

**RESOLUTION NUMBER 25-211**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, MAKING FINDINGS; APPROVING THE PAYMENT OF REASONABLE ATTORNEY FEES FOR THE DEFENSE OF RECALL PETITIONS AGAINST TWO TOWN COUNCIL MEMBERS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, recall petitions have been started against two Town Council members listing certain alleged grounds for recall; and

**WHEREAS**, the Town Attorney's office has done extensive legal research on the subject of the recall procedures to assist the Town Clerk's office in the handling of the Town Clerk's duties vis a vis the recall; and

**WHEREAS**, in the conduct of such legal research, the Town Attorney's office read and researched relevant statutory and case law regarding recall petitions, including, but not limited to the duties of municipalities in the event of recall petitions, and also did an in depth review of the allegations in the recall petitions to determine whether, under applicable case law, such allegations would create a common law duty, on the part of the Town, to provide a defense against such recall petitions; and

**WHEREAS**, under Florida law as decided by the Florida Supreme Court in *Garvin v. Jerome*, 767 So.2d 1190 (Fla. 2000), if there are multiple grounds stated on a recall petition, if even one of the grounds is legally insufficient, then the entire recall petition is legally insufficient; and

**WHEREAS**, under Florida law as decided by the Florida Supreme Court in *Thornber v. Town of Fort Walton Beach*, 568 So.2d 914 (Fla. 1990), a municipality has a common law duty to pay for the defense of a recall petition if the litigation meets the following criteria: it must "(1) arise out of or in connection with the performance of their official duties; and (2) serve a public purpose"; and

**WHEREAS**, in *Thornber*, the Court held that "[t]he purpose of this common law rule is to avoid the chilling effect that a denial of representation might have on public officials in performing their duties properly and diligently"; and

WHEREAS, the Court in *Thornber* analyzed the allegations in that particular case and found:

“In this case the council members' legal defense against the recall petition meets both of these requirements. **The factual basis for the petition was the council members' alleged malfeasance of meeting in violation of the sunshine law and subsequently voting at a public meeting in favor of resolutions effectively dismissing the town manager and police chief. Unquestionably, the vote taken at the public meeting was within their official duties. There is a sufficient nexus between the firing of these employees and the council members' official duties to satisfy the first prong of this test.**

“The council members' action in defending against the recall petition also served a public purpose and, thus, satisfied the second prong of this test. The town does not have an interest in the outcome of a recall petition because any individual, not any specific individual, can be the officeholder at issue. *Williams, 42 So.2d at 582*. **It does have a decided interest, however, in protecting its officers from untimely and illegal recall petitions.** We reject the town's contention that defending against a recall petition only serves the elected officials' personal interests in maintaining their position and is devoid of public interest. Notwithstanding that the council members have an obvious personal interest in keeping their jobs, under the circumstances of this case **the public has an overriding interest in ensuring the effective and efficient functioning of its governing body.** See *Town of North Miami Beach v. Estes, 214 So.2d 644 (Fla. 3d DCA 1968), cert. discharged, 227 So.2d 33 (Fla. 1969); Duplig v. Town of South Daytona, 195 So.2d 581 (Fla. 1st DCA 1967)*. **If a recall petition is commenced, the public has an interest -- and the town has a responsibility -- to ensure that the recall committee follows the proper procedures, i.e., that the recall petition is facially correct. Officials should not have to incur personal expenses to ensure that a recall committee follows the proper procedures. While this case presents an unusual twist in that the council members initiated the litigation and were not actually the defendants in an action against them, they were defending against a recall petition, albeit in an offensive posture. We agree with the district court in *Ferrara* that, in the "spirit" of common law principles, the unique circumstances of this case should not preclude the council members from recovering attorney's fees under the common law.**” [Emphasis supplied.]

WHEREAS, the Town Attorney's office has analyzed the recall allegations against the two Fort Myers Beach Town Council members and has determined that under the analysis set forth by the Florida Supreme Court in the cases cited above, the Town of Fort Myers Beach has a legal duty to pay for the defense of such elected officials because such defense arises out of or in connection with the elected officials' official duties and serves the public purpose of protecting the public's interest in the effective and efficient functioning of its governing body; and

**WHEREAS**, it is found that since the Town has a legal duty to pay for the defense of the recall petitions against the two council members and since under Florida law, the elected officials “should not have to incur personal expenses to ensure that a recall committee follows the proper procedures,” it is determined that the Town should pay for the defense of such recall petitions, including, but not limited to offensive actions for injunctive, declaratory or similar relief relating to the recall effort as described in *Thornber*.

**NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:**

**Section 1.** The above recitals are true, correct, incorporated herein by this reference, and adopted as the legislative and administrative findings of the Town Council.

**Section 2.** The Town Council hereby approves the payment of reasonable attorney’s fees for the defense of the recall petitions filed against the two Town Council members to include but not be limited to actions for injunctive or declaratory relief.

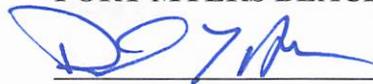
**Section 3.** The Town Manager is directed to ensure that the intent of this Resolution is carried out by the payment of reasonable attorney’s fees for the two council members subject to the recall petitions.

The foregoing Resolution was adopted by the Town Council upon a motion by Mayor Allers and seconded by Council Member Safford, and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	aye
Jim Atterholt, Vice Mayor	aye
John R. King, Council Member	abstained
Scott Safford, Council Member	aye
Karen Woodson, Council Member	abstained

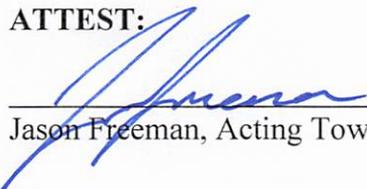
ADOPTED this 16<sup>th</sup> day of June 2025 by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**



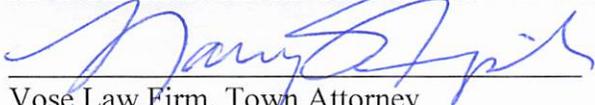
\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**



\_\_\_\_\_  
Jason Freeman, Acting Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

  
\_\_\_\_\_  
Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16<sup>th</sup> day of June 2025.