


## MEMORANDUM

To: City Council, Marco Island, Florida

From: Alan L. Gabriel, City Attorney 

Copy to: Casey Lucius, Interim City Manager

Re: City Attorney Matter Review for  
June 15, 2026, City Council Meeting

Date: June 5, 2026

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During the period commencing from May 9th, 2026, through June 5th, 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 Shark Fishing Regulations
- o Sea Turtle Regulations
- o Beach Vendor Permits
- o Community Parks Foundation
- o Live Local Project – Land Use Restriction Agreement
- o Solicitation License Regulations

### FOR COUNCIL AGENDA APPROVAL

- o Variance For Sale And Consumption Of Alcohol
- o Shark Fishing Regulations Ordinance
- o Sea Turtle Protection Ordinance Amendment
- o AWT Petition Ordinance
- o AWT Implementation
- o Noise Control Ordinance Amendment
- o Conservation Collier Acquisition Resolution
- o Bond Approval Resolution(s)
- o Council Appointment Process
- o Racquet Sports Regulations
- o Collier School Board Resource Officers MOU

### COUNCIL MATTERS/INQUIRIES

- o Noise Ordinance Amendment
- o AWT Petition Ordinance
- o City Manager Search

- City Manager Employment Agreement
- Candidate Interview Process
- Pickleball / Racquet Sports Noise Regulations
- Shark Fishing Regulations
- Sea Turtle Regulations
- Police Chief Resignation

#### **PLANNING BOARD**

- Rose Marina Site Development Plan Amendment, Variances, Conditional Use

#### **CODE ENFORCEMENT**

- May 26, 2026 Magistrate Hearings
  - 20 Cases
  - 3 Lien Certification
  - 2 Mitigation Of Fine
- Foreclosure Complaint Re 910 Ship Court
- Vacate Order Re 138 Bahama Court
- Mitigation Request 731 West Elkam Circle
- Enforcement Of County Parking Regulations
- Foreclosure Of Liens
- Miscellaneous Enforcement Matters
- Miscellaneous Mitigation Requests
- Fire Safety Code Fines

#### **LABOR AND EMPLOYMENT MATTERS**

- Former Employee Suit

#### **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 18<sup>th</sup> 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 20<sup>th</sup> 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 4<sup>th</sup> 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 30<sup>th</sup>, 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 has filed its Answer Brief. 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.

- **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 ("Complaint"). After Mr. Murphy retired from City service, he reported to the City that he was diagnosed with a serious health condition. Mr. Murphy sought treatment under the City's health plan at no cost in accordance with Florida law. Mr. Murphy claims that the City's health provider has failed to adequately remit payment for such treatment; instead, the provider contends that it is the obligation of Medicare to make payment. Mr. Murphy generally alleges that the City and its health care provider has failed to pay the costs associated with his treatment. The City waived service of process to expedite the handling of the matter and filed its Motion to Dismiss the filed complaint on July 7, 2025. The judge assigned to this matter recused himself on March 17, 2026 (right before the hearing on the City's Motion to Dismiss). This case was reassigned to Judge Lauren Brodie on March 19, 2026, and the hearing on the Motion to Dismiss was rescheduled to June 8, 2026. The City and Plaintiff are in the process of scheduling depositions and filing a joint motion for continuance and a three-month extension on pre-trial deadlines.

- **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 so 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.

- **666 6<sup>TH</sup> 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 has granted the City has until June 22, 2026, to file and amended response and the Petitioner may file a reply within 30 days thereafter. 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. The City has until June 11, 2026, to respond. (As referenced below)

- **666 6<sup>th</sup> Avenue LLC, 682 6<sup>th</sup> Avenue LLC, 658 6<sup>th</sup> Avenue LLC, and 674 6th Avenue LLC Request for FLUEDRA Relief (Florida Land Use and Environmental Dispute Resolution Act (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 (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. 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.

- **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. Once payment is made and 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 25<sup>th</sup>, 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 has 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. Monitoring this matter as warranted.

**WSH Legal Services Billings Summary**  
**Bills Dated May 12, 2026 for April 2026 Legal Services**

2914.001	Retainer	Inv. #316696	\$12,500.00
2914.003-9	Thompson, Tige – Second Employment Matter	Inv. #316697	\$1,815.00
2914.004	Public Works	Inv. #316698	\$137.50
2914.006	Miscellaneous Matters	Inv#316699	\$11,797.50
2914.007	Planning and Zoning	Inv. #316708	\$4,565.00
2914.008	Code Enforcement	Inv.#316700	\$3,685.90
2914.009	Litigation – Miscellaneous	Inv.#316701	\$275.00
2914.028	Community Parks Foundation	Inv.#316702	\$687.50
2914.047	Hideaway Beach District Special Ad Valorem Tax – PO 260184	Inv.#316703	\$385.00
2914.060	Heminger, Kimamana – Risk Protection Order	Inv.#316704	\$110.00
2914.068	6 <sup>th</sup> Avenue LLC – Bert Harris Claim	Inv. #316705	\$1,430.00
2914.069	6 <sup>th</sup> Avenue LLC – Appeal Code Enforcement Matter	Inv. #316706	\$3,542.00