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Reply to: Venice

MEMORANDUM

TO: City Council

FROM: Kelly M. Fernandez, Esq., City Attorney

DATE: June 29, 2021

RE: Proposed Amendments to Section 2-161

Florida law recognizes that public officials are entitled to legal fee reimbursement from the local government that they served when they successfully defend themselves in litigation arising out of the performance of their official governmental duties and when it serves a public purpose. *Thornber v. City of Ft. Walton Beach*, 568 So. 2d 914 (Fla. 1990). Recognizing both public policy considerations and established common law principles, the Florida Supreme Court in *Thornber* stated:

...The 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. *Nuzum v. Valdes*, 407 So. 2d 277 (Fla. 2d DCA 1981). This entitlement to attorney's fees arises independent of statute, ordinance or charter. *Lomelo*, 423 So. 2d at 976. For public officials to be entitled to representation at public expense the litigation must (1) arise out of or in connection with the performance of their official duties and (2) serve a public purpose. *Chavez v. City of Tampa*, 560 So. 2d 1214 (Fla. 2d DCA 1990). See *Lomelo*;

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Nuzum; Markham v. Department of Revenue, 298 So. 2d 210 (Fla. 1st DCA 1974), *cert. denied*, 309 So. 2d 547 (Fla. 1975).

Thornber at 916-17.

Florida law also recognizes that public officials may seek attorney fee reimbursement for the successful defense and dismissal of ethics complaints filed with the state Ethics Commission. Attorney fee reimbursement may be sought for ethics complaint dismissals when the claims arose out of or in connection with the performance of official duties and it serves a public purpose. See, Fla. Att’y Gen’l Op. 85-51 (stating that the City of Kissimmee was authorized to pay for the legal defense costs of the former city manager after the Ethics Commission found “no probable cause” and dismissed a complaint raised against the city manager); *see, Ellison v. Reid*, 397 So. 2d 352 (Fla. 1st DCA 1981)(finding the property appraiser was entitled to reimbursement of legal fees spent successfully defending against an ethics complaint).

Section 2-161 of the City of Venice Code of Ordinances, as presently adopted, provides that the City shall pay attorney fees to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any city official arising out of and within the scope of his city employment or function. The proposed amendments to Section 2-161 expand that language so that it is explicitly broad enough to cover additional types of claims, suits, or threat of the same that may be pursued against a public official, past and present, consistent with public policy and common law principles.

Staff recommends the adoption of the amendments to Section 2-161.