

Senate Bill 360 (Adopted)

&

**Amendment 4 to the Florida
Constitution (Proposed)**



City Council Workshop

November 16, 2009

Overview

■ **Senate Bill 360**

- Growth Management legislation that became law in 2009. Intended to streamline the development approval process and reduce transportation concurrency requirements in urbanized areas.

■ **Amendment 4**

- Proposed amendment to the Florida Constitution that will be on the ballot for the General Election on November 2, 2010. If approved, it will require a referendum for every comprehensive plan amendment approved by a local government.

Agenda

■ **Senate Bill 360**

- Key Terms
- Status
- 5 Key Provisions

■ **Amendment 4**

- Status
- Positions – Pro, Con & Neutral
- Previous & Future Actions
- Policy Direction

SB 360 - Key Terms

- **DULA** – Dense Urban Land Area
- **TCEA** – Transportation Concurrency Exception Area
- **DRI** – Development of Regional Impact
- **DCA** – Florida Department of Community Affairs
- **DOT** – Florida Department of Transportation
- **GMP** – City of Orlando Growth Management Plan
- **LDC** – City of Orlando Land Development Code

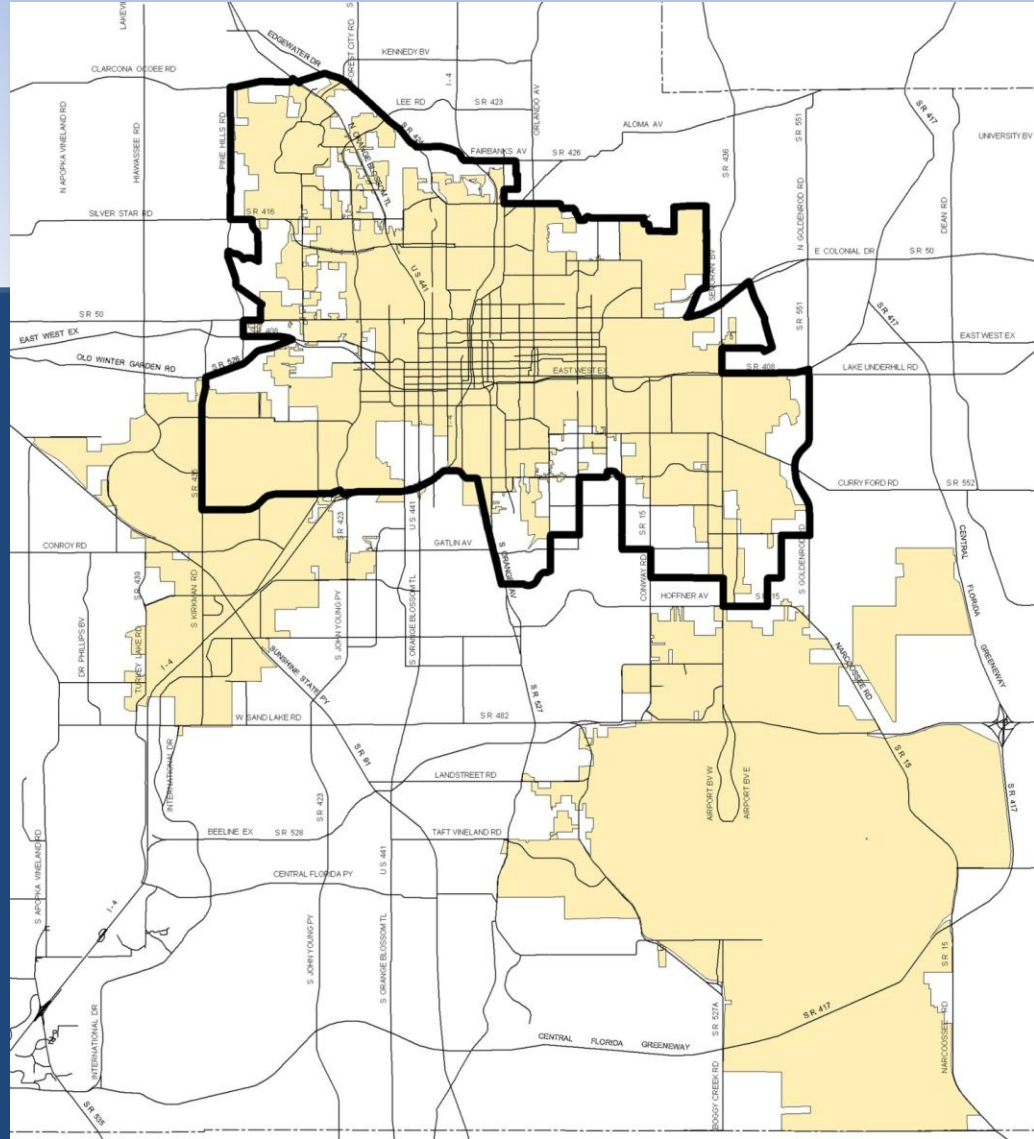
DULA – Dense Urban Land Area

- A City with an average of at least 1,000 people per square mile of land area (Orlando = 2,504 people per sq. mile).
- A County, including municipalities, with an average of at least 1,000 people per square mile of land area (Orange County = 1,229 people per square mile).
- A county, including municipalities, with a population of at least 1 million (Orange County = 1.1 million people).

TCEA

Transportation Concurrency Exception Area

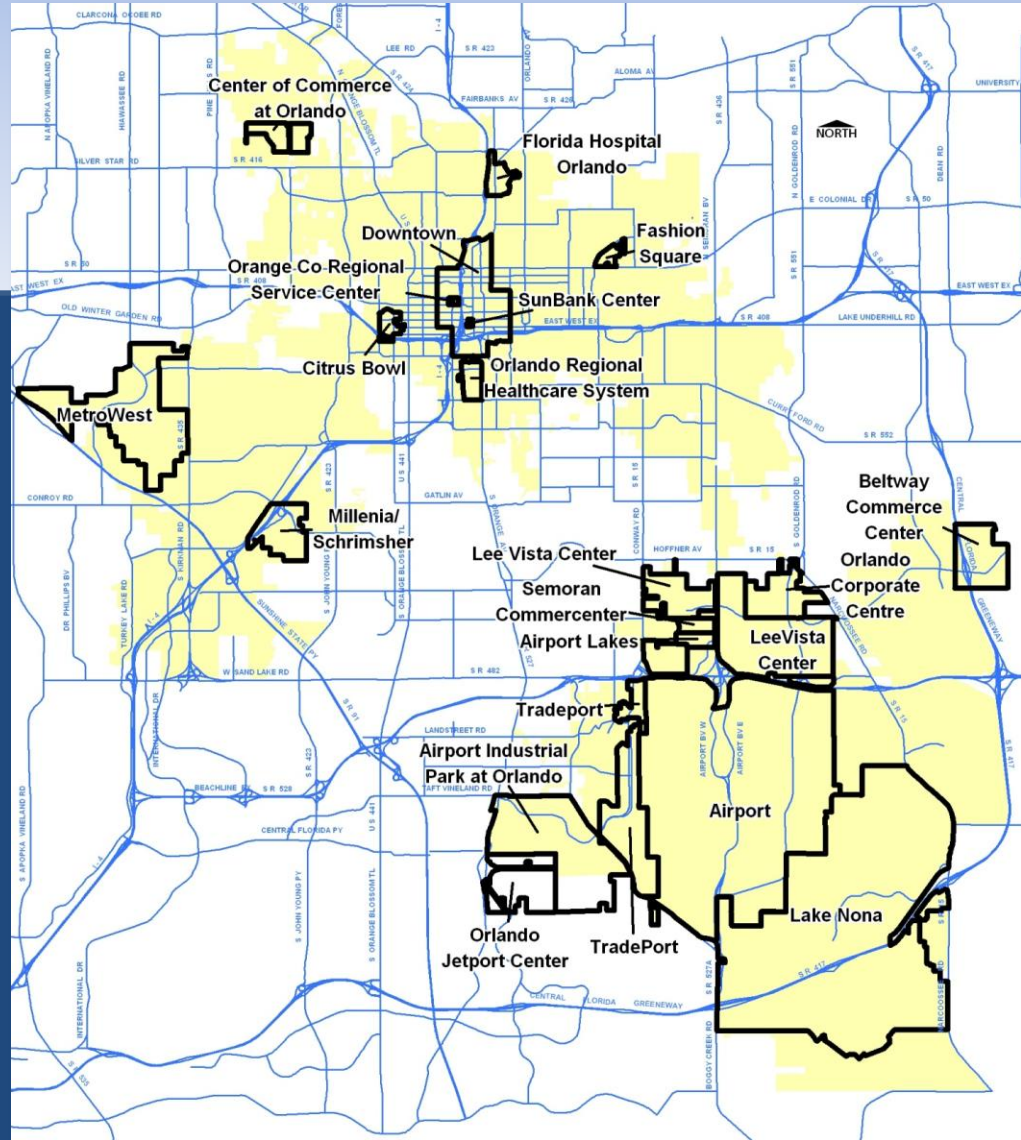
Area that is
exempt from
transportation
concurrency
level of service
standards.



DRI

Development of Regional Impact

Large scale development that would have a substantial effect upon more than one county.



Key Terms (cont.)

- **DCA** – Florida Department of Community Affairs
- **DOT** – Florida Department of Transportation
- **GMP** – City of Orlando Growth Management Plan
- **LDC** – City of Orlando Land Development Code

Status - SB 360

- Passed by Florida House and Senate on May 1, 2009
- Signed by Governor on June 1, 2009
- Lawsuit was filed by the City of Westin and 7 other local governments
 - 13 additional plaintiffs have joined suit
 - Claim SB 360 is an Unfunded Mandate and violated Single Subject Rule.
 - Anticipate new legislation may be proposed in special session to mute lawsuit.

Key Provisions – SB 360

1. Defines Dense Urban Land Areas (DULAs)
2. Allows local government to expand or create Transportation Concurrency Exception Areas (TCEAs) in DULAs.
3. Eliminates Development of Regional Impact (DRI) requirements for new large scale developments in DULAs.
4. Extends certain permits and build-out dates.
5. Requires that Department of Community Affairs (DCA) and Department of Transportation (DOT) work together to develop a mobility fee.

1. Defines Dense Urban Land Areas (DULAs)

- A City with an average of at least 1,000 people per square mile of land area (Orlando = 2,504 people per sq. mile).
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- A county, including municipalities, with a population of at least 1 million (Orange County = 1.1 million people)

1. Defines Dense Urban Land Areas (DULAs)

■ Impact:

- In theory, encourages infill development and reduces sprawl; however, at 1,000 people per square mile, could include substantial undeveloped areas.

■ Policy/Future Actions:

- Advise State regarding change in population after every annexation.

2. Allows local government to expand or create TCEAs in DULAs.

- **Impact:** Development can be approved without conforming to level of service standards.
- **Pro:** Encourages infill development; reduces sprawl.
- **Con:** If TCEA is expanded,
 - Eliminates Concurrency Resolution Agreements/upfront payments.
 - Requires return of Capacity Reservation Fees.

2. Allows local government to expand or create TCEAs in DULAs (cont.).

Issues:

- Effective date is unclear.
 - DCA believes local government must first amend policies and maps in GMP to define boundaries of TCEA.
- Proposed Constitutional Amendment 4 could impact the city's ability to adopt GMP amendments.
 - GMP amendments need to be initiated by February 2010 to be effective before Amendment 4 is effective.

2. Allows local government to expand or create TCEAs in DULAs (cont.).

Policy/Future Actions:

- Initiate GMP policies to promote mobility (transit, bike, pedestrian) within the existing or expanded TCEA.
- By February 2010, determine if City will expand TCEA.
 - Staff will weigh pros and cons and come back with a recommendation prior to February 2010
 - If yes, staff will request approval to process GMP amendment to amend TCEA Map.

3. Eliminates DRI requirements for new large scale developments in DULAs.

Impacts:

- Existing DRIs remain unless Developer requests and City approves rescission.
- “If requested by the developer or landowner, the DRI development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed.”

3. Eliminates DRI requirements for new large scale developments in DULAs (cont).

Impacts:

- New DRI-level projects are only subject to a local Development Order.
- City sends local Development Order to DCA if project exceeds 120% of DRI threshold.
- Developers will probably retain existing DRIs to protect entitlements (including school concurrency) and avoid new opposition.

Active DRIs in the City of Orlando

1. Downtown DRI
2. Airport Industrial Park Orlando (AIPO)
3. Beltway Commerce Center
4. Center of Commerce
5. Fashion Square Mall
6. Florida Hospital Health Village
7. Lake Nona
8. LeeVista
9. MetroWest (Veranda Park)
10. Millenia
11. Orlando Corporate Center
12. Orlando International Airport
13. Orlando Health
14. Semoran Commercenter

3. Eliminates DRI requirements for new large scale developments in DULAs (cont.).

- **Pro:** Reduces time and cost to approve DRI-level projects.
- **Con:** Eliminates coordination by Regional Planning Commission.
- **Policy/Future Actions:**
 - Determine fee structure/process for processing DRI-level Development Orders
 - Determine whether City will retain or rescind the Downtown DRI.

4. Extends certain permits and build-out dates

- Provides 2 year extension for certain development approvals.
- Legislation unclear – Appears to only apply to approvals that also have a Department of Environmental Protection (DEP) or water management district permit.
- Extends DRI build-out dates by 2 years.

4. Extends certain permits and build-out dates (cont.)

- City adopted Strengthen Orlando Ordinance on October 5, 2009 to recognize the depressed economy and eliminate confusion.
 - Amends LDC to lengthen the time when new approvals are valid (Master Plan & Conditional Use = 2 years; Variance & HP Approval = 1 year)
 - Adds 2 years to certain approvals granted between September 1, 2008 through January 1, 2012, if requested by December 31, 2009.

4. Extends certain permits and build-out dates (cont.)

■ **Transportation Impact Fees & Reservations**

- Impact fees may be calculated based on the difference between previous and proposed use; may consider use existing up to 10 years prior to application (previously 5 years).
- Owner may request 3 year extension to period when impact fee credits must be expended.
- Owner may request 3 year extension to a Transportation Concurrency Reservation.

4. Extends certain permits and build-out dates (cont.)

- **Policy/Future Actions:** None
 - Strengthen Orlando Ordinance already approved.

5. Requires DCA and DOT work together to develop a Mobility Fee

What is a Mobility Fee?

- A revenue source for mitigating transportation impacts resulting from new development.
 - Promote compact, mixed-use, and energy-efficient development
 - Mode Neutral (not just based on automobile)
 - Could replace “Transportation Concurrency”

5. Requires DCA and DOT work together to develop a Mobility Fee

- **Pro:** Uniform methodology. May cover operating and maintenance costs.
- **Con:** Fees would be allocated among impacted jurisdictions;
 - City may not get full share.
 - Possible loss in rate flexibility (city has 7 rate zones)
 - Effective date of fee unknown

5. Requires DCA and DOT work together to develop a mobility fee

- **Policy/Future Actions:** Staff to monitor recommendations by FDOT and DCA.

Senate Bill 360

■ Questions?

ENROLLED
2009 Legislature

CS for CS for SB 360, 2nd Engrossed

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2 An act relating to growth management; providing a
3 short title; amending s. 163.3164, F.S.; revising the
4 definition of the term "existing urban service area";
5 providing a definition for the term "dense urban land
6 area" and providing requirements of the Office of
7 Economic and Demographic Research and the state land
8 planning agency with respect thereto; amending s.
9 163.3177, F.S.; revising requirements for adopting
10 amendments to the capital improvements element of a
11 local comprehensive plan; revising requirements for
12 future land use plan elements and intergovernmental
13 coordination elements of a local comprehensive plan;
14 revising requirements for the public school facilities
15 element implementing a school concurrency program;
16 deleting a penalty for local governments that fail to
17 adopt a public school facilities element and
18 interlocal agreement; authorizing the Administration
19 Commission to impose sanctions; deleting authority of
20 the Administration Commission to impose sanctions on a
21 school board; amending s. 163.3180, F.S.; revising
22 concurrency requirements; providing legislative
23 findings relating to transportation concurrency
24 exception areas; providing for the applicability of
25 transportation concurrency exception areas; deleting
26 certain requirements for transportation concurrency
27 exception areas; providing that the designation of a
28 transportation concurrency exception area does not
29 limit a local government's home rule power to adopt

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

Amendment 4 to the Florida Constitution (2010)

Previously known as:

The Florida Hometown Democracy Initiative

November 2010 Ballot

- **Title:** Referenda Required For Adoption And Amendment of Local Government Comprehensive Land Use Plans.
- **Summary:** Establishes that before a local government may adopt a new comprehensive land use plan, or amend a comprehensive land use plan, **the proposed plan or amendment shall be subject to vote of the electors of the local government by referendum**, following preparation by the local planning agency, consideration by the governing body and notice. Provides definitions.

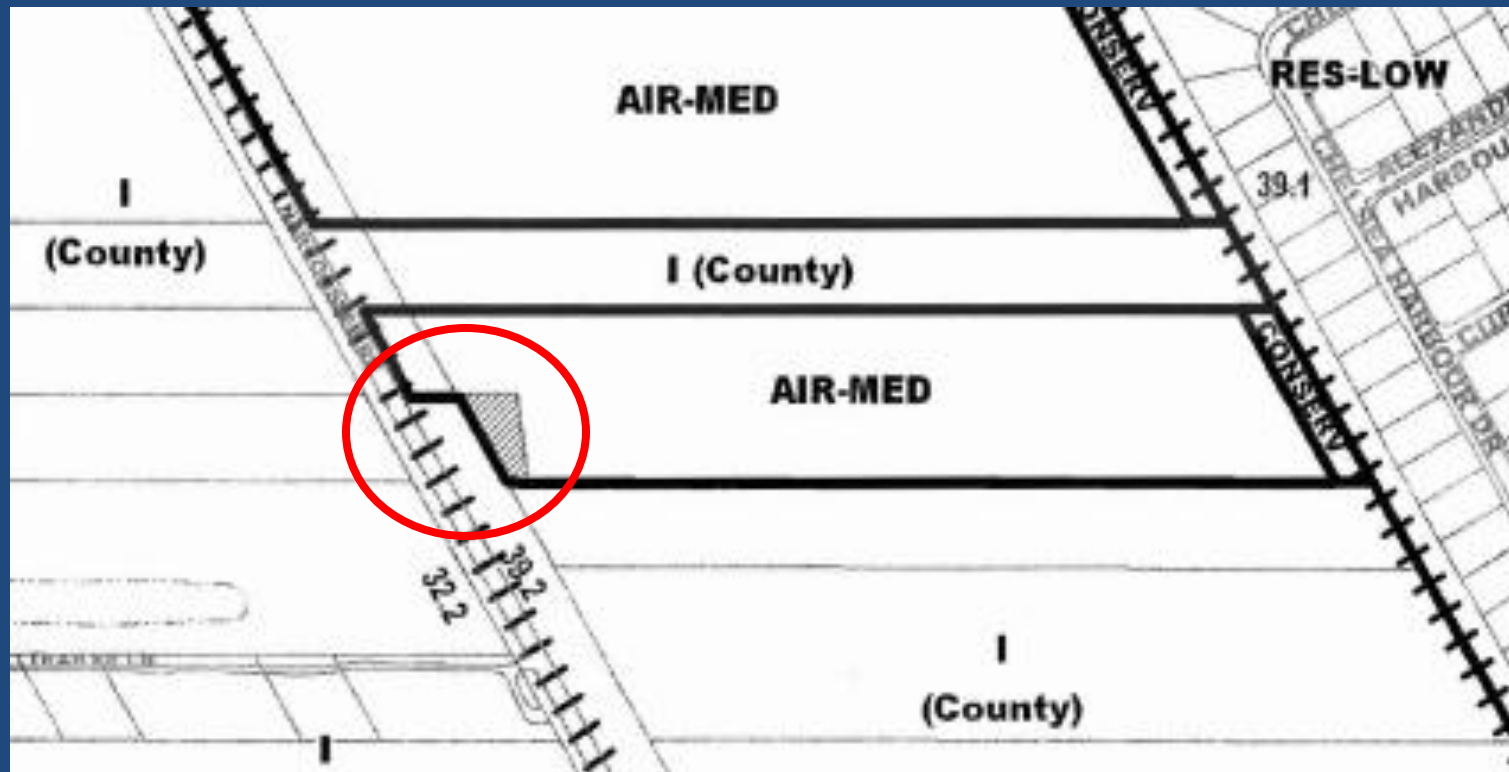
Impact

- Every Growth Management Plan (GMP) amendment approved by City Council would, technically, be subject to a vote of the electors of the City, by referendum.
- Applies to every Growth Management Plan amendment, not just large scale residential development.

Applicability

- Future Land Use Map (Princeton Smith, 0.28 acres)
- GMP Policy document (Florida Hospital)
- Capital Improvement Element (Annual Budget)
- Amendments required by State (Water Supply Plan)
- Even 0.5 acre scrivener errors, designations creating parkland, and technical amendments with no opposition (Narcoossee CommerCenter, 0.23 acres).

Applicability (cont.)



Applicability (cont.)

- Does **NOT** apply to other types of development approval, such as:
 - Rezoning
 - Conditional Uses
 - Master Plans
 - Plats
 - DRIs
 - Annexations (but impacts ability to assign city future land use designation after annexation)

Status

- Ballot language was certified by the Florida Division of Elections on June 22, 2009.
- Will appear as Amendment 4 on the ballot of Nov. 2, 2010.
- Will pass if more than 60% of voters select “yes.”

Position – Pro

- May increase the value of property that doesn't need a GMP amendment.
- May discourage sprawl and encourage infill development.
- Supported by a wide variety of concerned citizen groups, homeowner associations and environmental interest groups, including the Sierra Club of Central Florida.

Position – Con (Complexity)

- Referenda will delay and add uncertainty to all GMP amendments, even if they are minor, required or uncontested.
 - Referenda will appear on regular ballots or on special election ballots.
 - City may incur additional cost to promote city-initiated amendments or amendments approved by City.
 - Number of items on ballot may frustrate voters.

Position – Con (Procedures)

- City may have to rely on Orange County future land use designations for annexed property.
- Changes that have received professional and legal review, public input through the public hearing process and official approval by the City Council will not be final unless approved by popular vote.

Implications

- Amendments that are technically sound and truly good for the community could be denied based on lack of interest by voters who are either unaffected or simply believe that all change is bad.
- Amendments for affordable housing or essential facilities that benefit the entire community may be denied due to opposition from immediate neighbors (not in my back yard).

Implications (cont.)

- If changes to Capital Improvements Element (CIE) fail, land use changes that rely on CIE projects may be rejected by DCA.
- Annual update to DCA Certification boundaries is a GMP amendment, so if GMP amendments are not approved, annexed property will not be part of Certification area.
- If GMP amendment increases the value of property that already has appropriate land use designations, higher land costs may make some development infeasible.

Secondary Effects

- May affect long term perspective needed in land use decisions.
- Complex amendments may be reduced to “sound bites.”
- Land Use decisions may be skewed by heavily financed publicity campaigns.
- People who can't vote will not be heard.

Opposition

- Opposed by over 170 organizations, including:
 - 25 cities – Altamonte Springs, Fort Meyers, Jacksonville, etc.
 - Florida League of Cities, Florida Association of Realtors, Florida Chapter of the American Institute of Architects (AIA), Florida Chapter of the American Planning Association (FAPA), and the Florida Chamber of Commerce.
 - Orlando Regional Chamber of Commerce, 1000 Friends of Florida, and numerous building industry organizations.

Opposition (cont.)

- Opposed by over 170 organizations, including:
 - Governor Charlie Christ (*Orlando Sentinel*, September 25, 2007).
 - DCA Secretary Tom Pelham (*Orlando Sentinel*, September 25, 2007).
 - Orlando Sentinel Editorial Board (*Orlando Sentinel*, October 4, 2009)

Position - Neutral

- Most property in the city is not developed to the maximum density or intensity allowed, so many properties could be redeveloped and intensified without GMP amendments.
- City GMP allows mixed-use in nearly all districts and generally allows high densities when compared to Orange County
- Sufficient capacity is available to accommodate development and redevelopment indefinitely.

Previous and Future Actions in anticipation of Amendment 4

- City of Orlando has been processing applicant-initiated and city-initiated GMP amendments over the past several years in anticipation that amendments may become more difficult in the future.
- Staff will continue evaluating the need for GMP amendments for city properties prior to February 2010.

Summary

- Referendum requirement applies to every GMP amendment.
- Difficult to condense complex plan amendments into meaningful ballot language.
- Could turn GMP amendments into publicity campaigns that pit one neighborhood against another.
- Could frustrate voters with numerous ballot items that have already been approved by City Council through the local public hearing process.
- Unknown cost implications

Summary (cont.)

- **2006** – City of St. Pete Beach adopted a Charter amendment requiring a referendum on all GMP amendments effecting five or more parcels of land.
- Lawsuits ensued when voters approved comprehensive plan.
- **2009** – City of St. Pete Beach amended their Charter to only require referendum for amendments that change density or intensity of uses or height of structures, or which add or change a land use category (not all GMP amendments).

Summary (cont.)

- Ward Friszolowski, former Mayor of St. Pete Beach:
 - "St. Pete Beach residents are tired of voting on everything, especially issues that don't even relate to development."
 - "This amendment doesn't work. It has resulted in chaotic, confusing and expensive elections driven by sound bites rather than sound planning (www.florida2010.org)."

Policy Direction

- Determine if City will take an official position for or against Amendment 4.
 - Council may approve a formal resolution or merely adopt a motion stating its position.
- Questions?