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ORDINANCE 24-06

**AN ORDINANCE OF THE CITY OF MARCO ISLAND,
FLORIDA, ESTABLISHING THE CITY OF MARCO ISLAND
AS A CONSTITUTIONALLY PROTECTED FREEDOM
ZONE; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Marco Island, Florida (the "City") City Council has growing concerns over the federal government's increasing encroachment on the rights and privileges of its citizens; and

WHEREAS, of particular concern are those edicts being promulgated by the federal government in the form of executive orders, which circumvent the legislative process and arguably violate the fundamental American doctrine of separation of powers; and

WHEREAS, Article I, Section 1 of the Florida State Constitution recognizes that, "[a]ll political power is inherent in the people..."; and

WHEREAS, the Ninth Amendment to the Constitution of the United States of America states, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."; and

WHEREAS, the Tenth Amendment to the Constitution of the United States of America states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."; and

WHEREAS, "... federalism protects the liberty of the individual from arbitrary power...[and a]n individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate." *Bond v. United States*, 564 U.S. 211, 222, 131 S. Ct. 2355, 2364-65 (2011); and

WHEREAS, "[t]he structural principles secured by the separation of powers protect the individual as well." *Id.*; and

WHEREAS, the State of Florida is divided into various counties and municipalities and Article VIII, Section 2(b) of the Florida Constitution vests municipalities with "... 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 purposes except as otherwise provided by law"; and

43 **WHEREAS**, Chapter 166, Florida Statutes, provides that a municipality may
44 exercise its constitutional powers consistent with the following:

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46 The Legislature recognizes that pursuant to the grant of power set forth in
47 s. 2(b), Art. VIII of the State Constitution, the legislative body of each
48 municipality has the power to enact legislation concerning any subject
49 matter upon which the state Legislature may act, except:

- 50
51 (a) The subjects of annexation, merger, and exercise of extraterritorial
52 power, which require general or special law pursuant to s. 2(c), Art. VIII
53 of the State Constitution;
54 (b) Any subject expressly prohibited by the Constitution;
55 (c) Any subject expressly preempted to state or county government by the
56 constitution or by general law; and
57 (d) Any subject preempted to a county pursuant to a county charter
58 adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State
59 Constitution.

60 ; and

61
62 **WHEREAS** Chapter 166.021, Florida Statutes further provides that, "[t]he
63 provisions of this section shall be so construed as to secure for municipalities the broad
64 exercise of home rule powers granted by the constitution."; and

65
66 **WHEREAS**, neither the United States Congress nor the Executive Branch of the
67 federal government has the authority to commandeer the states to act (see, e.g., *Murphy*
68 *v. National Collegiate Athletic Ass'n*, 138 S. Ct. 1461 [2018]); and

69
70 **WHEREAS**, the anti-commandeering principle is absolute and categorical. See
71 *Printz v. United States*, 521 U.S. 898, 935 (1997) ("It matters not whether policymaking is
72 involved, and no case-by-case weighing of the burdens or benefits is necessary; such
73 commands are fundamentally incompatible with our constitutional system of dual
74 sovereignty."); and

75 **WHEREAS**, "[w]here Congress exceeds its authority relative to the States,
76 therefore, the departure from the constitutional plan cannot be ratified by the "consent" of
77 state officials" *New York v. United States*, 505 U.S. 144, 182, 112 S. Ct. 2408, 2431
78 (1992); and

79 **WHEREAS**, the Marco Island City Council acknowledges and affirms that the
80 Marco Island Police Department is charged with the duty to enforce City Ordinances.

81 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY**
82 **OF MARCO ISLAND, FLORIDA:**

SECTION 1. Recitals. The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true, correct, and reflective of the legislative intent of this Ordinance.

SECTION 2. Title. This Ordinance shall be known and cited as the "Constitutionally Protected Freedom Zone Ordinance".

SECTION 3. Findings. In addition to the foregoing whereas clauses, the City Council of the City of Marco Island, Florida, hereby finds and declares:

In order to secure the rights of the citizens of the City of Marco Island as enumerated, in part, by the United States Constitution including the first ten amendments thereto, which are commonly referred to as the Bill of Rights of that Constitution, and reads as follows:

Amendment I -

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment II -

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment III -

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

Amendment IV -

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and persons or things to be seized.

Amendment V -

No person shall be held to answer for a capital, or infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in a militia, when in actual service in time of War or public danger;

117 nor shall any person be subject for the same offence to be twice put in jeopardy of
118 life or limb; nor shall be compelled in any criminal case to be a witness against
119 himself; nor be deprived of life, liberty, or property, without due process of law; nor
120 shall private property be taken for public use without just compensation.

121 *Amendment VI -*

122 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public
123 trial, by an impartial jury of the State and district wherein the crime shall have been
124 committed; which district shall have been previously ascertained by law, and to be
125 informed of the nature and cause of the accusation; to be confronted with the
126 witnesses against him; to have compulsory process for obtaining witnesses in his
127 favor; and to have the assistance of counsel for his defense.

128 *Amendment VII –*

129 In suits at common law, where the value in controversy shall exceed twenty dollars,
130 the right of trial by jury shall be preserved, and no fact tried by a jury shall be
131 otherwise re-examined in any Court of the United States, than according to the
132 rules of common law.

133 *Amendment VIII -*

134 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and
135 unusual punishments inflicted.

136 *Amendment IX -*

137 The enumeration in the Constitution, of certain rights, shall not be construed to
138 deny or disparage others retained by the people.

139 *Amendment X –*

140 The powers not delegated to the United States by the Constitution, nor prohibited
141 by it to the states, are reserved to the states respectively, or to the people.

142 The City has the right to be free from the commanding hand of the federal government
143 and has the right to refuse to cooperate with federal government officials in response to
144 unconstitutional federal government measures, and to proclaim a Bill of Rights
145 Constitutionally Protected Freedom Zone for law-abiding citizens in its city ;

146 **THEREFORE**, through the enactment of this Ordinance, the City of Marco Island,
147 Florida is hereby declared to be a Constitutionally Protected Freedom Zone City

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149 **SECTION 4. Definitions.**

150
151 A. An "Unlawful Act" shall consist of:

- 152
153 1. Any federal act, law, order, rule, regulation or request, which violates or
154 unreasonably restricts, impedes, or impinges upon an individual's
155 Constitutional rights including, but not limited to, those enumerated in
156 Amendments 1 through 10 to the United States Constitution.

157 Provided, however,

- 158
159 a) If the City is acting pursuant to a State act, law, order, rule or
160 regulation, then adherence thereto shall not be deemed to be
161 an unlawful act under this Ordinance; and
162 b) No unlawful acts shall be deemed to have occurred absent a
163 clear nexus to a federal act, law, order rule, regulation or
164 request, and the conduct alleged to be an unlawful act.

- 165
166 2. Any such "Unlawful Act" is invalid in the City and shall not be recognized
167 by the City, and shall be considered null, void and of no effect in the City
168 of Marco Island, Florida.

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170 **SECTION 5. Prohibitions**

171
172 A. Notwithstanding any other federal law, regulation, rule or order to the
173 contrary, no agent, department, employee or official of the City, a political
174 subdivision of the State of Florida, while acting in their official capacity,
175 shall:

- 176
177 1. Intentionally participate in any way in the enforcement of any Unlawful
178 Act; or,
179
180 2. Utilize any assets, City funds, or funds allocated by any entity to the City,
181 in whole or in part, to engage in any activity that aids in the enforcement
182 or investigation relating to an Unlawful Act.

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184 **SECTION 6. Penalties**

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186 A. Any agent of the City of Marco Island, Florida, accused of being in violation
187 of this Ordinance may be sued in Circuit Court for declaratory and
188 injunctive relief, damages and attorneys' fees. The determination of a
189 requesting party's entitlement to prevailing attorneys' fees shall be left to
190 the discretion of the Circuit Court and shall be determined in accordance
191 with applicable state law.
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B. Prior to filing a Complaint in Circuit Court pursuant to subsection A above, a person intending to bring such an action must file with the City Clerk a Notice of Claim on a form prescribed by the Clerk identifying with specificity the alleged Unlawful Act that the City is believed to be participatory in thereby resulting in a violation of this Ordinance. The duly noticed claim shall be scheduled for a hearing before the City Council at the next available regularly scheduled City Council meeting. If the City Council finds that the Ordinance has been violated, it shall take corrective measures to cease participation in the Unlawful Act and may compensate the Complainant for any actual losses incurred as a result of the violation of this Ordinance. If the City Council does not find that a violation of the Ordinance has occurred, or does not take corrective measures that are satisfactory to the Complainant, or no action is taken by Council or the City within 35 days, unless otherwise agreed by the parties, the Complainant may proceed with suit as set forth in subsection A above.

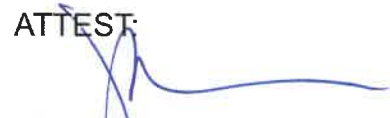
SECTION 7. Conflict and Severability. In the event this Ordinance conflicts with any other ordinance of the City or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION 8. Inclusion in the City's Code of Ordinances. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section" or "article" or any other appropriate word.

SECTION 9. Effective Date. This Ordinance shall be effective immediately upon adoption by the City Council on second reading.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND this 20th day of February 2024.

ATTEST:


Joan Taylor, City Clerk

CITY OF MARCO ISLAND, FLORIDA

By: 
Jared Grifoni, Chairman

Approved as to form and legal sufficiency:


Alan L. Gabriel, City Attorney