

IN THE CIRCUIT COURT FOR THE  
11<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CITY OF NORTH MIAMI BEACH, FL.,

Petitioner,

Case No.:

vs.

MIAMI-DADE COUNTY SUPERVISOR  
OF ELECTIONS,

Respondent.

\_\_\_\_\_ /

**VERIFIED EMERGENCY PETITION FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

Petitioner the CITY OF NORTH MIAMI BEACH, FL. (the “*City*” or “*NMB*”), by and through its undersigned counsel, files this Petition for Declaratory Judgment and Injunctive Relief against Respondent MIAMI-DADE COUNTY SUPERVISOR OF ELECTIONS (“*Elections*”) and alleges:

**JURISDICTION AND VENUE**

1. This is an action for declaratory judgment filed pursuant to Section 86.011 of the Florida Statutes and a request for injunctive relief.
2. This is an action to declare the rights of Petitioner and Respondent under the Charter of NMB (the “*Charter*”).
3. All at all times material to this action, NMB is and has been a municipal corporation authorized pursuant to the laws of the State of Florida that is located in Miami-Dade County, Florida.
4. At all times material to this action, Respondent Elections is and has been the Supervisor of Elections for Miami-Dade County, Florida.

## FACTS COMMON TO ALL COUNTS

### *A. The Charter*

5. The City operates pursuant to its Charter.
6. Section 2.5 of the City's Charter, titled "Quorum and Attendance of the City

Commission" states:

Sec. 2.5 - Quorum and Attendance of the City Commission.

A quorum of the City Commission at any regular or special meeting shall consist of five members. Except as otherwise provided herein, the affirmative vote of a majority of the quorum present shall be required upon any matter submitted for consideration of the Commission. If any Commissioner has failed to attend a meeting of the City Commission for a period of one hundred and twenty (120) days, the seat of such Commissioner shall automatically become vacant.

*See* Charter of the City of North Miami Beach §2.5. (A true copy of the Charter is attached hereto as Exhibit "A.")

7. In the case of a vacancy in office, it is the duty of the City Commission to fill the vacancy unless there is more than one (1) year prior to the next general election.

8. Section 4.5 of the Charter states:

Sec. 4.5 - Vacancies.

Vacancies in elective offices of the City of North Miami Beach shall be filled by the City Commission pending the next general election, at which time an election to fill the vacancy shall be held for any remainder of the unexpired term. Provided, however, that should any vacancy occur more than one year prior to the next general election, the Commission shall have no power to fill the same; it shall be filled by a special election to fill the vacancy for the unexpired term, to be held not less than 35 days nor more than 90 days after such vacancy has occurred, except that if the vacancy is due to a resignation and a City or County-wide election is scheduled to be held during the intervening period from the resignation's filing date with the City Clerk up to and including the resignation's effective date, the special election to fill the vacancy for the unexpired term as of the resignation's effective date may occur (subject to consent of the County Elections Department and City's ability to comply with laws concerning time periods for calling elections) at either such City or County-wide election. Any person who has been appointed or elected to fill a vacancy due to resignation filed pursuant to Florida Statute section 99.012 shall be installed and take office following the date the resigning

official would take office, if elected; any person who has been appointed or elected to fill a vacancy due to resignation not filed pursuant to Florida Statute section 99.012 shall be installed and take office following the effective date set forth in said resignation. Provisions related to a Special Election called pursuant to this section, including the qualifying period, shall be established in the City Resolution calling the Special Election.

See Exhibit "A" at §4.5.

### ***B. The Vacancies***

9. Pursuant to the Charter, NMB cannot conduct business without five (5) of its Commissioners present.

10. The City Commission is comprised of Seven (7) elected members. Each elected member is elected by an Election Group. There are Seven (7) Election Groups.

11. For various reasons, and through no fault of its own, NMB presently has three (3) vacant seats.

12. Presently, the Commissioner for Election Group 1, Election Group 5 and Election Group 7 are all vacant seats.

13. No meeting can be called to appoint anyone to fill any vacancy absent a quorum of five (5) members.

14. Additionally, the City, by failing to have a quorum, cannot call a meeting, vote on resolutions, prepare for budgeting, or conduct any other business requiring Commission approval.

15. Most immediately, the City cannot prepare, pass and therefore transmit to the Supervisor of Elections the appropriate resolution calling for election on November 6, 2018, as required by the Supervisor of Elections, thereby disenfranchising its electors and depriving its citizens their constitutionally and Charter protected right to vote.

16. Essentially, NMB cannot conduct any business unless it fills at least one (1) vacancy.

17. Furthermore, NMB presently has other urgent business which it must conduct for the benefit of its citizens, including resolutions regarding its budget, water utility and resolution of outstanding legal matters which it has a duty to perform.

18. The Supervisor of Elections will not authorize NMB to participate in November's General Elections without a Resolution from the City Commission, which NMB cannot obtain due to the vacancies.

### **COUNT I – DECLARATORY JUDGMENT**

19. Petitioner incorporates and re-alleges paragraphs 1 to 18.

20. This is an action to declare the rights of Petitioner and Respondent under the Charter.

21. NMB is in doubt of its rights and obligations under the Charter, and by this Petition, seeks a declaration of its rights and obligations with respect to its calling a meeting of its four (4) remaining Commissioners for the purpose of filling the vacancy in Election Group 7.<sup>1</sup>

22. There exists a bona fide actual present and practical need for the declaration of NMB's rights and duties available under the Charter and the rights and obligations of Elections in accepting the decision made by the Commission. NMB is entitled to have all doubts as to its rights and obligations under the Charter removed in its favor.

23. The rights and obligations of NMB under the Charter are dependant upon the facts and the law applicable to the facts affecting the Charter in these circumstances.

24. NMB and the Respondent has an actual, present controversy in the subject matter described herein.

---

<sup>1</sup> Although the first vacancy was Election Group 5, NMB is restrained by court order from filling that vacant seat. Chronologically, the next vacancy is Election Group 7, thus the City seeks to fill that seat.

25. All conditions precedent to the initiation and maintenance of this action have been complied with, have occurred, or have been waived.

**WHEREFORE**, Petitioner CITY OF NORTH MIAMI BEACH, FL respectfully requests that the Court adjudicate the rights, responsibilities and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call an Emergency Meeting with Four (4) members of the Commission for the limited and express purpose of appointing a person to fill the vacancy in Election Group 7 as prescribed in its Charter.

**COUNT II – INJUNCTIVE RELIEF**

26. Petitioner incorporates and re-alleges Paragraphs 1 to 18.

27. Pursuant to the Charter, Petitioner cannot conduct any business absent a quorum.

28. As a result, the City will face irreparable harm, as the City cannot prepare, pass and therefore transmit to the Supervisor of Elections the appropriate resolution calling for election on November 6, 2018, as required by the Supervisor of Elections, thereby disenfranchising its electors and depriving its citizens their constitutionally and Charter protected right to vote, as no business can be conducted by the City absent quorum, which will cause the City to cease all operations.

29. The City has a right to conduct business as granted by its Citizens, Miami-Dade County and the State of Florida.

30. If its relief requested is denied, the City and its citizens will be without any adequate remedy at law.

31. The consideration of the public interest favors the relief sought herein as the citizens of NMB are entitled to a functioning government, to participate in the General Election in November and NMB's neighbors benefit from its provision of services, including water to them.

**WHEREFORE,** Petitioner CITY OF NORTH MIAMI BEACH, FL respectfully requests that the Court adjudicate the rights, responsibilities and liabilities of the parties under the Charter, and that the Court enter an Order declaring that the City may call an Emergency Meeting with Four (4) members of the Commission exclusively for the express purpose of filling the vacancy in Election Group 7 as prescribed in its Charter, as well as any other relief the Court deems proper.

Dated this 10th day of April, 2018.

LYDECKER DIAZ  
*Attorneys for the City of North Miami  
Beach, Fl*  
1221 Brickell Avenue, 19th Floor  
Miami, Florida 33131  
Telephone: (305) 416-3180  
Facsimile: (305) 416-3190

By: *s/Stephen Hunter Johnson*  
Stephen Hunter Johnson  
Florida Bar No. 12362

VERIFICATION

I declare under penalty of perjury that the information contained in this Petition for Declaratory Relief and Injunction is true and correct and that emergency relief is needed, to the best of my knowledge and belief.

By: \_\_\_\_\_  
Jose Smith, as City Attorney for the  
City of North Miami Beach, FL

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared **Jose Smith**, who is personally known to me or has produced a driver's license as identification, and who took an oath, swore and attested that these answers to interrogatories are true and accurate.

SUBSCRIBED AND SWORN before me this \_\_\_\_\_ day of April, 2018.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

(NOTARY SEAL)  
My Commission Expires:

# EXHIBIT

## A

### PART I - CHARTER<sup>11</sup>

#### CITY OF NORTH MIAMI BEACH

##### Preamble.

We, the people of the City of North Miami Beach, in order to secure for ourselves the benefits and responsibilities of home rule and in order to provide for a municipal government to serve our present and future needs, do hereby adopt this charter and as part thereof adopt the following Citizens' Bill of Rights.

##### Citizens' Bill of Rights.

- A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:
1. Convenient access. Every person has the right to transact business with the City with a minimum of personal inconvenience. It shall be the duty of the City Manager and the City Commission to provide, within the City's budget limitations, reasonable convenient times and places for required inspections, and for transacting business with the City.
  2. Truth in government. No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
  3. Public records. All audits, reports, minutes, documents and other public records of the City and its boards, agencies, departments and authorities shall be open for inspection at reasonable time and places convenient to the public.
  4. Minutes and ordinance register. The City Clerk shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances (Ordinance means an official legislative action of the North Miami Beach Commission, which action is a regulation of a general and permanent nature and enforceable as a local law), and resolutions (Resolution means an expression of the North Miami Beach Commission concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the North Miami Beach Commission) listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than thirty (30) days after the conclusion of the meeting,
  5. Right to be heard. So far as the orderly conduct of public business permits, any interested person has the right to appear before the City Commission or any City agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the City. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit the City or any agency thereof from imposing reasonable time limits for the presentation of a matter.
  6. Right to Notice. Persons entitled to notice of a City hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.
  7. No unreasonable postponements. No matter once having been placed on a formal agenda by the City shall be postponed to another day except for good cause shown in the opinion of the City Commission, or agency conducting such meeting, and then only on condition that any person so requesting is mailed adequate notice of the new date of any postponed meeting.