of compensation payable for Fiscal Year 2024 to \$80,000; and

WHEREAS, on July 18, 2024, the Village executed a Second Amendment to the Agreement to increase the amount of compensation payable for Fiscal Year 2024 to \$125,000; and

WHEREAS, on April 24, 2025, the Village executed a Third Amendment to the Agreement to increase the amount of compensation payable for Fiscal Year 2025 to \$150,000; and

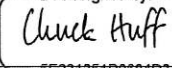
WHEREAS, due to additional work performed by Chen Moore for interim planning services because of organizational and departmental restructuring and the need to readopt revised EAR based amendments to the Village's Comprehensive Plan, the parties wish to increase the total amount of compensation for Fiscal Year 2025 to cover the cost of this additional work.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in the Agreement, as amended, the sufficiency of which is hereby acknowledged by the parties, the Village and the Consultant agree as follows:

1. The foregoing recitals are ratified and incorporated herein.
2. Section 5(a) of the Agreement is hereby amended to increase the total amount of compensation payable by the Village to Consultant for Fiscal Year 2025 to **Two Hundred Seventy-Five Thousand Dollars and No Cents (\$275,000.00)**.
3. All other provisions of the Agreement, to the extent not expressly modified herein, shall remain in full force and effect.

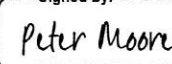
IN WITNESS WHEREOF, the parties hereto have made and executed this Fourth Amendment to the Professional Services Agreement (Planning Services) as of the day and year set forth above.

VILLAGE OF NORTH PALM BEACH:

By: 
Charles D. Huff, Village Manager

CONSULTANT:

CHEN MOORE & ASSOCIATES, INC.

By: 
Print Name: Peter Moore
Title: President