UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0: 25-25865-CIV-DIMITROULEAS

CHARLES MICHAEL TRAUSCH,

Plaintiff,

vs.

CITY OF MIAMI,

Defendant.
_______________________________________/

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

This Cause is before the Court on Defendant City of Miami (the "City" or "Defendant")'s Motion to Dismiss [DE 15] (the "Motion"), filed herein on January 23, 2026. The Court has reviewed the Motion [DE 15] the Plaintiff ("Trausch" or "Plaintiff")'s Response in Opposition to Defendant's Motion to Dismiss [DE 18] filed on February 13, 2026, and Defendant City of Miami's Reply in Support of Motion to Dismiss [DE 23], filed on March 13, 2026, as well as the parties arguments at the April 7, 2026 hearing,[1] and is otherwise fully advised.

I. BACKGROUND

This case presents a *Nollan-Dolan* claim[2]—a strand of the Takings Clause—and a procedural due-process claim, both challenging the City of Miami's policies and practices

---

[1] Although uninvited and untimely filed, the Court has also considered the City's Supplemental Authority, filed on April 8, 2026, but was not made aware, through that notice, of any authority that would alter the analysis herein.

[2] *Nollan-Dolan* requires government to show that a land-use permit condition shares an "essential nexus" with, and "rough proportionality" to, an anticipated public impact (i.e., harm) arising from the proposed property use. *See Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

regarding certain land-use permit conditions. According to the allegations in the First Amended Complaint ("FAC") [DE 1], the City of Miami-Dade (the "City") determined years ago that it might want to widen streets to reach existing base building lines, which would require taking private property. FAC ¶ 2. To avoid paying for the property through eminent domain, the City has been conditioning the approval of land use permits by requiring residents to fork over an expanding right of way. *Id.* Trausch alleges that the City "always" makes this demand, without a finding that there is any relationship between the demand and any public impact presented by the proposed project. *Id.* ¶ 43.

When Trausch applied for a permit to build a modest extension to his home in early 2024, the City subjected him to this process. *Id.* ¶¶ 2, 82–146. The City demanded that Trausch give up half his front yard as a condition for approving his permit. Trausch requested a waiver, but the City denied the request, stating, "[w]e looked into this one and discussed with Administration and unfortunately we're not able to waive the right-of-way dedication requirement after all." *Id.* ¶ 113. When Trausch requested a review of the denial by the review committee—and presented evidence with his architect of the minimal public impact of his project to the committee—the City affirmed the denied the waiver request, seven months later, without explanation. *Id.* ¶¶ 125–146. The City informed Trausch that its decision was "final," "binding per City code," that "no new decision will be made" and that his permit would "not be issued without complying with the decision of that committee"—to wit, the expanded right of way. *Id.* ¶ 155.

Trausch therefore initiated this lawsuit in Florida state court, *pro se*, requesting that the City be enjoined from conditioning his property's use on a dedication of an expanded public right-of-way absent lawful justification. *Id.* ¶ 147. The City filed a motion to dismiss wherein it defended its actions. *Id.* ¶ 148. Trausch then obtained counsel and appeared on Trausch's behalf in the action.

After Trausch obtained counsel, the City changed its mind. The City's director of public works, Director Santana, filed a notice in the docket, with a letter attached, stating, "you have requested to waive the dedication of right of way," and that "[y]our request to waive the right of way dedication is approved." *Id.* ¶ 151. Director Santana's letter did not explain the basis for reversing course on Trausch's waiver request, particularly at such a late juncture. *Id.* ¶ 157. The waiver letter also included a proviso stating "Note: All building setbacks and yard requirements of the Miami 21 Zoning Ordinance shall still be measured from the zoned base building line," *id.* ¶ 166, which allegedly means that the City will again demand the same expanded right-of-way the next time he needs a permit for his parcel. *Id.* ¶¶ 167–68.

Following the grant of the waiver, Trausch filed a First Amended Complaint, seeking new relief—this time, compensatory damages for the delay in issuing the waiver, and injunctive relief to stop the City from continuing its conduct, among other things. *See generally*, FAC. Trausch brings one count under the Takings Clause, alleging and unconstitutional condition under the Fifth and Fourteenth Amendments, and one count under the Due Process clause of the Fourteenth Amendment.

The City removed this action and now seeks dismissal the First Amended Complaint in its entirety on the basis that this Court lacks jurisdiction pursuant to standing and mootness doctrines, and that Plaintiff fails to state a *Monell* claim. The City also argues Plaintiff lacks entitlement to injunctive, declaratory, and economic relief. Each argument is explored below.

II. DISCUSSION

The City mounts wide ranging arguments in support of its motion. Up front, this Court notes that the City makes no challenge for failure to state a claim based upon the substantive elements of Plaintiff's *Nollan/Dolan* claim, nor Plaintiff's Due Process claim. The Court therefore has no occasion to comment on whether the underlying allegations state a plausible claim. Instead, this analysis is focused on whether the operative complaint is a shotgun pleading, whether Plaintiff meets threshold jurisdictional issues of mootness and standing, and whether Plaintiff's allegations suffice to withstand a *Monell* challenge. Ultimately, the law dictates that the case is not moot, and Plaintiff has standing to pursue its nominal and compensatory damages, but not to pursue injunctive or declaratory relief. Lastly, Plaintiff sufficiently alleges an official policy theory under *Monell.* For those reasons, the City's motion is granted in part.

A. Shotgun Pleading

The City contends the First Amended Complaint is a shotgun pleading because "legal doctrines associated with bringing constitutional claims against a municipality for facial and as-applied attacks are materially distinct, as one requires a showing that the statute/ordinance can never be applied constitutionally and the other requires a showing under Monell." Motion, [DE 15] p. 12. Under the *Monell* strand, the City reasons, "[a]n as-applied challenge can be brought under a policy, practice, or custom theory—with policy-based claims being materially distinct from practice and custom-based claims." *Id.* Thus, the City concludes that "because the Plaintiff says his as-applied challenges are premised upon policy, practice, or custom theories, the Plaintiff's Count I contains 3–4 distinct claims and Count II similarly contains 3–4 distinct claims. Together, there are 6–8 constitutional claims packed into two counts." *Id.*

This conclusion is not supported by law. As Plaintiff correctly notes, facial versus as applied challenges speak to the scope of the remedy available, not to substantive pleading standards. *See e.g.*, *Bucklew v. Precythe*, 587 U.S. 119, 139 (2019) ("classifying a lawsuit as facial or as-applied . . . does not speak at all to the substantive rule of law necessary to establish a constitutional violation."); *Adams ex rel. Kasper v. Sch. Bd. of St. Johns Cnty.*, 57 F.4th 791, 800

n. 3 (11th Cir. 2022) ("Indeed, an as-applied challenge merely 'affects the extent to which' a plaintiff must demonstrate 'the invalidity of the challenged law' or constitutional violation and the corresponding 'breadth of the remedy.'" ((quoting *Bucklew v. Precythe*, 587 U.S. 138 (2019)); *D.N. by Jessica N. v. DeSantis*, 701 F. Supp. 3d 1244, 1251 (S.D. Fla. 2023) (same)). Moreover, the City insufficiently argues that a Plaintiff is required to bring separate "policy" and "custom" claims. The law it cites—*Knight through Kerr v. Miami-Dade Cty.,* 856 F.3d 795, 819 (11th Cir. 2017)—does not support its position. In *Knight ex rel Kerr*, the Eleventh Circuit addressed the sufficiency of Plaintiff's *Monell* claim by asking, first, whether Plaintiff had met its burden of demonstrating an official policy, and second, whether Plaintiff had established a custom or practice. There is no evidence in that case that Plaintiff brought, or was required to bring, separate counts for its "policy" versus its "custom or practice" theories. Thus, the First Amended Complaint is not a shotgun pleading for the reasons the City states.

B. Mootness

The City raises mootness and standing challenges on the grounds that Plaintiff obtained what he initially sought—a waiver of the challenged dedication requirement—prior to filing the operative complaint. Although the City clarified during the hearing that it was *not* challenging the entire case as moot, this Court has an independent obligation to ensure a case presents an active controversy. Otherwise, this Court lacks jurisdiction to proceed. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559–560 (1992).

Federal courts may only hear "cases or controversies," pursuant to Article III of the Constitution. *Lujan*, 504 U.S. at 559–60. A case becomes moot—"and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (cleaned up). When the plaintiff "manages to secure" "all the relief" he is suing for, a federal court must dismiss a case as moot. *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 240 (2024).

At first glance, it might appear this action is moot. Following Plaintiff counsel's appearance in the record, in the very next docket entry, the City unilaterally granted Plaintiff's waiver request—thus removing the allegedly unconstitutional condition about which Plaintiff had initially complained. FAC ¶¶ 147–152; State Court Docket, [DE 1-3]. However, Plaintiff has since amended his complaint to request other forms of relief—consequential damages from the delay in approving the waiver and injunctive relief.[3] Thus, "[a]lthough the plaintiff['s] [original,] ultimate goal may have been to [to obtain a waiver], it does not follow that there is no meaningful relief available to [him]." *Baker v. City of Atlanta*, 164 F.4th 850 (11th Cir. 2026). Plaintiff still has a concrete interest in this case and there is meaningful relief available—if successful in this action, Plaintiff could recover compensatory damages from the delay in building their requested extension. Plaintiff alleges his project is substantially more expensive now than it would have been, and the delay was a direct result of the City's unconstitutional condition and Plaintiff's subsequent refusal to adhere to the condition. *See also* FAC ¶¶ 162–164 (setting out consequential damages). As set out more fully below, this amounts to a "legally cognizable interest in the outcome." *Already*, 568 U.S. at 91 (quotation omitted); "As long as the parties have a concrete interest, *however small*, in the outcome of the litigation, the case is not moot." *City of Atlanta*, 164 F.4th at 860 (quoting *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307–08 (2012)) (emphasis added).

[3] As explored below, however, only the economic damages are cognizable.

Secondly, as Trausch correctly argues, a defendant's voluntary secession of its allegedly unlawful conduct "does not deprive a federal court of its power to determine the legality of the practice." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation omitted). "[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Alford. v. Walton Cnty.,* 159 F.4th 844, 853 (11th Cir. 2025) (quoting *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)). "Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends." *Id.* The standard "for determining whether a case has been mooted by the defendant's voluntary conduct is stringent." *Laidlaw*, 528 U.S. at 189. Once a defendant has voluntarily stopped its allegedly unlawful conduct following the initiation of litigation, it must be "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur" is the case rendered moot. *Id.* (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203 (1968)); "A federal court's constitutional authority cannot be so readily manipulated." *Fikre*, 601 U.S. at 240.[4]

When a government entity, rather than a private party, voluntary ceases the challenged action "there is a presumption that the government will not later resume the action," and the opposing party must show a reasonable expectation that the government will reverse course. *Alford*, 159 F.4th 844; *Djadju v. Vega,* 32 F.4th 1102, 1108 (11th Cir. 2022); That is because "cessation of the allegedly illegal conduct by government officials has been treated with more

[4] Although the action was in state court at the time Defendant filed the notice containing the waiver letter, Defendant subsequently removed the action on December 12, 2025, and so manipulation can readily be inferred. Moreover, the Florida state constitution contains similar concepts of mootness as that of the federal Constitution. *See e.g.*, *Montgomery v. Dep't of Health & Rehab. Servs.,* 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985) ("[T]he rule discouraging review of moot cases is derived from the requirement of the United States Constitution, Article III, under which the existence of judicial power depends upon the existence of a case or controversy.").

solicitude by the courts than similar action by private parties . . . Courts are more apt to trust public officials than private defendants to desist from future violations." *Troiano v. Supervisor of Elections in Palm Beach Cty., Fla.*, 382 F.3d 1276, 1283 (11th Cir. 2004)). "To determine whether a [government] defendant's voluntary cessation renders a case moot, a reviewing court should look to three factors." *Alford*, 159 F.4th at 853 (quotation omitted). "First, we examine whether "the change in conduct resulted from substantial deliberation or is merely an attempt to manipulate jurisdiction." *Id.* "Second, we ask whether 'the government's decision to terminate the challenged conduct was unambiguous, i.e., permanent and complete.'" *Id.* "Finally, we consider whether 'the government has consistently maintained its commitment to the new policy or legislative scheme.'" *Id.* These factors are not exclusive, and no single factor is dispositive on its own. *Id.*; *accord Keohane v. Fla. Dep't of Corr. Sec'y*, 952 F.3d 1257, 1268 (11th Cir. 2020).

Here, each factor points squarely against mootness. First, there is no indication that the unilateral waiver was the result of any deliberation whatsoever, demonstrating a clear intention to manipulate jurisdiction. The City granted Trausch's waiver request in a short letter, without explanation, and immediately following the appearance in the record of counsel for Plaintiff. The letter stated, that "you have requested to waive the dedication of right of way," and that "[y]our request to waive the right of way dedication is approved." FAC ¶ 151. The letter did not explain the basis for reversing course on Trausch's waiver request. *Id.* ¶ 157. This stands in sharp contrast with the difficulty required to apply for a waiver in the first place, in which (1) Trausch submitted a waiver request, (2) the City denied it one month later after "looking into [it] and discuss[ing] with the Administration," (3) Trausch requested a meeting of the review committee, during which he was accompanied by his architect, and, (4) seven months later, was his waiver request was finally rejected. *Id.* ¶¶ 113–136.

Second, with respect to whether "the government's decision to terminate the challenged conduct was unambiguous, i.e., permanent and complete."—it clearly was not. The finally-obtained waiver included a proviso stating, "Note: All building setbacks and yard requirements of the Miami 21 Zoning Ordinance shall still be measured from the zoned base building line," *Id.* ¶ 166, which Mr. Trausch alleges means that the City intends again to demand the same expanded right-of-way the next time he needs a permit for his parcel. *Id.* ¶¶ 167–68.

Third, regarding whether "the government has consistently maintained its commitment to the new policy or legislative scheme." *Id.*, nothing suggests it has, and Plaintiff alleges it has not. Plaintiff alleges the City continues to ask for the allegedly unconstitutional rights-of-way. *See Id.* ¶ 200 ("Section 54-58 continues to allow the City to make groundless, unexplained demands whereby virtually any new or expanded use of 38 NE 46th Street would require dedicating land up to the base-building-line as an expanded right-of-way.").

Compare *Alford v. Walton County*, where the Eleventh Circuit found that all three factors weighed in favor of mootness. 159 F.4th 844, 853 (11th Cir. 2025). There, the challenged ordinance "expired over five years ago by virtue of its sunset clause" which suggested that the County's voluntary cessation was not an attempt to manipulate jurisdiction. *Id.* The County also "engaged in a deliberate and unambiguous policy" that contravened the challenged action, and the County "never renewed" its challenged actions since the expiration of the ordinance. The facts here demonstrate no such finality for Plaintiff or for the City policy itself. Based upon the foregoing, the voluntary secession doctrine applies: the case is not moot.

C. Standing

The City also argues that Plaintiff does not have standing to pursue claims for injunctive relief and declaratory relief—prospective relief—because Plaintiff has not demonstrated that he intends to build another extension to his home. Likewise, the City suggests that Plaintiff lacks standing to bring a claim for compensatory damages because he has not been injured, given the waiver, and that increased construction costs and emotional distress compensation are not recoverable.

Standing is satisfied where a plaintiff can show (1) it has suffered an "injury in fact" (2) the injury is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–561. A concrete injury is one that "actually exist[s]" and is "real" rather than "abstract." *Spokeo, Inc. v. Robins,* 578 U.S. 330, 340 (2016) (quotation omitted). An actual or imminent injury, unlike a conjectural or hypothetical one, is one which has occurred, is certainly impending, or has substantial risk of occurring. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014).

Generally speaking, under the *Nollan*/*Dolan* framework that Plaintiff invokes, "the impermissible denial of a governmental benefit is a constitutionally injury." *See Koontz v. St. Johns River Water Mgmt. Dist.,* 570 U.S. 595, 607 (2013); *Megladon, Inc. v. Vill. of Pinecrest,* 661 F. Supp. 3d 1214, 1239 (S.D. Fla. 2023) (Nollan-Dolan "applies in situations like ours—where nothing has been taken."). In *Koontz*, a landowner sued after refusing to accede to a permit condition. *Id.* The government argued that there could not have been a Takings Clause violation because Mr. Koontz did not transfer property to the government. *Id*. However, the Supreme Court explained that "[e]xtortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation." *Id.* Thus, "regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Koontz*, 570 U.S. at 606.

But the City—properly so—challenges standing with respect to each form or relief requested. "Standing is not dispensed in gross." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Instead, plaintiffs must demonstrate standing on a per-claim, per-remedy basis. *Id.* Thus, whether Plaintiff has standing to pursue both prospective and retrospective forms of relief is the next inquiry.

i. Standing for Prospective Relief

A plaintiff seeking injunctive relief to prevent future injury must demonstrate that the "defendant's allegedly wrongful behavior will likely occur or continue, and that the threatened injury is certainly impending." *Laidlaw*, 528 U.S. at 190 (citation omitted); *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 409 (2013). Likewise, a plaintiff has standing to seek declaratory relief only when "there is a substantial likelihood that he will suffer injury in the future." *A&M Gerber Chiropractic LLC v. GEICO Gen. Ins. Co.*, 925 F.3d 1205, 1210–11 (11th Cir. 2019) (quotation marks omitted).

It has been recognized that for *Nollan/Dolan* claims, "securing injunctive relief is independent of the Fifth Amendment's particular remedy of just compensation" because in these types of cases, no "taking" has occurred. *Pietsch v. Ward Cnty.,* 446 F. Supp. 3d 513, 537 (D.N.D. 2020), *aff'd*, 991 F.3d 907 (8th Cir. 2021) (citing *Koontz*, 570 U.S. at 607). Thus, for example, a *Nollan/Dolan* plaintiff "is entitled to have the improper condition removed" and may sue "to invalidate the purported demand as an unconstitutional condition" without resorting to anything other than the Takings Clause. *Koontz*, 570 U.S. at 620, 634 (Kagan, J., dissenting) (agreeing with the majority on this issue).

In this case, Plaintiff fails to allege entitlement to pursue injunctive relief. The sum total of Plaintiff's allegations that he will suffer injury in the future are: "If [Plaintiff] were to need any additional land-use permit in the future, the City would again withhold that permit unless and until he dedicates an expanded right-of-way of 500 square feet." FAC ¶ 170 and that "[Plaintiff] anticipates that he will pursue further modifications to his home in the near future, even just in terms of maintaining the house as it is; and he does not wish again to be subjected to the City's abusive permitting process." *Id.* ¶ 171. Moreover, Plaintiff points to the ultimately-issued waiver letter, in which the City stated, "Note: All building setbacks and yard requirements of the Miami 21 Zoning Ordinance shall still be measured from the zoned base building line." *Id*. ¶ 166. Mr. Trausch alleges this means the City again intends to demand the same expanded right-of-way the next time he needs a permit for his parcel. *Id.* ¶¶ 167–68.

These allegations do not suffice to show standing for injunctive relief. Nothing in the operative complaint suggests that Mr. Trausch has any intention of pursuing another extension on his home. Plaintiff has expressed no meaningful intention to pursue another permit. Compare *Pietsch v. Ward Cnty.* In that case, Plaintiffs sought nominal damages and an order declaring the ordinance unconstitutional, along with an accompanying permanent injunction barring further enforcement. The district court found that plaintiffs had standing to pursue injunctive and declaratory relief for their *Nollan*/*Dolan* claim where the county effectively prevented them from subdividing their property. 446 F. Supp. 3d at 527–28. Plaintiffs alleged they forewent an opportunity to build a planned farm shop and were precluded from selling a portion of the Trust's land for future residential development. *Id.* The Court found that "these injuries are ongoing[,]" reasoning that, "[s]o long as the dedication ordinance remains on the books, the Plaintiffs will be *unable to receive approval for their plat applications*, as well as the economic benefits that follow, without dedicating property to the County." *Id.* (emphasis added). Thus, plaintiffs never got what Trausch received here—a waiver of the permit.

In this case though, where Trausch has already achieved his desired outcome and has not meaningfully alleged an intention to apply for another permit, *Pietsch* would not appear to support a holding that Plaintiff has standing to pursue the relief it seeks—an invalidation of the City's ordinance, either facially or as applied. That is because, unlike in *Pietsch*, the harm posed by the ordinance is not continuing with respect to Trausch. Nor does Trausch point to any case that would support such a holding. Accordingly, Mr. Trausch lacks standing to pursue injunctive relief.

ii. Standing for Compensatory Damages

Money damages are a different story. In the *Nollan/Dolan* context, "whether money damages are available is not a question of federal constitutional law but of the cause of action—whether state or federal—on which the landowner relies." *Koontz*, 570 U.S. at 608–09 (declining to discuss what remedies might be available for a *Nollan/Dolan* unconstitutional conditions violation either in that case or in other cases where petitioner brought his claim pursuant to a state law cause of action). In turn, Plaintiff relies on 42 U.S.C. § 1983, which "authorizes consequential damages and attorney's fees." *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1264 (11th Cir. 2025). *Doe v. Mann*, No. 605CV259ORL31DAB, 2007 WL 2028833, at *2 (M.D. Fla. July 10, 2007) ("Compensatory damages may be awarded based on physical pain and suffering caused by a defendant's violation of § 1983, in addition to any damages based on monetary loss." *citing Slicker v. Jackson,* 215 F.3d 1225, 1231 (11th Cir. 2000)). Thus, contrary to the City's contentions, economic damages are cognizable.

In this case, Mr. Trausch has demonstrated standing to pursue compensatory, and for that matter, nominal damages. Plaintiff asserts it forewent construction for over a year and will be required to pay more because of the delay in remedying the unconstitutional condition, among other financial losses. He asserts that the City's unconstitutional condition alone caused the delay, as no other permitting requirements for the planned improvement remained. Economic loss, like that alleged here, is a concrete injury. *See Craig v. Boren*, 429 U.S. 190, 194–95 (1976) (collecting cases). And financial loss resulting from a delay to an entitlement is likewise a concrete injury in this circuit. *See MSPA Claims 1, LLC v. Tenet Fla., Inc.,* 918 F.3d 1312, 1318 (11th Cir. 2019) ("The question is whether delay alone is a "concrete" injury. It is.") (holding that where plaintiff sought—and received—monetary reimbursement, plaintiff still had a concrete injury because "harm cannot be remedied by simply receiving the amount owed—it requires something more to compensate for the lost time, like interest."); *Brantley Cnty. Dev. Partners, LLC v. Brantley Cnty., Georgia*, 540 F. Supp. 3d 1291, 1303 (S.D. Ga. 2021) (finding that where plaintiff complained of an unconstitutional zoning ordinance, "[t]he delayed processing of [an] application [with the county] [] ... constitutes an injury in fact", even where plaintiff's application had not yet been formally denied) (citation omitted); *Decker v. Cnty.,* No. 5:15-CV-24-OC-30PRL, 2015 WL 12844302, at *5 (M.D. Fla. May 19, 2015) ("damages for delay are [] recoverable should a plaintiff state a viable cause of action which would allow for recovery of such damages."). Plaintiff therefore sufficiently demonstrates standing to pursue economic damages.

D. Monell claims

Through its motion, the City argues that Plaintiff has not properly alleged a practice or custom, as he has not put forth factual content showing incidents where individuals received a hearing, a compromise, and a withdrawal of a requested dedication by issuing a waiver. To the contrary, Plaintiff says "[v]ery few people have subjected themselves to this waiver process" and cites one other person as the predicate for a practice or custom. FAC ¶¶ 75–78.

A governmental entity can be held liable under 42 U.S.C. § 1983 for the actions of its employees if a plaintiff can show that the unconstitutional act at issue is a result of a policy or custom promulgated by the entity. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–91 (1978). This showing requires a plaintiff to demonstrate: "(1) that his constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation." *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (citing *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

In response to the City's *Monell* challenge, Plaintiff asserts his *Monell* action is cognizable pursuant to a *Pembauer* theory, which allows a Plaintiff to establish *Monell* liability by showing a single incident of unconstitutional activity caused by an official, unconstitutional policy. *Pembaur v. City of Cincinnati,* 475 U.S. 469, 481 (1986); *Phoenix Ridge GA TC, LP v. City of Atlanta, Georgia*, No. 24-12883, 2025 WL 831248, at *2 (11th Cir. Mar. 17, 2025). A municipality can be liable under this theory if "the decisionmaker possesses final authority to establish municipal policy with respect to the action ordered." *Pembaur*, 475 U.S. at 481. In support of its theory, Mr. Trausch contends that

> there was a final policy decision enforced against him: Officials within Miami's public works department told Mr. Trausch, and wrote within a Plan Review Comments Report, that his permit would not be issued unless he dedicate land for an expanded public right-of-way. FAC ¶¶ 92, 95. The director of the department, Juvenal Santana, authorized this decision. *Id.* ¶ 100. After Mr. Trausch e-mailed Director Santana a request for a waiver, the department's section supervisor officer responded, while copying Director Santana, writing that "[w]e looked into this one and discussed with Administration and unfortunately we're not able to waive the right-of-way dedication requirement." *Id.* ¶¶ 113, 116. Mr. Trausch then requested a hearing of a municipal review committee, which affirmed the waiver denial in a "final decision." *Id.* ¶¶ 130, 139–40. *See* Miami Code § 54-58(b) (decisions by review committee "shall be final").

The City does not question whether decision makers here final policy had making authority, and so the Court accepts these allegations as true.[5]

The City, however, contends that because the ordinance was allegedly improperly applied, plaintiff's injuries were not *caused* by the written policy itself, which means the decision maker was not enforcing the City's official policy.[6] Thus, the City contends that this single-policy theory is not cognizable under *Monell.* This argument is hardly persuasive to refute Plaintiff's single policy theory. The City points to no requirement that an official unconstitutional policy must be enshrined in a written ordinance itself.[7] Conversely, Plaintiff more than plausibly alleges that the City of Miami-Dade has an internal, official policy where, every time someone applies for a permit to make an extension on their home, and it has been determined that there is undedicated right-of-way, then—according to Director Santana—"the right-of-way would be required . . . . We'll always ask for the dedication." FAC ¶ 43. According to the FAC, this has been the City's policy and practice for years, and the City has subjected hundreds of people to this policy. *Id.* ¶¶ 47–48. When asked if there had been other properties subjected to the dedication, Director Santana

---

[5] Although, as the City acknowledges in its supplemental brief, the Court could have decided—as a factual matter on a motion to dismiss—whether an official had final policymaking authority where a plaintiff relies on the single decisions. *See Phoenix Ridge GA TC, LP v. City of Atlanta, Georgia*, No. 24-12883, 2025 WL 831248, at *3 (11th Cir. Mar. 17, 2025). It has had no occasion to do so.

[6] The ordinance at issue, Section 54-58(a), states that a dedication requirement may be demanded in the first instance only if (1) the land is located "within the city's officially established right-of-way" and (2) the City first determines that the demand reflects reasonably necessary impact mitigation. FAC ¶¶ 33, 36–38. Meanwhile, Section 54-58(b) states that any waiver decision should be based on whether and to what extent the applicant's development will burden city services. *Id.* ¶ 62. Mr. Trausch has alleged that the City is not heeding those requirements. *Id.* ¶¶ 34–35, 39–41, 63.

[7] The City cites to *Knight through Kerr v. Miami-Dade Cty.*, 856 F.3d 795, 819 (11th Cir. 2017), but that case does not comment on what is required to make a single policy showing under *Monell*, pursuant to the *Pembauer* approach of alleging a single decision caused by an official policy. And to the extent that Plaintiff invokes *Kerr* to argue that Plaintiff has not met his burden in showing a *substantive* constitutional violation—arguing that a violation of the internal policy would not form a constitutional violation—*Kerr* does not provide the support the City needs. The learning from *Kerr* is not that a violation of internal policy never generates a constitutional violation, it's that a violation of internal policy does not *automatically* translate to a Fourteenth Amendment violation. And in this case, unlike in *Kerr*, Plaintiff has alleged that the violation of the ordinance generated a Fourteenth Amendment violation.

responded, "Yes, a lot." At this early stage of the litigation and construing all allegations in Plaintiff's favor as required on a motion to dismiss, and in the absence of convincing arguments to the contrary, Plaintiff has sufficiently alleged a constitutional violation under a *Monell* theory based upon a single decision of an official empowered to make the decision, pursuant to an allegedly official and unconstitutional policy.

III. CONCLUSION[8]

For the foregoing reasons, it is **ORDERED AND ADJUDGED** that the Motion to Dismiss [DE 15] is **GRANTED IN PART** as follows:

1. The requests for injunctive and declaratory relief is **DISMISSED**;
2. The remaining counts and forms of relief may proceed.
3. Defendant shall file its Answer by April 23, 2026.

DONE AND ORDERED in Chambers at Fort Lauderdale, Florida, this 9th day of April, 2026.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to

Counsel of record

[8] Defendant's remaining arguments are too skeletal to be meaningfully entertained. As this Court has stated, "'the onus is upon the parties to formulate arguments.'" *Hewlett-Packard Co. v. CP Transp., LLC*, 2012 WL 4795766, *2 (S.D. Fla. Oct. 9, 2012) (quoting *Resolution Trust Corp. v. Dunmar Corp*., 43 F.3d 587, 599 (11th Cir. 1995)). "When parties do not fully develop their arguments and support them with citation to legal authority, the burden upon the Court is improperly increased." *Hewlett-Packard Co.,* at *2. Thus, "'[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones.'" *Id.* (quoting *McPherson v. Kelsey*, 125 F.3d 989, 995-996 (6th Cir. 1997)).