

MEMORANDUM

To: City Council, Marco Island, Florida

From: Alan L. Gabriel, City Attorney 

Copy to: Casey Lucius, City Manager

Re: City Attorney Matter Review for
August 17, 2026, City Council Meeting

Date: August 7, 2026

During the period commencing from July 11th, 2026, through August 7th, 2026, the City Attorney has participated in or has been working on the following matters:

GENERAL CITY BUSINESS

- o Misc. Public Records Requests
- o Misc. Procurement Matters
- o Misc. Proposed Legislative Matters
- o Collier Count Public Notice Process
- o Sea Turtle Regulations
- o Referendum Advocacy Inquires
- o Campaign Financing
- o Utility System Refunding Revenue Bonds, Series 2026
- o Building Permit Application Process

FOR COUNCIL AGENDA APPROVAL

- o Operating Budget Workshop
- o Misc. Contract Approvals
- o Resolution Approving Proposed Fixel Year 2027 Millage Rate
- o Fire Tower Truck Lease/Purchase
- o Fire Ladder Truck Lease/Purchase
- o Fire Fee Impact Ordinance
- o Caxambas Court Bridge Grant And Project Approval Resolutions
- o Series 2026 Utility System Refunding Revenue Bond Approval Resolution(s)
- o Variance For 2259 San Marco Road County Water Tank
- o Approval To Withdraw From MIPD Dock Construction Project

COUNCIL MATTERS/INQUIRIES

- o Property Tax Referendum Ballot Deficiency
- o Committee Attendance

- Political Endorsements
- Financial Disclosure Requirements
- Pickleball / Racquet Sports Regulations
- Sea Turtle Regulations
- Code Enforcement
- City Legal Services

PLANNING BOARD

- Rezoning Application Review For 560 S. Collier Avenue
- Walker's Cay Site Plan
- Land Development Code Amendment – Marco Lake
- Rose Marina Site Development Plan Amendment And Related Matters

CODE ENFORCEMENT

- July 28, 2026, Magistrate Hearings
 - 12 Cases
 - 1 Certification Of Lien
- Foreclosure Of Code Liens
 1. **581 Tigertail Ct, Marco Island, FL 34145**
Special Magistrate Case No. 25-2357
City v. Luxury Homes of Southwest Florida
Collier County Small Claims Court, Case No. 11-2026-SC-002713-0001-01
After complaint was filed, contractor settled and paid all outstanding fines in the amount of \$6,200.00
 2. **1710 Canary Court, Marco Island, FL 34145**
Special Magistrate Case No. 25-2292
City v. Fetterhoff O'Neil Home Builders, Inc.
d/b/a Caxambas Aluminum & Screen
Collier County Court, Case No. 11-2026-CC-001933-0001-01
Pursuing Judgment of \$6,450.00, plus attorney's fees and costs
 3. **910 Ship Court, Marco Island, FL 34145**
City v. Mr. and Mrs. Barry Held
Foreclosure of Code Enforcement Liens, Case No. 22-2363; Case No. 23-442; Case No. 23-2523 and Case No. 23-0665
Pursuing Judgment of \$226,655.00, plus attorney's fees and costs
Status: Preparation and City verification of complaint

LABOR AND EMPLOYMENT MATTERS

- Fire Pension Ordinance Revision

LITIGATION MATTERS

- **Marco Club, LLC Request for FLUEDRA Relief (Florida Land Use and Environmental Dispute Resolution Act (Section 70.51, Fla. Stat.))**

Applicant alleges that the City's denial of the requested offsite parking agreement was either unreasonable or which unfairly burdened the use of the land (1202 Bald Eagle Drive) and is seeking to mediate through the non-judicial (FLUEDRA) mediation process with the hope that the parties can reach a mutually agreeable compromise, utilizing the participation of a special magistrate who will be selected by the parties. Applicant and City have agreed to a mutually acceptable magistrate.

Marco Club requested mediation before the selected special magistrate. The mediation was scheduled for October 18, 2022, at 9 a.m. in City Council Chambers, and pursuant to FLUEDRA must be open to the public. As required, the City has provided written notice of the Applicant's claim to (1) owners of property contiguous to the Applicant's property (1202 Bald Eagle Drive) and (2) interested parties. Interested parties consist of those who provided testimony at the public hearings before City Council on the Applicant's offsite parking agreement. The October 18th mediation was continued by the parties to November 7, 2022; after Marco Club submitted a new site plan application to the City, the parties agreed to further continue the mediation to December 6, 2022, which was re-scheduled to be heard by Special Magistrate Scott Steady on March 24, 2023. This hearing was cancelled by Marco Club on March 20th and has not been rescheduled. As of this time there has been no additional activity regarding this Claim.

- **Marco Club, LLC Request for FLUEDRA Relief #2; Resolution 23-07**

The Applicant filed a new revised Site Plan with reduced seating for the subject property located at 1202 Bald Eagle Drive with the City. That new Site Plan Application was reviewed and approved by the Planning Board on December 2, 2022. The neighboring property owner filed an appeal of the site plan approval which when heard by City Council, Council upheld the Planning Board's approval with two additional conditions. On February 22, 2023, the Applicant filed a second FLUEDRA request alleging that these additional conditions "impose a higher standard of approval than required by the code" and "codify disparate treatment of the Property owner relative to other similar-situated property owners in the City". Pursuant to the Act, the City will file its Response to the Claim and a special magistrate will be selected by the parties and mediation of this second claim will commence once Marco Club indicates a desire to proceed with its claim. As of this time there has been no additional activity regarding this Claim.

- **Shannon Schemel, et al v. City of Marco Island, Case No. 2:22-cv-00079-JLB-MRM (M.D. Fla.) (Section 1983 4th Amendment/State Constitutional Claims)**

This case involves the City's use of an automated license plate recognition ("ALPR") system on public roads. Plaintiffs allege that the City's use of the ALPR system, which photographs plates publicly visible on public roads locations, and its 3-year retention period (as

permitted by state law) violate the Fourth Amendment and Florida's constitutional right to privacy. Plaintiffs filed their original complaint on February 7, 2022, against the City and the City's police chief in her official capacity. Following the City's motion to dismiss, the district court dismissed the Police Chief, in her official capacity, with prejudice on February 14, 2023, and gave Plaintiffs leave to amend their pleading once more. Plaintiff filed their amended complaint on March 7, 2023, again asserting Fourth Amendment and state constitutional claims, which the City moved to dismiss with prejudice (the "Motion"). The Court issued an order directing the parties to file supplemental briefs on new authorities supporting their positions as to the Motion. The City filed its supplemental brief on April 30th, 2023 and the Plaintiffs filed theirs on May 21, 2023. The Court *stayed all remaining deadlines as well as the trial term*. Both parties filed notices of supplemental authority in support of their respective arguments in the motions to dismiss. Subsequently the case was reassigned to new judges. The Magistrate is now Judge Douglas N. Frazier, and the District Judge is now Judge Kyle C. Dudek. The previously assigned magistrate was recently elevated as a district judge. On October 17, 2025, the District Judge issued an Order of Dismissal. However, on November 5, 2025, a Notice of Appeal was filed by the Plaintiffs in the Eleventh Circuit. The Appellees have since filed their initial brief, and the Cato Institute filed an amicus brief on their behalf.

The City filed its Answer Brief on February 17, 2026. Additionally, the State of Georgia, AL, AK, AR, IN, IA, KS, LA, MO, NE, ND, OH, PA, SC, SD, TN, TX, UT, and WV, the Florida Sheriff's Association and Florida Police Chief's Association, and the Federal Department of Justice have filed amicus briefs in support of the City. The appeal is now fully briefed, and both sides have filed letters of supplemental authority about recent opinions.

- **Michael Murphy v. City of Marco Island, Case No. 11-2025-CA-000808-0001-01)
(Payment for Medical Treatment – Retired Employee Benefits Claim)**

This case involves former employee Michael Murphy's claim for declaratory and equitable relief regarding the payment and reimbursement of medical expenses. After Mr. Murphy retired from City service, he reported to the City that he was diagnosed with cancer. Plaintiff's claims arise under Florida Statute Section 112.1816 based on coverage and reimbursement issues for Plaintiff's cancer-related treatment. The case centers on the scope of the City's obligations under the statute and the amount of Plaintiff's unpaid or unreimbursed medical expenses. The City had attempted previously to reach a resolution with Plaintiff, but those discussions broke down after Plaintiff failed to provide adequate documentation substantiating the amount of his medical expenses. To better evaluate exposure, we served Plaintiff with targeted discovery requests aimed at ascertaining the amount of his unpaid or unreimbursed medical expenses. However, Plaintiff did not produce any additional documentation apart from what had already been provided to the City. Accordingly, we also sent multiple subpoenas directly to Plaintiff's medical providers. Importantly, the billing record received in response from Mr. Murthy's largest provider showed total charges over \$170,000 but it also showed insurance adjustments in an almost equal amount, and a total patient balance of \$0. Based largely on these records and deposition testimony, the parties were able to reach an agreement shortly thereafter at mediation, which occurred on July 30, 2026. The parties are now in the process of finalizing a settlement agreement.

- **Matthew Gallup and Christine Gallup v. City of Marco Island, Case No. 11-2025-CA-002561-0001 (Employment, Defamation, False Imprisonment, Invasion of Privacy, Conspiracy Claim)**

Mr. Gallup and his wife ("Plaintiffs") filed a Second Amended Complaint against the City, Chief Frazzano and Mike McNees on May 29, 2026. This arises after the Defendants' Motion to Dismiss the Amended Complaint was granted in part and denied in part. Specifically, the Motion was granted as to Count I (defamation) and Count II (fraud), both claims of which were alleged against former Chief Frazzano. The Motion was denied as to all other counts. Plaintiffs were given the opportunity to amend their Counts I and II, if they choose, upon being ordered to file another amended complaint. Thus, Plaintiffs' Second Amended Complaint contains amended allegations in its Count I (defamation) and Count II (fraud) alleged against former Chief Frazzano, while Counts III through XIII are identical to the prior, Amended Complaint. In response, Defendants filed a Motion to Dismiss the newly amended Counts I and II, a hearing on the Motion was held at the end of July, 2026. At this time we await a ruling from the Judge.

- **666 6TH Avenue LLC, et.al. v. City of Marco Island; Case No. 26-AP-02; (Petition for Writ of Certiorari)**

666 6th Avenue LLC and related entities have filed a Petition for Writ of Certiorari on January 9, 2026 with the Collier County, Florida 20th Judicial Circuit, challenging an official interpretation of the Director of Community Affairs that Section 30-105 (7) of the City's Land Development Code, "Dimensional standards," provides for minimum lot sizes for the construction of duplexes on the petitioners' lots. On March 10, 2026 the Circuit Court issued an Order To Show Cause why the requested relief should not be granted. After obtaining an extension of time, the City filed a response to the petition on April 23, 2026. Upon conferring with Petitioners' counsel an amendment to the Response was needed. The Court granted the City has until June 22, 2026, to file an amended response, and the City did so. The Petitioner may file a reply within 30 days thereafter. Petitioner has requested to extend that deadline, with our agreement, because the parties are exploring settlement. In that connection, Petitioners have separately served a March 13, 2026, Bert J. Harris claim notice pursuant to Section 70.0001, Florida Statutes, as a prerequisite to initiating litigation. Pursuant to an agreed upon extension between the parties, the City has until July 24, 2026, to respond. In the meantime, we have requested an attorney/client session with City Council to discuss this matter. The attorney/client session is scheduled to be held on August 17, 2026. The party's councils are attempting to schedule a call to discuss among other things, a further extension of the deadline to respond to the Bert J. Harris Claim letter.

- **666 6th Avenue LLC, 682 6th Avenue LLC, 658 6th Avenue LLC, and 674 6th Avenue LLC Request for Bert J. Harris Jr. Private Property Rights Protection Act Claim (Section 70.51, Fla. Stat.)**

The Applicants allege that the City's 2025 interpretation of the land development regulations applicable to the individual Applicants subject properties effectively prohibit the construction of duplexes on these properties and is seeking to mediate through the non-judicial mediation process with the hope that the parties can reach a mutually agreeable compromise,

utilizing the participation of a special magistrate who will be selected by the parties. Pursuant to the Act, the City will file its Response to the Claim and a special magistrate will be selected by the parties and mediation will be scheduled. In the meantime, we have requested an attorney/client session with City Council to discuss this matter. The attorney/client session is scheduled to be held on August 17, 2026.

- **Ricardo Ostos Salazar, et. al. v. City of Marco Island, Case No. 11-2025-CA-001067-0001 (Negligence)**

This case arises out of an automobile accident involving a City-owned vehicle being driven by Officer John Wallace. Plaintiff brought this claim on his own behalf and on behalf of his son. Plaintiff claims that both he and his son were injured in the accident. The City has agreed that the officer was acting within the course and scope of his employment at the time of the incident so, as a result, the City would be liable for any negligence on the part of the officer that caused this accident. The parties have reached a settlement agreement in the amount of \$28,000 for the father and \$2,000 for the child. The settlement paperwork has been signed by both parties. Payment has been made and is currently held in Trust by the Court, and once the Court approves the settlement to the minor child, the case will be dismissed.

RISK PROTECTION ORDERS

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Tracey Lynne Taylor***

On October 25th, 2022, the Respondent threatened harm to herself with a handgun. All accessible firearms were seized, and a final Risk Protection Order was entered on November 4, 2022. The Order was extended a second time, for another year, and now expires on October 26, 2025. The City filed an additional extension of the Risk Protection Order which was granted by the Court on October 14, 2025, and now expires on October 26, 2026.

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Michael Vincent Clausen.***

On September 20, 2021, Mr. Clausen, who was taking medication for psychiatric conditions, experienced recent hallucination events. During an argument with his father, he grabbed for his firearm, which was taken away from him without further incident. Police were called, and Mr. Clausen was committed for evaluation under the Baker Act. The subject firearm is owned by Mr. Clausen and was taken into protective custody. The Respondent stipulated to the entry of a Final Risk Protection Order on October 5, 2021. This Order expired on October 4, 2022, and was extended by Joint Stipulation for another year, to expire on October 1, 2023. Mr. Clausen continued to provide cause for an extension of the Order. On September 26, 2023, the City attended a hearing to extend the Order a second time, and the City's Petition was granted. The Order was to expire September 26, 2024. On September 19, 2024 the Final Order was extended a third time and will now expire on September 18, 2025. The Court further extended the Order a fourth time and will now expire on September 11, 2026.

- ***In Re: Risk Protection Order Marco Island Police Dept. v. Kimamana Waste Win Heminger***

On March 15, 2024, the Respondent threatened to kill herself with a firearm. A Final Risk Protection Order was issued via joint stipulation. The Final Order was to expire on March 20, 2025, and was extended to March 20, 2026. The City is moved to further extend the Final Order, which was further extended to March 20, 2027. The City will continue to monitor for compliance and for the need for an extension as the expiration date approaches.

WORKER'S COMPENSATION MATTERS

- **Scott Edson v. City of Marco Island** - There is no new information to update. There are no pending court dates, and no new petition has been filed. The indemnity portion of the claim has been settled, and we are working on negotiating a settlement of the medical portion of the claim. The City has exhausted its insurance retention, and insurance excess is making reimbursements for current payments on the claim.

- **James Jay v. City of Marco Island** - There is no new information to update. There are no pending court dates, and no new petition has been filed. The indemnity portion of the claim has been settled, and we are working on negotiating a settlement of the medical portion of the claim. The City has exhausted its insurance retention, and insurance excess is making reimbursements for current payments on the claim.

- **Jonathan Gray v. City of Marco Island** – Claimant is represented by Counsel and has filed petitions for benefits. On February 10, 2026, the claimant, a Marco Island Police Officer, was struck by a ricochet bullet hitting his left forearm. The current petitions seek indemnity benefits and authorization of medical care. The City's third-party administrator (Commercial Risk Management) responded to the petition acknowledging that benefits are being paid and authorizing proper medical care for the injured worker. There is a state mediation conference set for September 22, 2026, and final hearing set for December 7, 2026. Because the benefits are being provided, we anticipate the claimant attorney will file a notice of dismissal of the pending claims and both the mediation and final hearing will be canceled. No benefits have been controverted at the present time. Since the case is in litigation, we will continue defending the City's interests and will ensure that proper reporting is made with the City and the third party administrator.

WSH Legal Services Billings Summary
Bills Dated July 13, 2026 for June 2026 Legal Services

2914.001	Retainer	Inv. #319635	\$12,500.00
2914.003	Labor and Employment	Inv.#319636	\$2,585.00
2914.004	Public Works	Inv. #319637	\$2,189.22
2914.006	Miscellaneous Matters	Inv#319638	\$5,335.00
2914.007	Planning and Zoning	Inv. #319639	\$3,190.00
2914.008	Code Enforcement	Inv.#319640	\$4,212.50
2914.008-2	Code Enforcement – Fetterhoff O’Neil Home Builders, Inc. d/b/a Caxambas Aluminum & Screen	Inv.#319646	\$907.50
2914.008-3	Code Enforcement – Luxury Homes of SW Florida, Inc.	Inv.#319647	\$660.00
2914.009	Litigation – Miscellaneous	Inv.#319641	\$55.00
2914.047	Hideaway Beach District	Inv.#319642	\$467.50
2914.068	6 th Avenue LLC – Bert J. Harris, Jr. Property Claim	Inv. 319643	\$2,310.00
2914.069	6 th Avenue LLC – Appeal Code Enforcement Matter	Inv. #319644	\$1,078.00