

**IN THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA, IN AND
FOR MIAMI-DADE COUNTY, FLORIDA
CIVIL DIVISION
CASE NO. _____**

**ANTHONY F. DEFILLIPO,
In his Official Capacity as Mayor,
North Miami Beach, Florida,
Plaintiff,**

vs.

**CITY OF NORTH MIAMI BEACH,
Defendants.**

**VERIFIED EMERGENCY COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF REQUIRING
ATTENDANCE FOR QUORUM AT DULY CALLED COMMISSION
MEETING**

Plaintiff ANTHONY F. DEFILLIPO (“Mayor DeFillipo”), in his official capacity as Mayor, North Miami Beach, Florida, files this Verified Emergency Complaint for Declaratory Judgment and Injunctive Relief against defendant CITY OF NORTH MIAMI BEACH (“City”) seeking to compel the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter for the transaction of official City business.

JURISDICTION AND VENUE

1. This is an action for declaratory judgment filed pursuant

to Section 86.011, Florida Statutes, and for injunctive relief in accordance with Florida law authorizing the issuance of injunctive writs.

2. This action is brought by Mayor DeFillipo in his capacity as North Miami Mayor to require the attendance of a quorum at the duly called Commission meeting on January 17, 2023, and thereafter as needed for the transaction of official City business.

3. This action is brought to declare the rights of the Mayor and the citizens and electors of North Miami Beach pursuant to the North Miami Beach Charter (“Charter”) for the conduct of official City business..

4. Plaintiff is the Mayor of the City of North Miami Beach, in which capacity he is entrusted to preside over City Commission meetings and call and preside over Special Call Meetings.

5. All at all times material to this action, the City is and has been a municipal corporation authorized pursuant to the laws of the State of Florida, located in Miami-Dade County, Florida.

FACTS COMMON TO ALL COUNTS

A. The Charter.

6. The City is required by law to operate in accordance with

its Charter.

7. Section 2.5 of the 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.

Charter of the City of North Miami Beach §2.5. The Charter is attached hereto as Exhibit “A.”

8. Section 3.3 of the City Charter states, “The City Commission shall appoint the City Attorney or law firm to serve at the pleasure of the City Commission. The City Attorney or law firm shall be removed by a majority vote of the City Commission.”

B. Commission Meeting Scheduled December 20, 2022.

9. A Commission Meeting was scheduled for December 20, 2022, during which six of the seven elected officials were present. Commissioner Michael Joseph was absent.

10. Mayor DeFillipo asked for a motion to terminate the contract of the law firm serving as the City Attorney. The motion was duly made and seconded, and discussion began (“Termination Motion”).

11. At that point, Commissioner Daniela Jean excused herself and left the meeting, leaving five members of the Commission present.

12. As discussion on the termination motion continued, Commissioner McKenzie Fleurimond announced her vehement opposition to terminating the City Attorney, noting he was the Commissioner who initially suggested the hiring of that law firm, Ottinott, P.A, be hired.

13. After discussion, Commissioner Fortuna Smukler called the question, and the matter was ready for voting.

14. At that point, Commissioner McKenzie Fleurimond announced he was leaving the meeting, thus breaking quorum, for the sole purpose of preventing the Mayor and Commission from voting to terminate the City Attorney’s contract.

15. No further City business was transacted, and the Meeting paused for lack of a quorum.

C. Special Call Meetings Failed for Absence of Quorum.

16. Thereafter, Mayor DeFillipo attempted to call a Special Meeting on two separate occasions for the purpose of resuming the December 20, 2022 meeting. But three Commissioners, Michael Joseph, McKenzie Fleurimond, and Daniela Jean, refused to respond for the sole purpose of preventing a Commission Meeting from taking place due to lack of a quorum.

D. Regular Meeting Scheduled January 17, 2023.

17. A regularly scheduled Commission Meeting is noticed and scheduled for to be held Tuesday, January 17, 2023.

18. Based on information and belief, the three Commissioners who refused to respond to the Special Meeting calls intend not absent themselves from the January 17, 2023 meeting to prevent a quorum and the transaction of business, including the Termination Motion.

19. In his capacity as City Mayor, Mayor DeFillipo has great concern that the same three Commissioners will refuse to attend the meeting, and once again cause a lack of quorum, for the sole purpose of preventing the transaction of City business, including voting on the Termination Motion.

20. The City, by failing to have a quorum, cannot call a meeting, vote on resolutions, or conduct any other official City business requiring Commission approval.

21. The City presently has urgent business it must conduct for the benefit of its citizens, including resolutions regarding its budget, water utility, and outstanding legal matters that it has a duty to undertake.

22. In effect, the City of North Miami Beach is shut down and no City business has been transacted as a result of Commissioners intentionally refusing to attend in order to avoid the quorum needed to transact City business, which has not been done for more than 90 days;

23. Florida Statutes 1!66.041 provides that a majority of Commissioners present for a meeting in any City, in this case four, constitutes quorum for purposes of conducting City business.

COUNT I – DECLARATORY JUDGMENT

24. Plaintiff incorporates and re-alleges paragraphs 1 to 23.

25. This is an action to declare the rights of the parties under the Charter.

26. The City and the plaintiff is in doubt of the rights and

obligations under the Charter, and by this Complaint seek a declaration of the rights and obligations with respect to calling a meeting attended by the Commissioners for the purpose of conducting the City's business.

27. There exists a *bona fide* actual, present, and practical need for the declaration of the Mayor and Commission's rights and duties attendant to the Charter. The City is entitled to have all doubts as to the rights and obligations under the Charter resolved in its favor, requiring Commissioner attendance at a duly called Commission Meeting for the transaction of official City business.

28. The rights and obligations of the City under the Charter are dependent upon the facts and the law applicable to the City pursuant to the Charter in these circumstances.

29. Plaintiff and the City have an actual, present controversy in the subject matter described herein.

For these reasons, Plaintiff Mayor DeFillipo 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 a Meeting attended by four (4) members of the Commission for the limited and express purpose of

conducting the City business until such time as the remaining three (3) members of the Commission see fit to fulfill their duties as elected officials as prescribed in the Charter of the City of North Miami Beach.

COUNT II – INJUNCTIVE RELIEF

30. Petitioner incorporates and re-alleges paragraphs 1 through 23.

31. Pursuant to the Charter, the plaintiff as Mayor and the City cannot conduct any business absent a quorum.

32. As a result, the City is facing irreparable harm, as the City cannot conduct official business for the benefit of the citizens, residents, and businesses within the City, thereby disenfranchising and depriving its citizens of their government. No business can be conducted by the City absent a quorum.

33. The City has a right and an obligation to conduct official business as granted by its Charter, the Miami-Dade County Home Rule Charter, and the Constitution and laws of the State of Florida.

34. If relief is denied, the City will be without any adequate remedy at law.

35. Consideration of the public interest favors the relief sought herein as the citizens of North Miami Beach are entitled to a functioning government, including its provision of services, including police, water, and sanitation services.

For these reasons, Mayor DeFillipo 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 purpose of conducting City Business as provided in the Charter, as well as any other relief the Court deems proper.

VERIFICATION

I make this declaration according to 28 U.S.C § 1746. I make this declaration in Miami-Dade County, State of Florida, United States of America. I declare under penalty of perjury that the foregoing, including all facts, are true and correct. Executed at Miami-Dade County, Florida, January 17, 2023.

Signature: 
Anthony DeFillipo (Jan 17, 2023 01:03 EST)

Email: defillipoanthony@gmail.com

ANTHONY F. DeFILLIPO

Respectfully submitted,

MICHAEL A. PIZZI, JR.
Attorney for Plaintiff
Florida Bar No. 079545
6625 Miami Lakes Drive, Suite
316
Miami Lakes, FL 33014
Phone: (305) 986-2277
mpizzi@pizzilaw.com

By: /s/ Michael A. Pizzi, Jr.
MICHAEL A. PIZZI, JR.

S/ David P. Reiner
REINER & REINER, P.A.
DAVID P. REINER, II
Florida Bar No. 416400
9100 So. Dadeland Boulevard,
Suite 901
Miami, FL 33156-7815
Tel: (305) 670-8282; Fax: (305)
670-8989
dpr@reinerslaw.com
eservice@reinerslaw.com

S/ Benedict P. Kuehne
BENEDICT P. KUEHNE
Florida Bar No. 233293
JOHAN D. DOS SANTOS
Florida Bar No. 1025373
KUEHNE DAVIS LAW, P.A.
100 S.E. 2nd St., Suite 3150
Miami, FL 33131-2154
Tel: 305.789.5989
Fax: 305.789.5987
ben.kuehne@kuehnelaw.com
johandkuehnelaw.com
mdavis@kuehnelaw.com
efiling@kuehnelaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was e-filed via the State's eFiling Portal and copies furnished electronically to all parties of record, including Andrise

Bernard, Clerk, City of North Miami Beach,
andrise.bernard@citynmb.com, on January 17, 2023.

By: /s/ Michael A. Pizzi, Jr.
MICHAEL A. PIZZI, JR.