

CITY OF MARCO ISLAND

RESOLUTION NO. 98- 5

A RESOLUTION RELATING TO ACCESS TO LOCAL PUBLIC OFFICIALS; PROVIDING A DEFINITION OF LOCAL PUBLIC OFFICIAL; PROVIDING FOR ACCESS TO PUBLIC OFFICIALS; AUTHORIZING INVESTIGATIONS AND RECEIPT OF INFORMATION; REQUIRING DISCLOSURE OF EX PARTE COMMUNICATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, government in Florida is conducted in the open meetings pursuant to Chapter 286, Florida Statutes (Government In The Sunshine Act); and

WHEREAS, all meetings of the City Council shall be public, pursuant to Section 3.09 of the Charter of the City of Marco Island; and

WHEREAS, the public should be able to voice its opinions to local elected and appointed public officials; and

WHEREAS, elected and appointed public officials are presumed to perform their duties in a lawful and proper manner; and

WHEREAS, quasi-judicial decision-making must be based on competent, substantial evidence of record; and

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WHEREAS, local elected and appointed public officials have been obstructed or impeded from the fair and effective discharge of their sworn duties and responsibilities due to expansive interpretations of Jennings v. Dade County, a decision rendered by the Third District Court of Appeal; and

WHEREAS, Section 5, Article I of the Florida Constitution gives the people the right peaceably to assembly, to instruct their representatives, and to petition for redress of grievances.

NOW, THEREFORE, be it resolved by the City Council of the City of Marco Island, Florida:

SECTION 1: Pursuant to Subsection 286.0115, Florida Statutes, the City of Marco Island has the authority to enact this Resolution which removes the presumption of prejudice from ex parte communications with local officials by establishing the process set forth herein to disclose such communications.

SECTION 2: As used in this Resolution, the term "local public official" means any elected or appointed public official holding a city office who recommends or advises, or takes quasi-judicial action as a member of such board, commission or committee.

SECTION 3: Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by the board, commission or committee on which the local public official is a member. Adherence to the following procedures shall remove the presumption of prejudice arising from ex-parte communications with local public officials.

(a) The substance of any ex-parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action provided the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the public record before final action on the matter is taken.

(b) A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before the local public official shall not be presumed prejudicial to the action provided such written communication is made a part of the public record of the board, commission or committee before final action on the matter is taken.

(c) Local public officials may conduct investigations and site visits, and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action provided the existence of the investigation, site visit, or expert opinion is made a part of the public record before final action on the matter is taken.

(d) Disclosure made pursuant to paragraphs (a), (b) and (c) must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex-parte communication are given a reasonable opportunity to refute or respond.

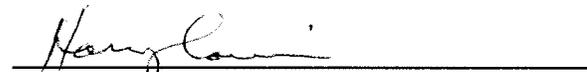
SECTION 4: This Resolution shall take effect immediately upon adoption.

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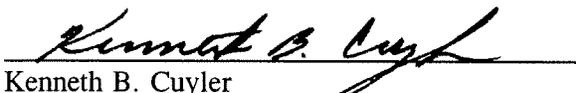
Passed in open and regular session by roll call vote of the City Council of the City of Marco Island, Florida, this 5th day of January, 1998.

Attest:

  
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Patricia L. Berry  
Interim Assistant City Clerk

  
\_\_\_\_\_  
Harry Cowin, Chairman

Approved as to form and  
legal sufficiency:

  
\_\_\_\_\_  
Kenneth B. Cuyler  
Interim City Attorney

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Skip Camp  
Temporary Interim City Manager