Resolution No. 06 - 39

A RESOLUTION TO CLARIFY THE DECISION TO REIMBURSE LEGAL EXPENSES FOR COUNCILMAN MICHAEL MINOZZI WHO MAY CHALLENGE THE LEGAL SUFFICIENCY OF THE RECALL PETITIONS.

WHEREAS, a Petition to recall Councilman Michael Minozzi of the Marco Island City Council was initiated by Mr. Roger Hall, and;

WHEREAS, consistent with Section 100.361(1) (a), the petition circulated by Mr. Hall states that "The recall committee shall consist of signatories to this petition…", and;

WHEREAS, Florida case law provides that a City Council member who successfully challenges the recall petition is entitled to recover his or her attorneys' fees from the City. In addition, the City Council can elect to reimburse a Council member's legal expenses prior to the Council member prevailing. For a City Council member to be entitled to representation at public expense, the litigation must (1) arise out of or in connection with the performance of his/her official duties and (2) serve a public purpose.

WHEREAS, on September 18, 2006 the Marco Island City Council agreed to pay reasonable attorney fees and legal expenses for Councilman Michael Minozzi should he decide to challenge the legal sufficiency of the recall petition, and;

WHEREAS, some citizens have expressed concern that signatories of the recall petition may be subject to financial liability should Councilman Michael Minozzi prevail in a challenge of the legal sufficiency of the recall petition, and;

WHEREAS, some citizens have questioned the extent to which expenses would be reimbursed by the City to Michael Minozzi for his challenge of the legal sufficiency of the recall petition, and;

WHEREAS, the Marco Island City Council desires to reassure citizens that they will not be subject to financial liability should they sign the recall petition, and that Councilman Michael Minozzi will act prudently to limit the legal expenses associated with his individual challenge to the legal sufficiency of the recall petition.

NOW, THEREFORE, BE IT RESOLVED BY THE MARCO ISLAND CITY COUNCIL, IN COUNCIL DULY ASSEMBLED, THAT:

1. The Marco Island City Council, collectively, and Councilman Michael Minozzi, individually, will not seek recovery of attorney fees and legal expenses paid on

behalf of a Council member from citizens who organize the recall petition initiative or who exercise their right to sign the recall petition.

2. The Marco Island City Council, including Councilman Glenn Tucker, understand that the term "reasonable attorney fees means: those reasonable attorney fees for attorneys licensed and who practice in the State of Florida, whose billing rates are reasonable and customary, but reimbursement shall not exceed $265 per hour. Reasonable legal expenses are expenses associated in the prosecution of a lawsuit, including, but not limited to, in-state travel expenses, court reporting services, and court costs.

3. This Resolution shall take effect immediately upon its passage.

Passed in open special-called session through roll-call vote by the City Council of the City of Marco Island, Florida this 28th day of September, 2006.

ATTEST:

Laura Litzan
City Clerk

MARCO ISLAND CITY COUNCIL
MARCO ISLAND, FLORIDA

Terri DiSciullo, Chairwoman

Approved as to form and legality:

Richard D. Yovanovich
City Attorney