**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT**
**IN AND FOR PINELLAS COUNTY, FLORIDA**

THOMAS RASK
Plaintiff

UCN: 522024CA000923XXCICI
Case No. 24-000923-CI

vs.

CITY OF ST. PETE BEACH,
(a political subdivision of the State of Florida)
Defendant
_____/

# AMENDED COMPLAINT FOR DECLARATORY RELIEF UNDER THE FLORIDA PUBLIC RECORDS LAW (§119), and APPLICATIONS FOR INJUNCTIONS UNDER THE FLORIDA SUNSHINE LAW (§286)

Comes now plaintiff, THOMAS RASK ("Plaintiff"), a resident of Pinellas County, sues Defendant, CITY OF ST. PETE BEACH ("the City"), and alleges:

## COUNT ONE - VIOLATION OF THE FLORIDA PUBLIC RECORDS LAW

1. Count One seeks to enforce the right to access public records guaranteed by Art. I, Sec. 24(a), Constitution of Florida, and by Sec. 119.07, Fla. Stat.
2. Plaintiff seeks declaratory relief under Sec. 86.011, Fla. Stat., and , among other things, a writ of mandamus pursuant to Fla. R. Civ. P. 1.630 for the purpose of enforcing the public right of access to public records. This court has jurisdiction pursuant to Art. V, Sec. 5, Constitution of Florida; Fla. R. Civ. P. 1.630; and Sec. 26.012, 86.011 and 119.11, Fla. Stat.
3. The City held a so-called executive session (a.k.a. "closed door session" or "shade session") on April 26, 2022 to discuss litigation involving two civil complaints. The meeting was not open to the public. Such executive sessions are allowed if they are held pursuant to Sec. 286.011(8), Fla. Stat., which states that such a meeting is allowed "provided that" certain "conditions" are met.

4. Two of said conditions were not met for said meeting.
5. The first condition that was not met is the following requirement in Sec. 286.011(8)(a), Fla. Stat.: "The entity's attorney shall advise the entity at a public meeting that he or she desires advice concerning the litigation" [underlining added]. The City Attorney did not make such a statement, or one substantively similar to it, at a public meeting.
6. The second condition that was not met is the following requirement in Sec. 286.011(8)(d), Fla. Stat.: "The session shall commence at an open meeting at which the persons chairing the meeting shall announce the commencement and estimated length of the attorney-client session and the names of the persons attending" [underlining added]. The "names of the persons attending" were demonstrably not announced in the open meeting before the executive session.
7. Both said conditions are required to be met under Sec. 286.011(8), Fla. Stat.
8. Both the meeting minutes and the meeting video show that the conditions were not met, and the city has not disputed those two allegations by Plaintiff after being informed of them.
9. On January 17, 2024, Plaintiff made a Florida §119 public records request for the court reporter's transcript of said executive session.
10. In response, the City provided Sec. 286.011(8)(e), Fla. Stat., as the basis for not providing 12 of the 28 pages of the meeting transcript.
11. However, in *Chmielewski v. City of St. Pete Beach*, 161 So. 3d 521 - Fla: Dist. Court of Appeals, 2nd Dist. 2014, the 2nd Fla. Dist. Court of Appeals opined about that "the City must demonstrate the applicability of a statutory exemption" and that "we resolve any doubt in favor of disclosure." Therefore, the City has been on notice for quite some time that it must "dot its i's and cross its t's" (so to speak) before entering into any shade session, and that public records otherwise exempt from disclosure become subject to disclosure if it fails to take the necessary protective steps. It is the same city in both said case, and the present case.

12. In another case also decided in 2014, the court found that even if the court found no need for it to take any other action, the Plaintiff was "still entitled to a declaration that the City violated the Sunshine Law" provided that the Court concluded that it did (*Anderson v. City of St. Pete Beach*, 161 So. 3d 548 - Fla: Dist. Court of Appeals, 2nd Dist. 2014).
13. In said case, which also involves the same Defendant as in this case, the City conceded in oral arguments that the Plaintiff "is at least entitled to a declaration that the City violated the Sunshine Law, provided we [the 2nd DCA] conclude that it did."
14. The statutory public records exemption that the City is relying on in withholding the requested records in this case, Sec. 286.011(8)(e), Fla. Stat., states that "the transcript shall be made part of the public record upon conclusion of the litigation," meaning that the redacted portion involving ongoing litigation can no longer be withheld once litigation has concluded.
15. However, a plain reading of Sec. 286.011(8), Fla. Stat., shows that said exemption is only enjoyed "provided that the following conditions are met" [underlining added], followed by a listing of said conditions.
16. When the conditions are not met, the meeting becomes open to the public, yet it was not. Any record of said meeting become unexempeted public records. That includes the statutorily required court reporter transcripts, yet the City refuses to release said transcript.
17. The City held an executive session on January 23, 2024 to discuss litigation involving two other civil complaints unrelated to the ones in the 2022 executive session.
18. The executive session that was opened inside of the open meeting was noticed.
19. The open meeting in which the executive session was opened was not noticed.
20. Not noticing the open meeting is a violation of the requirement in Sec. 286.011, Fla. Stat., that the the City "must provide reasonable notice of all such meetings" [that are "public meetings open to the public"].

21. In the case of the aforementioned and above complained of 2022 executive session, both the public meeting and the executive session were noticed.
22. In violation of the requirement in Sec. 286.011(8)(a), Fla. Stat.,, the City Attorney also at the 2024 meeting did not "advise the entity at a public meeting that he or she desires advice concerning the litigation" [underlining added]. The City Attorney did not make such a statement, or one substantively similar to it, at a public meeting.
23. Thus also for the 2024 executive session, the City failed to meet two conditions of the Sunshine Law.
24. Also for this executive session, Plaintiff made a public records request for the court reporter's transcript of said executive session.
25. Also in the case of this executive 2024 session, the City cited Sec. 286.011(8)(e), Fla. Stat., as a basis for not providing the requested record. However, because the City also for this meeting failed to take the necessary protective steps, it does not enjoy said exemption.
26. The Florida Sunshine Law is very clear: subsection (19 declares that *"**All meetings** of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation...**are declared to be public meetings open to the public at all times**"* unless "*the following conditions are met" (*conditions which §286.011(8) lists). [emphasis added].
27. In *Board of Public Instruction of Broward County v. Doran*, 224 So.2d 693, 699 (Fla. 1969) (henceforth "Doran") the Florida Supreme Court held that "statutes enacted for the public benefit should be interpreted most favorably to the public."
28. The latest available "Government in the Sunshine Manual" (2023), published by the Florida Office of the Attorney General, cites the Doran decision as a basis for stating that "as a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose while exemptions should be narrowly construed" [underlining added].

29. Applying the required narrow construction mandated by the Doran opinion case, the City does not enjoy the public records exemption it is relying on for either executive session because said exemption is found in that very kind of statute that was "enacted for the public benefit" (namely Sec. 286.011, Fla. Stat., the Sunshine Law).
30. Because said statute was "enacted for the public benefit," it therefore "should be interpreted most favorably to the public" (*Doran*).

WHEREFORE, Plaintiff respectfully requests that this Court for COUNT ONE:

a) Grant this matter expedited consideration pursuant to Sec. 119.11(1), Fla. Stat.;
b) Declare that the City violated Sunshine Law in how it conducted both the 2022 executive session and the 2024 executive session.
c) Issue an alternative writ of mandamus directing the City to produce the records requested by Plaintiff;
c) Issue a peremptory writ directing the City to make all records in its possession, custody or control that are responsive to Plaintiff's request for public records immediately available;
d) Award Plaintiff his attorney's fees and costs as provided by Sec. 119.12(1), Fla. Stat.; and
e) Grant such other and further relief this Court deems appropriate.

## COUNT TWO - VIOLATION OF THE FLORIDA SUNSHINE LAW (§286)

31. The Florida Constitution, Article I, Section 24 "Access to public records and meetings" states in (b) that meetings of any collegial body of a municipality "shall be open and noticed to the public."
32. Fla. Stat. 286.011 requires that Florida public agencies give "reasonable notice" of all public meetings. Upon belief, the City posts the city commission meeting agenda ("the Agenda") on bulletin boards around the city, including the locked bulletin board outside of city hall. The City also posts meeting information on their website www.stpetebeach.org, and may also seek to notice their meetings in other ways which the Plaintiff is unaware of.
33. The City Clerk told Plaintiff that they post the Agenda as a notice of meeting, not any other document. The City's position appears to be that the Agenda also notices meetings (henceforth "the Purported Notices").
34. A typical Purported Notice, from the City Commission meeting on December 23, 2023, is attached as **Exhibit A**.
35. Notably, the Agendas are not titled as agendas. For some of the Agendas, "Approval of the Agenda" is the first numbered item listed, sometimes it is second, but for four (4)of them, the word "agenda" does not appear at all.
36. The City's Commission ("the City Commission") held meetings in December, 2023 on the following days: the 5th,12th, 18th, 21st, 26th, 27th and 28th. It also held meetings in January, 2034 on January 9th, 10th, 23rd and in February, 2024 on the 13th, the 21st and the 27th. In total, these add up to thirteen (13) meetings will henceforth be referred to as "the Meetings."
37. The Purported Notices for the Meetings were all substantially the same, with the title in all capital letters reading "CITY COMMISSION MEETING CITY OF ST. PETE BEACH." Some of the Meetings were regular meetings, some were special meetings.

38. In the case of the December 18th meeting, the word "SPECIAL" was added to the beginning of the title to indicate it was a special city commission meeting. The word "special" was omitted from the title of the next four special City Commission meetings, but then appeared again in the the title of the Purported Notice for the special City Commission meeting on January 10th, 2024.
39. The evidence thus shows inconsistent action by the city in noticing its meetings.
40. More importantly, the Purported Notices for the Meetings do not state that each was a public meeting (meaning: open to the public). They also do not contain the word “notice" (except for as explained below) and gives an address (that of City Hall), but does not expressly state that this is the address where the meeting will take place, or in which room at that address that the meeting will take place.
41. At the very end of each of the Purported Notices, it says "The public is cordially invited to attend this meeting" (second to last line in each of the Purported Notices).
42. The only hint that the public has that the Purported Notices are meant to be notices of meetings is when the word "notice" is used in certain text required by Sec. 286.0105, Fla. Stat. That text in the Purported Notices reads in relevant part:

    In accordance with 286.0105, Florida Statute (Notices of meetings and hearings must advise that a record is required to appeal), if a person decides to appeal any decision..." [underlining added to the word "Notices")

    ....and it goes on from there, citing 286.0105
43. This amounts to a form of "indirect" noticing, basically saying that because the City referenced "notices of meetings" in the Purported Notice, the public then should have been able to fgure out that they were reading a notice of a meeting.
44. It is Plaintiff's position that the Purported Notices do not meet the "reasonable notice" requirement in Sec. 286.011(8), Fla. Stat., in part because the public should not have to closely parse a document to see if it is meeting notice or not.

45. The public also cannot know cannot know that the city commission meetings are “public” (the statutory language) or “open” (the constitutional language) unless the notice says so.
46. The public cannot know that they are being given notice of a meeting if the word “notice” is not prominently used. The purpose of a Section 286.11(1), Fla. Stat., notice is not to force the public to ask public agencies questions about whether they can attend, or if a particular document is the notice of such a meeting.
47. As mentioned above, the City used language copied directly from Sec. 286.0105, Fla. Stat., in giving the notice required by that portion of the statute. Had the City similarly used statutory language and made the first line of the Purported Notices for the Meetings say that it was a notice of a *"public meeting open to the public,"* which is how the portion of the statute containing the "reasonable notice" requirement reads (Sec. 286.011(1), Fla. Stat.), then Plaintiff would have had no cause of action to bring this Count in this civil action.
48. The statutorily required "reasonable notice" is required even when meetings of the deliberative body that is meeting are “of general knowledge” and are not conducted in a closed door manner. See *TSI Southeast, Inc. v. Royals*, 588 So. 2d 309, 310 (Fla. 1st DCA 1991).
49. In *Florida Citizens Alliance, Inc. v. School Board of Collier Count*y, 328 So. 3d 22 (Fla. 2d DCA 2021), the court found that "nothing indicated that the meetings were open to the public" when examining the notice action taken by the Defendant in that case.
50. In considering what constitutes "notice," Plaintiff respectfully asks that this court take notice of the public's Florida *constitutional* right to notice. Notices that are provided in a way that requires the public to incur expenses. e.g by by having internet access, or having to to agree to terms of service, such as through e.g. internet access device provided by public libraries, should be viewed with great skepticism because the public is neither required to incur expense or agree to terms of service in order to receive their consitutionally guaranteed right to notice of public meetings.

51. The court has the authority under Sec. 286.011(4), Fla. Stat., to enforce Sec. 286.011, Fla. Stat., to "invalidate the actions" of the City taken in violation of the same, and shall assess “reasonable attorney's fees” against the city if it in fact did violate Sec. 286.011, Fla. Stat.
52. There is no statutory definition of what constitutes"reasonable notice," and Plaintiff is unaware of any case law that defines it. But it presumably means whether a reasonable person would think that the Purported Notices are in fact notices of a "public meeting open to the public."
53. Recognizing that the Sunshine Law should be construed so as to frustrate all evasive devices, the courts have held that any official action taken in violation of the law is void *ab initi*o. The "mere showing that the government in the sunshine law has been violated constitutes an irreparable public injury so that the ordinance [the official action in that specific case] is void ab initio (see *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974)).
54. Citing said case and said statement, *Sarasota Citizens For Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010) stated the following: “Therefore, where officials have violated section 286.011, the official action is void ab initio. *Id.*”
55. In case after case, courts have concluded that *any* official action taken in meetings that violate the Sunshine Law are null and void *ab initio*. This conclusion was reached even for actions such as approval of meeting minutes, see *Grapski v. City of Alachua*, 31 So. 3d 193 (Fla. 1st DCA 2010), review denied, 47 So. 3d 1288 (Fla. 2010).
56. In *Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969)* (henceforth “Doran”) the Florida Supreme Court held that “statutes enacted for the public benefit should be interpreted most favorably to the public.”
57. The “Government in the Sunshine Manual” (2023) published by the Florida Office of the Attorney General, cites the *Doran* decision as a basis for stating that “as a statute enacted for the public benefit, the Sunshine Law should be liberally construed to give effect to its public purpose”.

WHEREFORE, Plaintiff respectfully requests that for Count Two, this Court:

a) Issue an injunction declaring as null and void *ab initio* any and all officials actions taken by the St. Pete Beach City Commission at the Meetings.

d) Award Plaintiff reasonable attorney's fees and costs as provided by Sec. 286.011(4), Fla. Stat.; and

e) Grant such other and further relief this Court deems appropriate.

## COUNT THREE - VIOLATION OF SECTION 286.0114(2), FLA. STAT.

58. The St. Pete Beach City Commission held a meeting at 6:00 PM on January 9, 2024. Listed as agenda item #3 was "Discussion of District 3 vacancy." Agenda item #6 was "Actions Items" and filling the District 3 vacancy was not listed as an action item.

59. At 10:08 AM on 1/5/2024, more than four (4) full days before said meeting, Plaintiff sent an email to the city clerk, the city manager and the mayor requesting "that the city be extremely clear, even overly clear, about whether a majority of the commission intends to take action on either 1/9 or 1/10 to fill the district 3 seat" (attached as **Exhibit B**). No response was received to said email.

60. The Plaintiff therefore chose to watch the meeting on the internet rather than to make the 20-mile round trip to attend the meeting.

61. Five minutes into the meeting, Assistant City Attorney Matthew McConnell asked that the agenda be amended to make filling the District 3 vacancy a possible action item. McConnell said that perhaps a "scrivener's error" explains why it said "discussion item" instead of "possible" action item. When Mayor Adrian Petrila chose to not take action in response, City Attorney Andrew Dickman, attending remotely, also used the term "scrivener's error" and advanced other arguments for why it would be lawful for the city commission to take action on filling the District 3 vacancy.

62. The agenda was approved in a 4-0 vote without making the District 3 vacancy an action item.

63. A discussion followed. In response to a question from District 2 Commissioner Nick Filtz, City Attorney Dickman falsely claimed that a person by the name Betty Rzewnicki "will" become the District 3 Commissioner in March. District 1 Commissioner Karen Marriott later repeated, and stated as a reason for her supporting Rzewnicki, this false "will become the District 3 commissioner" claim, without the city attorney or anyone else correcting her. Thus one or more commissioners based their vote on false information provided by the City Attorney.

64. During the discussion, Dickman admitted to having previously and repeatedly referred to Rzewnicki as the "commissioner-elect" in commission meetings, and that it had been "brought to his attention" that he had used said incorrect phrasing. Parenthetically, it was Plaintiff who had brought this misrepresentation to the City by Dickman to his attention.
65. The public's statutory right under Sec. 286.0114, Fla. Stat., to "be given a reasonable opportunity to be heard on a proposition before a board or commission" was not being mentioned at all during the commission's discussion.
66. In passing resolution 2022-13 on August 10th, 2022, the City in section 9 of said resolution codified the "Rules for Public Comment." Section 9.a. "Intent" states: "These rules are intended in part to implement Section 286.0114, Florida Statutes, which requires that the parties [sic] be given a reasonable opportunity to be heard on a proposition before a board or commission."
67. There was some indication that official action might be taken because the Mayor decided to open up the matter for public comment and the City does not take public comment on discussion items.
68. Because it seemed like a vote was coming, Plaintiff texted City Attorney Dickman saying he would sue if the City went ahead with a vote. Plaintiff expressly cited Sec. 286.0114, Fla. Stat., in his text messages, yet the City attorney didn't tell the City Commission that.
69. Plaintiff's action was entirely consistent with what he had said in his aforementioned email to the City four days before the meeting. In that email, Plaintiff also cited Sec. 286.0114, Fla. Stat., also cautioned against taking unlawful action in violation of it, and stated that "if the city commission does take such unlawful action, or any action in violation of §286, I could and probably would sue. Others unknown to me might do the same."
70. City Attorney Dickman stated "maybe Tom Rask is in the audience and come up and speak to it" after which Mayor Petrila asked "is Tom Rask [Plaintiff] in the audience?" However, and as stated before, Plaintiff was at home. Furthermore, the city provides no mechanism to provide public

comments remotely via video or audio in live meetings. City Attorney Dickman must have known this, yet did not invite such comments via text message from Plaintiff, or other alternative means.

71. The official meeting minutes state that "Commissioner Filtz motioned to move the number 3 discussion of District 3 Vacancy to an action item" but that the motion "died."

72. Therefore, the meeting agenda that had been approved through a vote by the commission was in fact never amended by any subsequent vote by the commission.

73. Less than five (5) minutes after asking if Plaintiff was in the audience less than eight (8) minutes, Commissioner Karen Marriott motioned to appoint Betty Rzewnicki as "interim [sic] commissioner for District 3" (there is no provision in the city charter to appoint an "interim commissioner"). The motion was seconded and carried, with Mayor Petrila voting no.

74. City Attorney Dickman's advice to the City Commission on this matter (at 30:17 of the meeting video) was: "It [the agenda] should say discussion and possible action. That's what it was supposed to say, but it doesn't. And if you want to avoid being sued by Tom Rask and be held...held by Tom Rask...held up, you know, that's fine, then reword the agenda and bring it back in two weeks."

75. The City Commission chose to not take that advice, knowing full well that it would be "held up" by this civil action, which it invited by not taking the City Attorney's advice.

76. Sec. 286.0114(2), Fla. Stat., requires that "members of the public shall be given a reasonable opportunity to be heard on a proposition before a board or commission."

77. In the end, agenda item #2 involved that very kind of "proposition before a board or commission" for which no "reasonable opportunity to be heard" was given to Plaintiff (and perhaps others).

78. It is impossible for a member of the public, including Plaintiff, to comment on a proposition until they first hear the exact wording of the motion. In the case of an appointment, it isn't just the matter of who to appoint, but also the ability to comment on the motion itself, which in this case was defective in Plaintiff's view, as outlined above.

79. Given the contentious battle with citizens over the appointment of three city commissioners, the City knew or should have known that the appointment of a fourth one would draw close public scrutiny and much public comment.

80. In fact, three among the few citizens who were present at the meeting did make public comment when the floor was opened up for such comment. It is unknown how many more would have shown up if they knew there was going to be a vote, but at the very least Plaintiff would have.

81. Note the written statements by City Clerk Amber LaRowe in Exhibit B that she feel that she was "not given clear direction on what the intention of 1/9 was supposed to entail it was maybe interviews & maybe not interviews; therefore, I added what I felt was the best course of action [to the agenda] based on the convoluted 12/28 meeting. The agenda is created by the City Manager and his staff....I did my best to put something together and to allow the Commission to vote or provide direction the day of" [underlining added].

82. The underlined statement is what caused Plaintiff to respond to the email, copying the allegedly agenda-creating City Manager, and asked "that the city be extremely clear, even overly clear" on this matter.

83. Plaintiff's request for clarity did not lead to modification of the agenda fro that meeting, despite the City Clerk's admission that she was "not given clear direction" on this item. The agenda is attached as **Exhibit C**.

84. Given that City resolution 2022-13 was passed less than 17 months before the January 9, 2024 meeting and included action to "implement" Sec. 286.0114, Fla. Stat., given all of the above described facts, the City's "efforts" in this case to comply with Sec. 286.0114(2), Fla. Stat., raises reasonable questions involving willfulness (alternatively incompetence), and evince a blatant disregard for the statutory rights of citizens to be heard, and the vital involvement of citizens in the public policy process.

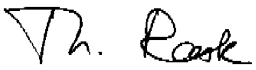
WHEREFORE Plaintiff respectfully requests that this Court for COUNT THREE:

a) Issue an injunction declaring that the City violated Sec. 286.0114(2), Fla. Stat., as authorized by Sec. 286.0114(6), Fla. Stat., enjoining the City from doing so in the future, and/or whatever other statements and actions this Court deems appropriate to include in said injunction.

b) If the Court deems such an award is authorized by Sec. 286.0114(7)(a), Fla. Stat., award appropriate costs and fees; and

c) Grant such other and further relief this Court deems appropriate.

Dated: March 16, 2024



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 16, 2024, the undersigned electronically filed the foregoing with the Clerk of Court using the Florida Courts E-Filing Portal.

Dated: March 16, 2024

/s/ Thomas Rask
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