

## RESOLUTION 24-04

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA, AUTHORIZING PARTICIPATION IN A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS OF SECTION 112.144(1)(d), FLORIDA STATUTES, THAT REQUIRE MUNICIPAL ELECTED OFFICIALS TO FILE FORM 6 FINANCIAL DISCLOSURE FORMS IS UNCONSTITUTIONAL AND INVALID; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, since 1976, Article II, Section 8 of the Florida Constitution has required that all elected State constitutional officers file a full and public disclosure of their financial interests, which is done through a state-adopted form ("Form 6") that requires, among other things, the disclosure of the specific amounts of an official's net worth, income and asset values; and

**WHEREAS**, historically, municipal elected officials have been required to make a more limited financial disclosure that is done through a different state-adopted form ("Form 1") that requires, among other things, the disclosure of information related to sources of income, real property, intangible personal property liabilities and interests in specified businesses, but does not include the specific amounts of an official's net worth, income and asset values; and

**WHEREAS**, the current elected members of the City of Marco Island (the "City Elected Officials") were elected by the voters of the City of Marco Island, Florida (the "City") subject to and in reliance upon Florida law that required the City Elected Officials annually file Form 1 (not Form 6) financial disclosures forms; and

**WHEREAS**, although the State Legislature has the power in the Florida Constitution to require that additional public officers file a full and public disclosure of their financial interests, it must do so consistent with other constitutional limitations; and

**WHEREAS**, in 1980, the voters of Florida amended the Florida Constitution by adopting Article 1, Section 23, the “Right to Privacy,” which states that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein”; and

**WHEREAS**, because the right of privacy is a fundamental right within Florida’s Constitution, the Florida Supreme Court has consistently required that any law intruding on the right is presumptively unconstitutional and must be justified by a “compelling state interest” which the law serves or protects through the “least restrictive means”; and

**WHEREAS**, the First Amendment to the United States Constitution, and Article 1, Section 4 of the Florida Constitution, protects the freedom of speech, which includes the right to choose what to say and what not to say, any impairment of which must be justified by a “compelling state interest” which the law serves or protects through the “least restrictive means”; and

**WHEREAS**, during the 2023 legislative session, Senate Bill 774 was passed and codified at Law of Florida 2023-09, amending Fla. Stat. § 112.3144, to change the financial disclosure requirements and now require that all elected municipal mayors and elected members of the governing board file a Form 6 financial disclosure, which is substantially more burdensome and personally intrusive than the Form 1; and

**WHEREAS**, the imposition of the Form 6 disclosure requirements at the municipal level (a) represents an unwarranted intrusion into the privacy rights of municipal elected officials, most of which receive little or no compensation for their service, (b) unnecessarily risks the safety of such officials (making them targets of, among other

things, burglary, identity theft and extortion), and (c) will deter many otherwise qualified and interested citizens from running for office; and

**WHEREAS**, in fact, many municipal officials resigned from office prior to December 31, 2023, as a result of the new disclosure requirements, disrupting the ability of some local governments to operate for lack of a quorum; and

**WHEREAS**, the imposition of the intrusive Form 6 disclosure requirements at the municipal level is not the least restrictive means of serving the governmental interests of preventing abuse of the public trust, as demonstrated by, among other things, the lack of such requirements at the municipal level in other states and at the federal level (even the President of the United States and members of the U.S. Congress are not required to make such extensive disclosures); and

**WHEREAS**, requiring that unpaid (or low paid) municipal elected officials disclose their precise net worth, income and assets does not serve (let alone constitute the least restrictive means of serving) any compelling interest – Form 1 disclosures constitutes sufficient transparency to inform the public of potential conflicts; and

**WHEREAS**, the imposition of new financial disclosure requirements upon municipal elected officials who were elected without such requirements violates due process, is fundamentally unfair and violates fundamental constitutional rights; and

**WHEREAS**, the City desires to participate in a lawsuit seeking a declaration that the provisions of Section 112.3144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 financial disclosure forms are unconstitutional and invalid and should be enjoined (the “Lawsuit”); and

**WHEREAS**, the Marco Island City Council believes it is in the best interest of the citizens and residents of the City to participate in the Lawsuit and urges other municipalities and their elected officials to also participate as plaintiffs.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, FLORIDA AS FOLLOWS:**

**Section 1:** That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

**Section 2:** The City Council hereby authorizes the participation of the City, and any individual Members of the Council who choose to participate as plaintiffs, in a lawsuit seeking declaratory, injunctive and other appropriate relief challenging the provisions of Section 112.3144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 financial disclosure forms, based upon any appropriate legal theories, including those set forth above, subject to the participation of at least ten Florida municipalities.

**Section 3:** Weiss Serota Helfman Cole + Bierman, PL (the “Firm”) is hereby retained to represent the City in this litigation. The Firm will charge the City a flat fee, inclusive of attorneys’ fees and costs, of \$10,000 to represent the City and the individual elected officials who choose to participate as plaintiffs, for the litigation in the trial court. The City and elected officials recognize that such flat fee may be less than the actual attorneys’ fees and costs incurred, and that if the City and elected officials prevail in the Lawsuit, the Firm may apply with the Court for its actual reasonable attorneys’ and costs from the defendants. The filing of any appeals will be authorized by separate resolution under the terms thereof. The City and its elected officials also acknowledge that the Firm will be representing other local governments and officials in this lawsuit and waives any

conflicts related to such representation. [ONLY FOR CITIES WHERE THE FIRM DOES NOT SERVE AS CITY ATTORNEY: The City further acknowledges that, from time to time, the Firm may be called upon by a client to represent them as to requests for various approvals and as to other matters with respect to or involving the City. The City hereby waives any potential conflict of interest in the Firm's representation of those clients arising from its representation of the City in the Lawsuit.]

**Section 4:** The City invites and urges other local governments and elected officials to join the City as plaintiffs in the Lawsuit and to coordinate their efforts with the City.


**Section 5:** The City Clerk is directed to distribute this Resolution to all local governments in Collier County, Florida.

**Section 6:** That the appropriate City Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.


**Section 7:** That this Resolution shall take effect immediately upon adoption.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND, this 22<sup>nd</sup> day of January 2024.**

**ATTEST:**

  
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Joan Taylor, City Clerk

Approved as to form and legal sufficiency:

  
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Alan L. Gabriel, City Attorney

**CITY OF MARCO ISLAND, FLORIDA**

By:   
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Jared Grifoni, Chairman

