



Legislation Text

File #: RES-2024-16, **Version:** 1

Submitted By: William E. Sexton, City Attorney

Presentation By: William E. Sexton, City Attorney

Department: City Attorney

STAFF RECOMMENDATION (Motion Ready):

Adopt Resolution 2024-16 authorizing participation in a lawsuit seeking a declaration that the provisions of Section 12.3144(1)(D), *Florida Statutes*, that require municipal elected officials to file Form 6 Financial Disclosure Forms is unconstitutional and invalid

OCALA'S RELEVANT STRATEGIC GOALS:

Operational Excellence

PROOF OF PUBLICATION:

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BACKGROUND:

In or about 2023, the Florida Legislature passed Senate Bill 774, which was codified at 2023-09, *Laws of Florida*, and which amended Section 112.3144(1)(D), *Florida Statutes*, to require that municipal elected officials complete the Form 6 financial disclosure.

Many elected officials resigned because of the amended financial disclosure requirements.

Twenty-six municipalities and 74 municipal elected officials have filed lawsuits in state and federal courts alleging that the amendment to Section 112.3144(1)(D), *Florida Statutes*, is unconstitutional. The law firm of Weiss Serota Helfman Cole + Bierman, PL is litigating those cases on behalf of interested municipalities and elected officials.

In the event that the City of Ocala desires to join the lawsuits, this resolution authorizes participation and further permits the Mayor and City Council to participate individually, if they so choose, in both cases.

FINDINGS AND CONCLUSIONS:

In the event that City Council desires to adopt this resolution, it makes the findings and conclusions outlined in the resolution itself, including that participation in the lawsuit serves a public purpose and is in the best interest of the City of Ocala, Florida and its citizens.

FISCAL IMPACT:

Participation in the litigation requires a one-time, flat fee of \$10,000 to be paid to the law firm of Weiss Serota Helfman Cole + Bierman, PL. Funding is available in the Fiscal Year 2023-24 budget and will be paid from account 001-012-011-511-51-31020.

PROCUREMENT REVIEW:

N/A

LEGAL REVIEW:

A form of this resolution was originally prepared by the law firm of Weiss Serota Helfman Cole + Bierman, PL. This final version was drafted and reviewed, as well as approved as to form and legality, by William E. Sexton, City Attorney.

ALTERNATIVE:

- Approve with amendments
- Deny
- Table

RESOLUTION 2024 - 16

A RESOLUTION OF THE CITY COUNCIL OF OCALA, FLORIDA AUTHORIZING PARTICIPATION IN A LAWSUIT SEEKING A DECLARATION THAT THE PROVISIONS OF SECTION 112.3144(1)(D), *FLORIDA STATUTES*, THAT REQUIRE MUNICIPAL ELECTED OFFICIALS TO FILE FORM 6 FINANCIAL DISCLOSURE FORMS IS UNCONSTITUTIONAL AND INVALID; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, since 1976, Article II, Section 8 of the Florida Constitution has required that all elected State constitutional officers file a full and public disclosure of their financial interests, which is done through a state-adopted form (“Form 6”) that requires, among other things, the disclosure of the specific amounts of an official’s net worth, income and asset values; and

WHEREAS, historically, municipal elected officials have been required to make a more limited

financial disclosure that is done through a different state-adopted form (“Form 1”) that requires, among other things, the disclosure of information related to sources of income, real property, intangible personal property, liabilities and interests in specified businesses, but does not include the specific amounts of an official’s net worth, income and asset values; and

WHEREAS, the Mayor and all current elected members of the City of Ocala, Florida (the “City Elected Officials”) were elected by the voters of the City of Ocala subject to and in reliance upon Florida law that required the Mayor and members of the City Council to annually file Form 1 (not Form 6) financial disclosures forms; and

WHEREAS, although the State Legislature has the power in the Florida Constitution to require that additional public officers file a full and public disclosure of their financial interests, it must do so consistent with other constitutional limitations; and

WHEREAS, in 1980, the voters of Florida amended the Florida Constitution by adopting Article 1, Section 23, the “Right to Privacy,” which states that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein;” and

WHEREAS, because the right of privacy is a fundamental right within Florida’s constitution, the Florida Supreme Court has consistently required that any law intruding on the right is presumptively unconstitutional and must be justified by a “compelling state interest” which the law serves or protects through the “least restrictive means”; and

WHEREAS, the First Amendment to the United States Constitution, and Article 1, Section 4 of the Florida Constitution, protects the freedom of speech, which includes the right to choose what to say and what not to say, any impairment of which must be justified by a “compelling state interest” which the law serves or protects through the “least restrictive means;” and

WHEREAS, during the 2023 legislative session, Senate Bill 774 was passed, signed by Governor Ron DeSantis and was codified at Law of Florida 2023-09, amending Section 112.3144, *Florida Statutes*, to change the financial disclosure requirements and now require that all elected municipal mayors and elected members of the governing board file a Form 6 financial disclosure, which is substantially more burdensome and personally intrusive than the Form 1; and

WHEREAS, the imposition of the Form 6 disclosure requirements at the municipal level (a) represents an unwarranted intrusion into the privacy rights of municipal elected officials, most of which receive little or no compensation for their service, (b) unnecessarily risks the safety of such officials (making them targets of, among other things, burglary, identity theft and extortion), and (c) will deter many otherwise qualified and interested citizens from running for office; and

WHEREAS, in fact, many municipal officials resigned from office prior to December 31, 2023, as a result of the new disclosure requirements, disrupting the ability of some local governments to operate for lack of a quorum; and

WHEREAS, the imposition of the intrusive Form 6 disclosure requirements at the municipal level is not the least restrictive means of serving the governmental interests of preventing abuse of the public trust, as demonstrated by, among other things, the lack of such requirements at the municipal level in other states and at the federal level (even the President of the United States and members of the U.S. Congress are not required to make such extensive disclosures); and

WHEREAS, requiring that unpaid (or low paid) municipal elected officials disclose their precise net worth, income and assets does not serve (let alone constitute the least restrictive means of serving) any compelling interest - Form 1 disclosures constitutes sufficient transparency to inform the public of potential conflicts; and

WHEREAS, the imposition of new financial disclosure requirements upon municipal elected officials who were elected without such requirements violates due process, is fundamentally unfair and violates fundamental constitutional rights; and

WHEREAS, the City desires to participate in a lawsuit seeking a declaration that the provisions of Section 112.3144(1)(d), *Florida Statutes*, that require municipal elected officials to file Form 6 financial disclosure forms are unconstitutional and invalid and should be enjoined (the “Lawsuit”); and

WHEREAS, the City Council of the City of Ocala, Florida finds that the adoption of this resolution and the authorization to participate in the Form 6 Financial Disclosure litigation contained herein supports the health, safety and welfare of the citizens of the City of Ocala, Florida and is therefore in the best interest of the City of Ocala, Florida and its citizens.

NOW THEREFORE be it resolved by the City Council of the City of Ocala, Florida as follows:

Section 1. Adoption and Incorporation of Recitals.

The City Council of the City of Ocala, Florida adopts the above-outlined recitals and incorporates them herein as part and parcel of this resolution.

Section 2. Purpose and Authority for Resolution.

This resolution is adopted for the purpose of authorizing participation in a lawsuit challenging Section 112.3144(1)(d), *Florida Statutes*, and engaging the services of the law firm Weiss Serota Helfman Cole + Bierman, PL with regard to said litigation and is adopted pursuant to the authority granted by Chapter 166, *Florida Statutes*, and other relevant provisions of Florida law.

Section 3. Participation in Lawsuit Challenging Section 112.3144(1)(d), *Florida Statutes*.

The City of Ocala, Florida hereby authorizes the participation of the City, and any of individual

members of the City Council who choose to participate as plaintiffs, in a lawsuit seeking declaratory, injunctive and other appropriate relief challenging the provisions of Section 112.3144(1)(d), *Florida Statutes*, that require municipal elected officials to file Form 6 financial disclosure forms, based upon any appropriate legal theories, including those set forth above, subject to the participation of at least ten municipalities.

Section 4. Engagement of Weiss Serota Helfman Cole + Bierman, PL.

- A. The law firm of Weiss Serota Helfman Cole + Bierman, PL (the “Firm”) is hereby retained to represent the City of Ocala, Florida in this litigation.
- B. The Firm will charge the City of Ocala, Florida a flat fee, inclusive of attorneys’ fees and costs, of \$10,000.00 to represent the City of Ocala, Florida and the individual elected officials who choose to participate as plaintiffs, for the litigation in the trial court.
- C. The City of Ocala, Florida and the individual elected officials who choose to participate as plaintiffs recognize that such flat fee may be less than the actual attorneys’ fees and costs incurred, and that if the City and elected officials prevail in the Lawsuit, the Firm may apply with the Court for its actual reasonable attorneys’ and costs from the defendants.
- D. The filing of any appeals will be authorized by separate resolution under the terms thereof.
- E. The City of Ocala, Florida and its elected officials also acknowledge that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation.
- F. The City of Ocala, Florida further acknowledges that, from time to time, the Firm may be called upon to represent them as to requests for various approvals and as to other matters with respect to or involving the City and the City hereby waives any potential conflict of interest in the Firm’s representation of those clients arising from its representation of the City in the Lawsuit.

Section 5. Participation by Other Local Governments and Elected Officials.

The City Council of the City of Ocala, Florida invites and urges other local governments and elected officials to join the City of Ocala as plaintiffs in the Lawsuit and to coordinate their efforts with the City.

Section 6. Direction to City Clerk to Distribute Resolution.

The City Clerk is directed to distribute copies of this Resolution to all local governments in Marion County, Florida.

Section 7. Direction to Staff.

All appropriate officials of the City of Ocala, Florida, specifically including the City Manager and the City Attorney, are hereby authorized and directed to take all necessary and expedient measures to ensure the intent and aim of this Resolution are fully effectuated.

Section 8. Effective Date of Resolution.

This resolution shall be effective immediately upon adoption by the City Council of the City of Ocala, Florida.

RESOLVED AND ADOPTED by the City Council of the City of Ocala, Florida, with a quorum present and voting, this 5th day of March 2024.

CITY OF OCALA, FLORIDA

By: BARRY MANSFIELD, as
President of the City Council

ATTEST:

By: ANGEL JACOBS, as
City Clerk

APPROVED AS TO FORM AND LEGALITY:

By: WILLIAM E. SEXTON, as
City Attorney