AGENDA BACK UP MATERIALS FOR DISCUSSION RE: SIT LIE ORDINANCE

MEMORANDUM

TO: City Commission

FROM: Robert M. Fournier, City Attorney RMF

RE: Proposal for "Sit Lie" Ordinance to prohibit sitting and lying on sidewalk within designated zone during designated times

DATE: September 13, 2021

I. INTRODUCTION

At the regular City Commission meeting of June 7, 2021, the Commission discussed the possibility of adopting an ordinance that would prohibit sitting and lying on public sidewalks within a designated area or zone during certain specified hours. The item was placed on the agenda by Mayor Brody. However, there was no back up information in the agenda package, so the City Commission did not have the ability to reference the current City ordinance intended to address obstruction of public sidewalks. After public testimony and discussion, the City Commission requested that a sample "sit lie" ordinance be drafted for review and brought back for discussion (without setting for public hearing) together with other back up information that would be relevant to the discussion, including the currently existing ordinance pertaining to obstruction of sidewalks.

II. HISTORY OF SIDEWALK OBSTRUCTION ORDINANCE

For decades prior to April 6, 2015, when the current ordinance was adopted, the City's "no obstruction" ordinance provided as follows:

"Sec. 30-3. Obstructing pedestrian or vehicular traffic.

It shall be unlawful for any person to place or attempt to place or cause to be placed, himself or herself or any object of any nature or description upon or above any public way, sidewalk, footpath or other area used by the public for pedestrian or vehicular traffic in such a manner as to impede or interfere with the flow of pedestrian or vehicular traffic."

After an individual was cited for a violation of the above quoted prior ordinance in 2014, the Constitutional validity of the ordinance was challenged in County Court. A copy of the Motion to Dismiss the citation alleging that the ordinance was unconstitutional is provided in the agenda back up materials. The two major reasons that the former ordinance was alleged to be unconstitutional were that: (1) the Ordinance impaired the fundamental right to travel guaranteed by the federal and state constitutions; and (2) the Ordinance was void for vagueness because of its failure to define "impede or interfere with the flow of (pedestrian) traffic." The City Attorney's office was more concerned about the later allegation than the former.

For reasons that I do not presently recall, (possibly because the defendant left the jurisdiction or the state dropped the charges) the Motion to Dismiss was not heard or ruled on by the court. However, the experience prompted the City Attorney's office to recommend that the ordinance be amended to better withstand a potential future legal challenge based on the allegation that the ordinance is void because it is unconstitutionally vague.

III. CURRENT SIDEWALK OBSTRUCTION ORDINANCE

On April 6, 2015, the City Commission amended Section 30-3 of the City Code by the adoption of Ordinance 15-5131. The 2015 ordinance addressed the potential for a subsequent challenge to Sec. 30-3 of the Code on the basis that it was unconstitutionally vague after the above referenced 2014 challenge. An ordinance will be held unconstitutional and void "on its face" (i.e. in all applications), if it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." A plaintiff asserting that an ordinance is void for vagueness must show either: (1) the ordinance fails to give fair notice of the conduct it prohibits; or (2) the ordinance lacks enforcement standards such that it could result in arbitrary or discriminatory enforcement.

As noted above, the prior version of Sec. 30-3, in effect in 2014, prohibited conduct that would "impede or interfere with the flow of pedestrian traffic." Ordinance 15-5131 changed the description of the prohibited behavior to "block, hinder or obstruct *unreasonably* the free passage of pedestrians . . ." In *State of Florida v. Josh Leroy Kemp, Jr.,* 429 So.2d 822, (Fla. 2nd DCA, 1983), the Florida Second District Court of Appeal found that a Lee County ordinance prohibiting this same behavior was not unconstitutionally vague. As to the first basis for a vagueness challenge noted at the end of the last paragraph above, the court found that there was fair notice of the conduct prohibited by the ordinance because the ordinance required

either an initial warning from a law enforcement officer or posting of signs. As to the second basis for a vagueness challenge noted in the preceding paragraph, the court found that the ordinance did not lack enforcement standards that could result in arbitrary or discriminatory enforcement because the restriction of enforcement to blockage, hindering or obstruction that is *unreasonable* was a limitation on the unfettered discretion of police officers to enforce in an arbitrary or discriminatory manner. The court noted that the use of the word "unreasonable" in the context of the ordinance represented "a targeted effort by the County to control (only) conduct which justifiably warrants concern." Consequently, I have been comfortable with the language in the current ordinance because it has insulated the City from any facial challenges based on the contention that the ordinance is unconstitutionally vague.

Since April of 2015, when Sec. 30-3 was amended to prohibit blocking sidewalks unreasonably, the number of citations issued for violating the ordinance is zero. I have spoken to former Deputy Chief of Police, now Deputy City Manager, Pat Robinson, about the reasons for the lack of citations. He noted a possible perception among the officers that a complete obstruction of the sidewalk is required before a citation could be issued. Other possible reasons might include a general relaxation of enforcement in favor of initially educating and encouraging alternative lawful behavior. There is also the possibility that some individuals who might otherwise have been cited were willing to move if requested to do so.

Another way the former version of Sec. 30-3 was amended by Ordinance 15-5131 was to make it applicable only to *persons* who were obstructing the sidewalk. The reference to "objects of any nature" (i.e. personal property) obstructing the sidewalk was removed and is now addressed separately in another section of the City Code. Also, the current ordinance applies to individuals who are standing in addition to sitting and lying down.

IV. PROPOSED "SIT LIE" ORDINANCE

The term "sit lie" ordinance is generally used and understood to mean a municipal ordinance which prohibits sitting or lying (and sometimes sleeping) on a public sidewalk or in other public places as opposed to obstructing pedestrians on the sidewalk. These ordinances have been adopted more frequently in west coast cities in states such as Washington, Oregon and California, all within the jurisdiction of the U.S. Ninth Circuit Court of Appeals. However, many of these cities had situations where blocks of their public sidewalks were almost totally covered with people reclining on blankets, in sleeping bags and in tents. However, many of the

ordinances in these cities have not survived or may not survive in the wake of the Ninth Circuit decision in *Martin v. City of Boise*, which is discussed in Section IV.E below.

In Florida, "site lie ordinances" have not been as prevalent as in cities on the west coast. In a search of 25 Florida municipalities, three were found to have ordinances that could accurately be described as "sit lie" ordinances. These three cities are Orlando, St. Petersburg and Clearwater. The Orlando prohibition applies in a designated downtown zone from 7:00 am until 10:00 pm on weekdays and from 7:00 am until 1:00 am on Fridays and Saturdays. The St. Petersburg ordinance applies in a zone called the "prohibited area" during "daylight hours." The Clearwater ordinance applies in certain zones where the City has made public improvements at significant expense between the hours of 7:00 am and 10:00 pm.. The sample draft Sarasota ordinance would apply between 10:00 am and midnight. However, these hours are of course subject to revision as desired by the City Commission.

Because there is a reasonable probability that the legality of any "sit lie" ordinance that might be adopted by the City of Sarasota could be challenged in court, some of the arguments that have been made in cases challenging the legality of such ordinances are summarized below.

A. Lack of proper municipal purpose

Generally speaking, the purposes of a sit lie ordinance are typically to maintain and promote the economic vitality of a particular business district, (sometimes in an area with a tourist dependent economy) and to promote public safety, which are both valid municipal purposes to enact legislation. Proponents of these ordinances say that the impact of such an ordinance is to make the designated zone more welcoming to visitors and shoppers, which helps local businesses. However, opponents will claim that the ordinance is not motivated by economic considerations or by a desire to ensure that public sidewalks are passable, but rather by a desire to limit the visibility of a specific segment of the population, even if they are not obstructing pedestrians.

Unfortunately, the fact that there have been no citations issued for violation of the existing no obstruction ordinance might be used to argue that there is no basis for enactment of a sit lie ordinance because there is actually no problem to be addressed. This is one reason that public testimony as to the need for the ordinance would be especially important if an ordinance were adopted.

B. Equal Protection of the law

Detractors may argue that the ordinance disproportionately impacts persons experiencing homelessness. A potential plaintiff could argue that the City enforces the ordinance selectively against the homeless and that the homeless population is intentionally targeted and treated differently from non-homeless persons through the City's enforcement actions. A selective enforcement claim can be made if can be shown that a municipal defendant based enforcement decisions on an arbitrary classification, (i.e. homelessness) which will give rise to an inference that the City "intended to accomplish some forbidden aim against that group through selective application of the laws." Such a claim may need to wait until there is a record of citations issued for violation of the ordinance.

C. First Amendment - Freedom of Speech

The First Amendment protects not only expression via the spoken word or what appears in print. The First Amendment also protects symbolic speech in the form of non-verbal activities or conduct that is "sufficiently imbued with elements of communication" such that it will be understood by those who observe it because of the surrounding circumstances. The City of Seattle ordinance survived a challenge alleging that the ordinance was facially unconstitutional under the First Amendment. (A facial challenge to an ordinance alleges that the whole ordinance is invalid and that there is no conceivable way it can be applied in a constitutional manner under any circumstances. This is contrasted with an "as applied" challenge, which alleges that the ordinance was unlawfully applied in a particular situation.)

The plaintiffs in the suit against the City of Seattle alleged that sitting on the sidewalk could constitute expressive conduct, such as when a homeless person assumed a sitting posture to convey a message of passivity toward solicitees. The plaintiffs might have argued that the Seattle ordinance was unconstitutional *as applied* to a particular instance of sitting on the sidewalk for an expressive purpose (which is the reason for the exception found in Section 30-26(c)(7) of the sample draft Sarasota ordinance provided) but instead they brought a facial challenge. The court did not seem impressed, finding that the fact that sitting might possibly constitute expressive conduct in some situations was not sufficient to support a facial challenge to the Seattle ordinance based on the First Amendment. (I believe there have been some situations when individuals were instructed to avoid the application of these ordinances by holding a sign while sitting.)

D. Fourth Amendment - Unreasonable Search and/or Seizure

There is case law to the effect that a person can be "seized" in violation of the Fourth Amendment if a situation is presented in which a reasonable person would not feel free to leave an encounter with the police. Arguments have been made that the converse can be a violation as well, that is that the Fourth Amendment can also be violated if a reasonable person would not feel free to remain somewhere because of some official action. The Seventh Circuit Court of Appeals appears open to the idea that denial of freedom to remain in a place can be a "seizure." (See, *Kernats v. O'Sullivan,* 35 F.3d 1171, 1177-78 (7th Cir. 1994). Likewise, the federal Sixth Circuit, in a case out of Eastpointe Michigan, has held that the Fourth Amendment can encompass the right to remain in any public place. However, the Eleventh Circuit (which includes Florida) has rejected this argument, making it less likely that it would be raised.

E. Eighth Amendment - Cruel and Unusual Punishment

The "cruel and unusual punishment" clause of the Eighth Amendment can be applied in three ways. First, it limits the type of punishment the government may impose. Second, it proscribes punishment that is grossly disproportionate to the severity of the crime. Third, it places substantive limits on what the government may criminalize. It is the third application of the clause that is pertinent to a challenge to a sit lie ordinance.

A prospective plaintiff could cite case law to support the proposition that the Eighth Amendment prohibits a state or local government from punishing an involuntary act or condition if it is an unavoidable consequence of one's status or being. The argument will be that the conduct made unlawful by a sit lie ordinance is involuntary and inseparable from status and that they are one and the same, given that people are biologically compelled to rest whether by sitting, lying or sleeping. (This argument is more persuasive in a challenge to an ordinance in which the designated prohibition zone is a larger area or an entire City.)

In the *Martin v. City of Boise* case referenced above the Ninth Circuit federal court of appeals held that the Eighth Amendment prohibits the imposition of penalties for sitting, sleeping or lying outside on public property for homeless individuals who cannot obtain shelter. More specifically, the court held as long as there are a greater number of homeless individuals in a jurisdiction than the number of available beds in shelters in a jurisdiction, that the jurisdiction "cannot prosecute homeless individuals for involuntarily sitting, lying and sleeping in public." (This

overlooks the probability that even if the number of available beds in a jurisdiction exceeds the number of homeless people, some homeless individuals would still not go to a shelter.) The Boise decision is not currently binding on Sarasota because the City is outside the jurisdiction of the Ninth Circuit Court of Appeals, but it is an argument that still might be made in the event a sit lie ordinance were adopted and subsequently challenged.

F. Substantive Due Process

In order to prevail in a substantive due process violation claim, a plaintiff has to show that the challenged ordinance effects a governmental deprivation of life, liberty or property that is essentially arbitrary and unreasonable. In the context of a sit lie ordinance, the claim would be that a plaintiff was deprived of his or her "liberty" interest to remain free to roam or to remain in any public place for arbitrary reasons. In the challenge to the City of Seattle sit lie ordinance, the plaintiffs alleged a deprivation of their liberty interest and that the deprivation was arbitrary and without a rational basis in the law because its real intent was to "drive unsightly homeless people from the downtown commercial areas."

In response, however, the City of Seattle was able to put sufficient evidence into the record that its ordinance was a legitimate response to substantial public concerns. The City's argument that the downtown area was becoming dangerous to pedestrian safety and to economic vitality when individuals were blocking the public sidewalks "causing a cycle of decline as residents and tourists were going elsewhere to meet, shop and dine" was supported by the record, hence not arbitrary.

V. CONCLUSION

The City Commission has the legal authority to adopt a sit lie ordinance if the Commission desires to do so similar to other Florida municipalities such as Clearwater, St. Petersburg and Orlando. If so, I would recommend that the ordinance be limited to a specified designated zone or area with a higher level of pedestrian and commercial activity than other areas. The City Commission should be aware that such an ordinance might result in complaints from business owners located in areas excluded from the no sit lie zone. Some may complain that their area should be included in the no sit lie zone. Others may complain that adoption of the ordinance results in more people sitting or lying on the sidewalks in their areas outside of the no sit lie zone.

Presently, I am inclined to believe that a City Commission decision on whether to adopt a sit lie ordinance should be deferred for at least another six to nine months to see how the current city ordinance will work out if appropriately applied and enforced. The Police Department and Police Legal Advisor Joe Polzak should have the opportunity to implement training focused on the current ordinance. It is only by utilizing the ordinance that the City will have the chance to learn the circumstances under which the courts will consider the passage of pedestrians to be blocked, hindered or obstructed in an unreasonable manner.

Situations will arise when it can be credibly argued that someone lying or sitting on the sidewalk is unreasonably blocking, hindering or obstructing pedestrians. Finally, there has been a change in circumstances because Sarasota police officers are now equipped with body cameras. Consequently, the interaction between law enforcement officers and persons allegedly violating the ordinance can now be captured and recorded by the cameras. So, in addition to hearing testimony, a judge will be able to view the actual circumstances in which a citation was issued.

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Ordinance No. 21-XXXX

AN ORDINANCE OF THE CITY OF SARASOTA AMENDING THE SARASOTA CITY CODE, CHAPTER 30, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, ARTICLE I, BY ADDING A NEW SECTION TO BE KNOWN AND ENTITLED AS SECTION 30-26, "SITTING OR LYING DOWN WITHIN PUBLIC RIGHT-OF-WAYS IN PEDESTRIAN ACTIVITY ZONE," BY MAKING IT UNLAWFUL TO SIT OR LIE UPON A PUBLIC SIDEWALK AFTER WARNING, AS MORE FULLY SPECIFIED HEREIN; MAKING FINDINGS; PROVIDING FOR SEVERABILITY; REPEALING ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR READING BY TITLE ONLY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, public streets and sidewalks are constructed and maintained for the primary purposes of enabling pedestrians and lawfully permitted vehicles to safely and efficiently move about from place to place, facilitating deliveries of goods and services and providing the public with convenient access to goods and services; and,

WHEREAS, such public streets and sidewalks can be prone to congestion, especially in the downtown core of the City where there is a higher level of pedestrian activity; and,

WHEREAS, except in places provided for sitting or lying and where reasonably necessary, sitting or lying on public sidewalks in the downtown Sarasota retail business district interferes with the primary purpose of allowing the public to safely and efficiently move about from place to place, thus deterring others from frequenting the downtown retail business district and discouraging others from patronizing downtown shops, restaurants, businesses and entertainment venues, thereby undermining the essential economic viability of downtown Sarasota; and,

WHEREAS, the City Commission seeks to maintain a safe and orderly environment within public rights-of-way in downtown Sarasota that is conducive to the conduct of business and to retail commercial activity and that is inviting to patrons of business establishments, including both residents and visitors; and,

WHEREAS, maintaining pedestrian activity and authorized commercial activity on public sidewalks is essential to public safety and sitting or lying in public streets can also endanger public safety, especially for the elderly, disabled and vision impaired, and be otherwise injurious to the public welfare; and,

WHEREAS, sitting or lying down is not the customary use of public rights-of-way including public sidewalks; and,

WHEREAS, there are numerous locations in downtown Sarasota and elsewhere, other than the pedestrian activity zone designated by this ordinance, in which individuals can sit or lie down; and,

WHEREAS, the City Commission recognizes the need to regulate pedestrian traffic on public ways, streets, sidewalks and walkways in the interest of public safety; and,

WHEREAS, the City Commission finds it necessary to prohibit occupation of those public areas in a manner which inhibits pedestrians from safely and expeditiously utilizing those public ways, streets, sidewalks and walkways; and,

WHEREAS, the City Commission recognizes that the City has a compelling interest in complying with the requirements of the Americans with Disabilities Act which include sidewalk access with minimal obstructions for those with disabilities; and,

WHEREAS, parking meters have been installed in downtown Sarasota in areas of concentrated pedestrian activity due to concentrated retail business activity (including restaurants which are classified as retail establishments by the City Zoning Code) along Main Street east of Washington Boulevard and along Palm Avenue; and,

WHEREAS, the City Commission finds that it is in the furtherance of the public health, safety, welfare and common good, to amend Chapter 30, Article I, to add Section 30-26, as set forth herein.

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. The Code of the City of Sarasota; Chapter 30, Streets, Sidewalks and Other Public Places, Article I, In General is hereby amended by the addition of a new Section 30-26 to be entitled " ", which shall provide as follows: (All text shown below is new additional text.),

"Sec. 30-26. Sitting or lying down within the public right of ways in pedestrian activity zone

(a) ***Pedestrian Activity Zone.*** There is hereby designated an area in downtown Sarasota to be known as the Pedestrian Activity zone. Said zone shall consist of the public right of way of Main Street from U.S. Highway 41 on the west to U.S. Highway 301 (Washington Boulevard) on the east and the public right of way of Palm Avenue from Cocoanut Avenue on the north to Ringling Boulevard on the south.

(b) ***Prohibited Behavior.***

(1) It shall be unlawful for any person to sit or lie down upon the right-of-way, including the sidewalk, located between the curb line or the edge of the pavement of a roadway and the adjacent property line of privately or publicly owned properties, within the designated Pedestrian Activity Zone or upon a blanket, sleeping bag, chair, stool, or any other object not permanently affixed upon such area, between the hours of 10:00 am and midnight.

(2) No person shall be cited for a violation of Section 30-26(b)(1) above for a first violation unless the person continues to engage in conduct prohibited by that section after having been (a) notified by a law enforcement officer that the conduct violates Section 30-26(b)(1) and (b) provided an opportunity to relocate to an area where sitting or lying down would be lawful.

(3) It shall be a violation of Section 30-26(b)(1) for any person who has previously violated that section and who has received notice pursuant to Section 30-26(b)(2) to commit a second or subsequent violation within the designated Pedestrian Activity Zone.

(c) ***Exemptions.*** Persons in the following situations shall be exempt from the prohibitions of Section 30-26(b), unless any such exemption creates and/or causes a hazardous condition or threatens public safety:

(1) ***Medical Emergency.*** A person sitting or lying in or upon a public right-of-way because of a medical emergency is exempted from the prohibitions of Section 30-26(b) until the resolution of the medical emergency.

(2) ***Permitted Event.*** A person sitting or lying in or upon a public right-of-way because the person is attending a permitted event in the City, such as but not limited to parades, festivals, assemblies or concerts is exempt from the prohibitions of this Section 30-26(b) during his or her attendance at said event.

(3) ***Government Agents.*** A person who is an agent of a government entity or a person or number of persons acting pursuant to authority or direction from a government agent are exempted from the prohibitions of Section 30-26(b).

(4) **Seating supplied by public agencies.** A person utilizing an object supplied by the City or by another public agency in the manner it was intended, such as sitting on a bench or a chair.

(5) **Mobile seating.** A person sitting or lying in or on a wheelchair, a baby carriage, stroller or any other object or motor vehicle or other vehicle in order to move about.

(6) **Sidewalk Café.** A person who is sitting down while patronizing a sidewalk café which has a valid sidewalk café permit from the City while seated within the permitted area.

(7) **Expressive Activity.** A person sitting or lying down while engaged in expressive activity protected by the First Amendment when accompanied by incidents of speech such as signs or literature explaining the expressive activity.

(8) **Public Transportation.** A person sitting at a bus stop or trolley stop while waiting for public transportation.

Nothing within the exceptions enumerated in subsections (1) through (8) above shall be construed to authorize any conduct that is otherwise prohibited by statute or by ordinance.

(d) Posted Notice. Upon the affirmative vote of the City Commission, the City may post, or cause to be posted, notice of the prohibitions of Section 30-26(b)(1) in City right-of-way within the Pedestrian Activity Zone determined, by the City, to have heavy pedestrian traffic utilizing said right-of-way. Said notice shall consist of signage notifying the public that the prohibitions of Section 30-26(b)(1) thereby apply in the posted right-of-way. Said signage shall comply with the following requirements:

(1) The signage shall be readable to pedestrians traveling in or upon the right-of-way.

(2) The signage shall be prominently displayed in the right-of-way where the prohibitions of Section 30-26(b)(1) apply.

(3) The signage shall publish the prohibitions of Section 30-26(b)(1) as follows; "no sitting or lying on the public right-of-way or sidewalk between 10:00 am and midnight."

(4) The signage shall cite this Ordinance

Section 2. It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be

deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 3. Ordinances in conflict herewith are hereby repealed to the extent of such conflict. The City Commission specifically finds that no portion of Ordinance 15-3151, codified as Section 30-3 of the Sarasota City Code, is in conflict with the provisions hereof and that no provision of said Section 30-3 is repealed by the adoption of this Ordinance.

Section 4. This ordinance shall take effect immediately upon second reading.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this ____ day of _____, 2021.

PASSED on second reading and finally adopted this ____ day of _____, 2021.

CITY OF SARASOTA, FLORIDA

_____
Hagen Brody, Mayor

ATTEST:

_____
Shayla Griggs
City Auditor and Clerk

_____ Mayor Hagen Brody

_____ Vice Mayor Erik Arroyo

_____ Commissioner Jen Ahearn-Koch

_____ Commissioner Liz Alpert

_____ Commissioner Kyle Scott Battie

cityatty/ordinances/21-XXXX(sit.lie.sidewalk)/rmf/lg/09-13-21

Ordinance No. 15-5131

AN ORDINANCE OF THE CITY OF SARASOTA AMENDING THE SARASOTA CITY CODE, CHAPTER 30, STREETS, SIDEWALKS AND OTHER PUBLIC PLACES, ARTICLE I, SECTION 30-3, "OBSTRUCTING VEHICULAR OR PEDESTRIAN TRAFFIC," BY MAKING IT UNLAWFUL TO OBSTRUCT FREE PASSAGE IN OR UPON PUBLIC RIGHTS OF WAY AFTER WARNING, AS MORE FULLY DESCRIBED HEREIN; MAKING FINDINGS; PROVIDING A STATEMENT OF PURPOSE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR READING BY TITLE ONLY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Sarasota has a significant governmental interest in vehicular and pedestrian traffic safety; and,

WHEREAS, the City Commission recognizes the need to regulate pedestrian traffic on public ways, streets, sidewalks and walkways in the interest of public safety; and,

WHEREAS, the City Commission finds it necessary in the interests of public safety to prohibit occupation of those public areas in a manner which inhibits pedestrians from safely and expeditiously utilizing those public ways, streets, sidewalks and walkways; and,

WHEREAS, the City Commission recognizes that the City has a compelling interest in complying with the requirements of the Americans with Disabilities Act which include sidewalk access with minimal obstructions for those with disabilities; and,

WHEREAS, the City Commission seeks to maintain a safe, orderly and pleasant environment on public property and public rights-of-way; and,

WHEREAS, this ordinance is intended to regulate conduct for the purpose of promoting pedestrian and vehicular safety; and,

WHEREAS, Section 30-3 of the Sarasota City Code prohibits the interference with the flow of pedestrian or vehicular traffic on public ways, streets, sidewalks and walkways; and,

WHEREAS, it has come to the attention of the City Commission that Section 30-3, as currently enacted, may be construed to prevent utilization of those public areas for bonafide, legal purposes; and,

WHEREAS, the City Commission finds that it is in the furtherance of the public health, safety, welfare and common good, to amend Chapter 30, Article I, Section 3, as set forth herein; and,

WHEREAS, the City Commission recognizes the holding of the Florida Second District Court of Appeal in State v. Kemp, 429 So.2d 822, (FLA 2DCA, 1983), where an ordinance of Lee County, Florida, similar to Sec. 30-3, as amended herein, was determined by the Court to be constitutionally valid; and,

WHEREAS, the City Commission recognizes the holding of the United States Supreme Court in McCullen v. Coakley, 134 S.Ct. 2518, at 2535 (2014), that "ensuring public safety and order, promoting the free flow of traffic on streets and sidewalks, [and] protecting property rights" are legitimate and significant government interests; and,

WHEREAS, the City Commission recognizes the holding of the United District Court for the Middle District of Florida, Fort Myers Division, in Minahan v. City of Fort Myers, 2014 WL 7177998 (2014), where the Court concluded that a city ordinance regulating conduct that "hinders or impedes' the "free and uninterrupted passage of vehicles, traffic or pedestrians" promotes a substantial government interest and is "not broader than necessary to promote the City's interest in the free flow of traffic on streets and sidewalks."

NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF SARASOTA, FLORIDA:

Section 1. The Code of the City of Sarasota; Chapter 30, Streets, Sidewalks and Other Public Places, Article I, In General, Section 30-3. Obstructing Pedestrian or Vehicular Traffic is hereby amended as follows: (New text is shown by underline. Deleted text is shown in ~~strike through~~ format.),

"Sec. 30-3. ~~Obstructing pedestrian or vehicular traffic.~~

~~It shall be unlawful for any person to place or attempt to place or cause to be placed, himself or herself or any object of any nature or description upon or above any public way, sidewalk, footpath or other area used by the public for pedestrian or vehicular traffic in such a manner as to impede or interfere with the flow of pedestrian or vehicular traffic."~~

Obstructing free passage in or upon public rights-of-way after warning.

(a) ***Purpose.*** It is the intent of this section to eliminate the obstruction of free passage in or upon a public right-of-way, whether such obstruction results from the manner in which a person or number of persons stand, sit or lie in or upon said right-of-way.

(b) ***Prohibited Behavior.***

(1) It shall be unlawful for any person or any number of persons to stand, sit, or lie in or upon any City right-of-way, to include but not limited to any public sidewalk, street, curb, crosswalk, walkway area, median or that portion of private property utilized for public use, so as to block, hinder or obstruct unreasonably the free passage of pedestrians or vehicles thereon; after first being warned by a law enforcement officer of the prohibition of this section and requested by the law enforcement officer to move or relocate so as to cease blocking, hindering or obstructing free passage theron, or where a "no obstructing free passage" sign or signs have been posted.

(2) It shall be unlawful for any person or any number of persons to stand, sit, or lie in or upon any City right-of-way, to include but not limited to any public sidewalk, street, curb, crosswalk, walkway area, median or that portion of private property utilized for public use, so as to block, hinder or obstruct unreasonably the free access to the entrance of any building open to the public; after first being warned by a law enforcement officer of the prohibition of this section and requested by the law enforcement officer to move or relocate so as to cease blocking, hindering or obstructing free access to the entrance of a building open to the public, or where a "no obstructing free passage" sign or signs have been posted.

(c) ***Exemptions.*** The following situations shall be exempt from the prohibitions of Section 30-3(b), unless any such exemption creates and/or causes a hazardous condition or threatens public safety:

(1) ***Medical Emergency.*** A person or number of persons standing, sitting or lying in or upon any public right-of-way because of a medical emergency are exempted from the prohibitions of Section 30-3(b) until the resolution of the medical emergency.

(2) ***Permitted Event.*** A person or number of persons standing, sitting or lying in or upon any public right-of-way because they are attending a permitted event in the City, such as but not limited to parades, festivals, assemblies or concerts are exempted from the prohibitions of this Section 30-3(b) during their attendance at said event.

(3) ***Government Agents.*** An agent or agents of a government entity or a person or number of persons acting pursuant to authority or direction from a government agent are exempted from the prohibitions of Section 30-3(b).

(d) **Posted Notice.** Upon the affirmative vote of the City Commission, the City may post, or cause to be posted, notice of the prohibitions of Section 30-3(b) in any City right-of-way determined, by the City, to have pedestrian traffic utilizing said right-of-way. Said notice shall consist of signage notifying the public that the prohibitions of

Section 30-3(b) thereby apply in the posted right-of-way. Said signage shall comply with the following requirements:

(1) The signage shall be readable to pedestrians traveling in or upon the right-of-way.

(2) The signage shall be prominently displayed in the right-of-way where the prohibitions of Section 30-3(b) apply.

(3) The signage shall publish the prohibitions of Section 30-3(b) as follows: "no standing, sitting or lying so as to unreasonably block, hinder or obstruct free passage in this right-of-way."

(4) The signage shall cite this Ordinance.

Section 2. It is hereby declared to be the intention of the City Commission that the sections, paragraphs, sentences, clauses and phrases of this Ordinance shall be deemed severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance is declared unconstitutional or otherwise invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections hereof.

Section 3. Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall take effect immediately upon second reading.

PASSED on first reading by title only, after posting on the bulletin board at City Hall for at least three (3) days prior to first reading, as authorized by Article IV, Section 2, Charter of the City of Sarasota, Florida this 16th day of March, 2015.

PASSED on second reading and finally adopted this 6th day of April, 2015.

CITY OF SARASOTA, FLORIDA

Willie Charles Shaw, Mayor

ATTEST:

Pamela M. Nadalini, MBA, CMC
City Auditor and Clerk

Yes	Willie Charles Shaw, Mayor
No	Susan L. Chapman, Vice Mayor
Yes	Commissioner Suzanne Atwell
Yes	Commissioner Eileen Walsh Normile
No	Commissioner Stan Zimmerman

cityatty/ordinances/15-5131(obstruct.free.passage)/rmf/lg/04-07-15

MEMORANDUM

TO: City Commission

FROM: Robert M. Fournier, City Attorney RMF

RE: Proposed Ordinance 15-5131
Responses to comments made on first reading

DATE: March 27, 2015

1. Comment: The proposed ordinance would violate rights guaranteed by the First Amendment. Summary of Response: Disagree. Recommendation is that no changes to the ordinance are required to safeguard the exercise of First Amendment rights. [*See, Minihan v. City of Ft. Myers* 2014 WL 7177998]

The question was asked as to whether a "sit in" could violate the proposed ordinance. The answer is yes, it could, if the "sit in" were conducted in such a way so as to block the entrance to a building or to unreasonably obstruct the passage of the public over the public right of way. Local governments are allowed to place reasonable "time place and manner" restrictions on the exercise of First Amendment rights in a traditional public forum (i.e. the public right of way); provided that such restrictions are content neutral, allow alternative channels for communication and are narrowly tailored to serve a significant governmental objective. This ordinance could easily pass this test under the standard known as "intermediate (judicial) scrutiny."

2. Comment: The word "unreasonably" utilized in the context of the phrase "so as to block, hinder or obstruct unreasonably" should be deleted or defined. Summary of Response: Disagree. Recommendation is to retain the word "unreasonably" and to leave the word undefined in light of the holding in *State v. Kemp*, 429 So. 2d 822 (Fla. 2nd DCA 1983).

In the *Kemp* case cited above, the Florida Second District Court of Appeal found that a Lee County ordinance prohibiting standing, sitting or lying upon a public sidewalk "so as to hinder or obstruct unreasonably" the free passage of pedestrians was not unconstitutionally vague or overbroad *on its face*. The court perceived the use of the word "unreasonably" as limiting the scope of the conduct that would constitute a violation and noted approvingly that this limitation did not give the police unfettered discretion, which might have encouraged arbitrary

enforcement. The *Kemp* case presented a situation in which it was alleged that the ordinance was *facially* unconstitutional as distinguished from unconstitutional *as applied.*

At the public hearing on first reading it was argued that it is not possible to interfere with the flow of pedestrian traffic in a reasonable way. But, actually it is. If someone walking along a sidewalk meets a friend by chance and they stand in the middle of the sidewalk talking for five minutes, that would be an obstruction of pedestrian traffic. However, most people would likely feel that it was not an unreasonable obstruction. Whether an obstruction is "unreasonable" or not and thus a violation of the ordinance will be determined on a case by case basis depending on the particular facts and circumstances of each case. If a law enforcement officer is too zealous about issuing a citation, there could well be a finding that the obstruction was reasonable under the circumstances and not a violation of the ordinance.

The only way to eliminate officer discretion in the context of such an ordinance is to provide a measurable standard such as to make it a violation only if more than 50% of the sidewalk is blocked or more than 60% or whatever the "cut off" might be. On the other hand, to delete the word "unreasonably" would leave the ordinance open to a vagueness challenge because it would be argued that it applied to all citizens present on public sidewalks for any reason and that anyone's presence on the sidewalk could and does obstruct or interfere with the movement of other pedestrians. The claim would be that the terms "block or obstruct" have to be defined to describe the prohibited conduct more precisely.

3. Comment: The definition of "block, hinder or obstruct" causes confusion and the section regarding "applicability" that required "actual" blockage, hindrance or obstruction for a violation causes confusion. Summary of Response: Agree. Recommendation: These provisions might well cause confusion and were not essential to the ordinance. The provisions were therefore deleted as unnecessary. The meaning of the words "block," "hinder" and "obstruct" is generally understood without the need to define them for purposes of the ordinance.

IN THE COUNTYCOURT FOR THE FOURTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA Defendant,	)	
v.	)	CASE NO. 2014 MO 016384 NC
MERLE D. MILLER, Defendant.	)	

MOTION TO DISMISS
CONSTITUTIONAL CHALLENGE TO
SARASOTA MUNICIPAL ORDINANCE 30-3
(PURSUANT TO Fla.R. Crim. P. 3.190(b))

Defendant in the above cause, through undersigned counsel, pursuant to Fla.R. Crim. P. 3.190(b), moves this Honorable Court to enter an Order dismissing the Citation filed in this cause. The Defendant MERLE D. MILLER requests, under the following authority, that this Court find that the City of Sarasota Municipal Ordinance No. 30-3, **Obstructing Pedestrian or Vehicular Traffic,** is unconstitutional on its face, or in the alternative as applied. As grounds for said motion Defendant states:

On August 24, 2014 at 1:11 p.m. in the 400 block of Kumquat Court, Sarasota, Florida. The Defendant, Merle Douglass Miller was speaking to another person on the sidewalk. Officer Cespedes of the Sarasota Police Department asked him for identification, which was provided, and then issued him a citation for his presence on the sidewalk. Interestingly, Officer Cespedes observed on the Defendant's driver's license a residential address, but listed him as "homeless" on the citation. When Mr.

Miller pointed this out to the Officer, his residential address was added to the citation, but the designation of "homeless" was not removed. Mr. Miller is not, in fact, homeless.

The ordinance under which Mr. Miller was cited states as follows:

- **Sec. 30-3. - Obstructing pedestrian or vehicular traffic.**

  It shall be unlawful for any person to place or attempt to place or cause to be placed, himself or herself or any object of any nature or description upon or above any public way, sidewalk, footpath or other area used by the public for pedestrian or vehicular traffic in such a manner as to impede or interfere with the flow of pedestrian or vehicular traffic.

  (Code 1971, § 37-2)

A. Defendant, MERLE D. MILLER, challenges the **facial validity** of City of Sarasota Municipal Ordinance 30-3 as unconstitutional on its face as it is **an unconstitutional burden on the fundamental right to travel.**

B. Defendant, MERLE D. MILLER, challenges the City of Sarasota Municipal Ordinance 30-3 as unconstitutionally applied, as it is **unconstitutionally vague.**

C. Defendant, MERLE D. MILLER, challenges the **facial validity** of City of Sarasota Municipal Ordinance 30-3, in the alternative, as **unconstitutional as applied** for the **lack of due process.**

D. The foregoing constitutional challenges are based upon and provided for the protections outlined in the United States Constitution, Amendments I, IV, V, VI, , and XIV; the Florida Constitution, Article I, Sections 2, 5, 9, 12,

16, and 23; and the Florida Constitution, Article I, Sections 2, 5, 9, 12, 16, and 23;

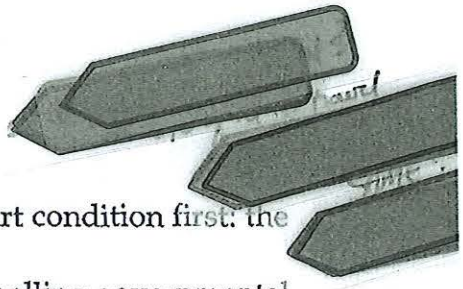
E. Other grounds to be argued ORE TENUS.

MEMORANDUM OF LAW

FUNDAMENTAL RIGHT TO TRAVEL

Defendant has a constitutionally protected liberty interest to be in parks or on other city and public lands of their choosing that are open to the public generally. *Catron v. City of St. Petersberg*, 658 F.3d 1260 (11th Cir. App. 2011), citing *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 1858, 144 L.Ed.2d 67 (1999) (plurality opinion) (citations omitted) ("[A]n individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is 'a part of our heritage,' or the right to move 'to whatsoever place one's own inclination may direct.'")

In addition to a federal right to travel, the Florida Supreme Court recognizes, under its state constitution, a fundamental right to intrastate travel. *State v. J.P.*, 907 So.2d 1101, 1113 (Fla.2004); *see* Fla. Const. Art. I, § 2. All Florida citizens have a right under the Florida Constitution to "chat on a public street," "stroll aimlessly," and "saunter down a sidewalk." *J.P.*, 907 So.2d at 1113 (quoting *Wyche v. State*, 619 So.2d 231, 235 (Fla.1993)). The City ordinance limits Defendants' right of intrastate travel as defined by the Florida Supreme Court. If properly drafted, a City ordinance may



constitutionally burden this right. But the City must meet a two-part condition first: the City's ordinance must be 1) narrowly tailored 2) to advance a compelling governmental interest. *Catron* at 1270 - 71. *See also J.P.*, 907 So.2d at 1115-16. Because the City's ordinance burdens this fundamental right, is subject to the strict scrutiny test as required by Florida law.

When a statute or ordinance operates to the disadvantage of a suspect class or impairs the exercise of a fundamental right, then the law must pass constitutional muster under a strict scrutiny standard. *See, e.g., Reno v. Flores,* 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993); *Mitchell v. Moore,* 786 So.2d 521, 527 (Fla.2001). These conditions precedent are in the alternative rather than in the conjunctive. Strict scrutiny is applicable here, not because Defendant is a member of a protected class, but because fundamental rights are implicated by the ordinance.

A fundamental right is one which has its source in and is explicitly guaranteed by the federal or Florida Constitution. *See, e.g., T.M.,* 784 So.2d at 444 n. 1; *Reno v. Flores,* 507 U.S. at 302, 113 S.Ct. 1439. The fundamental rights to privacy and freedom of movement are implicated by these ordinances. It is settled law that each of the personal liberties enumerated in the Declaration of Rights of the Florida Constitution is a fundamental right. *See generally Traylor v. State,* 596 So.2d 957 (Fla.1992). "Florida courts consistently have applied the 'strict' scrutiny standard whenever the Right of Privacy Clause was implicated, regardless of the nature of the activity." *N. Fla. Women's Health & Counseling Servs., Inc. v. State,* 866 So.2d 612, 635 (Fla.2003). To withstand strict

scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest through the use of the least intrusive means. *See Qutb v. Strauss,* 11 F.3d 488, 492 (5th Cir.1993) (applying strict scrutiny to review a Dallas juvenile curfew ordinance). *See Winfield v. Div. of Pari-Mutuel Wagering,* 477 So.2d 544 (Fla.1985); *State v. J.P.,* 907 So. 2d 1101, 1109-10 (Fla. 2004) (applying strict scrutiny to a review of Florida's juvenile curfew ordinance.)

The State, in this case, cannot demonstrate a compelling government interest in the convenience of persons traveling on a City sidewalk, in and of itself, and certainly cannot demonstrate a compelling governmental interest that outweighs the Defendant's fundamental, constitutional rights. However, even if the State could demonstrate such an interest, the ordinance is not narrowly tailored to accomplish its goal through the use of the least intrusive means.

In *Pottiger v. City of Miami,* 720 F. Supp. 955, 1583 (S.D. Fla. 1989), the court held public inconvenience and annoyance was not compelling governmental interest, and that arrest and incarceration are not the least intrusive means of accomplishing any governmental interest in the context of homeless sleeping.

> **Similarly, although the idea of homeless people sleeping in public parks may disturb or offend some portion of society, the answer is not in arresting individuals who have arguably only committed the offense of being without shelter. There exist other means of preventing crime that are less drastic than arresting the homeless for harmless conduct that poses no threat to society. Rather than arrest the homeless, the City could increase police patrols of the park. It could allow homeless persons who**

> **have no alternative place to sleep to remain in a limited area instead of banishing them from the park entirely. In addition, the City could issue warnings to both homeless and non-homeless people about high-crime areas. In short, arresting homeless people is not the least intrusive means of achieving the City's compelling interest in preventing crime in public parks. Accordingly, the court rejects the City's contention that its interest in crime prevention justifies the infringement on the fundamental right to travel. In summary, arresting homeless individuals for such harmless acts as sleeping, eating, or lying down in public generally serves no compelling governmental interest. Furthermore, in no case are such arrests the least intrusive means of accomplishing the City's interests. Consequently, arresting the homeless for the harmless acts which they are forced to perform in public infringes on their fundamental right to travel.**

Pottinger v. City of Miami, 720 F. Supp. 955, 1583 (S.D. Fla. 1989).

In this community and indeed in this case, the Defendant has been summoned to Court and criminally prosecuted for the act of being present on a public sidewalk. As the *Pottinger* court opined, this is not the least restrictive means to accomplish whatever interest the government has in discouraging the inconvenience of pedestrian travelers in Sarasota.

If the Defendant, as a citizen in this community, cannot remain in this city without facing arrest and prosecution for being present on a public sidewalk, the right to interstate travel and the right to intrastate travel are both impermissibly burdened and the ordinance should be found to be constitutionally invalid on its face.

VOID FOR VAGUENESS

A conviction for an offense so poorly defined as to leave reasonable doubt whether the conduct of the accused falls within the ambit of the law cannot stand. Such is the import of the void-for-vagueness doctrine—a corollary of the notion that no person shall be deprived of life, liberty or property without due process of law which is applicable to all laws, but which is applied most rigorously to laws defining crimes. Except in those instances in which First Amendment, or constitutionally protected privacy rights are implicated, the question of vagueness is addressed within the context of the facts of the case before the court. In *Maynard v. Cartwright*, 486 U.S. 356, 358, 108 S. Ct. 1853, 1856, 100 L. Ed. 2d 372 (1988) the Supreme Court observed that:" [o]bjections to vagueness under the Due Process Clause rest on the lack of notice".

In what is perhaps the most famous of the void-for-vagueness cases, *Lanzetta v. New Jersey*, 306 U.S. 451, 83 L. Ed. 888, 59 S. Ct. 618 (1939), the Supreme Court examined a state statute which made being a gangster a crime, the offense defined as follows:

> **Any person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons, who has been convicted at least three times of being a disorderly person, or who has been convicted of any crime, in this or any other State, is declared to be a gangster.**

The Court unanimously found the absence of any definition of the term "gang," other than "consisting of two or more persons," to render the statute void.

Even had "gangster" been adequately defined, however, the Court found troubling ambiguity in the phrase "known to be a member" as well.

> **There immediately arises the doubt whether actual or putative association is meant. If actual membership is required, that status must be established as a fact, and the word "known" would be without significance. If reputed membership is enough, there is uncertainty whether that reputation must be general or extend only to some persons. And the statute fails to indicate what constitutes membership or how one may join a "gang".**

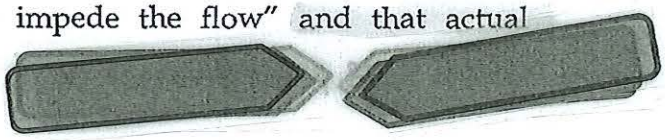
Considering the ordinance under discussion, the City criminalizes the following:

> **It shall be unlawful for any person to place or attempt to place or cause to be placed, himself or herself or any object of any nature or description upon or above any public way, sidewalk, footpath or other area used by the public for pedestrian or vehicular traffic in such a manner as to impede or interfere with the flow of pedestrian or vehicular traffic**

Sarasota Municipal Code Sec. 30-3. - Obstructing pedestrian or vehicular traffic.

The ordinance fails for vagueness, as it applies, literally, to all citizens present upon public sidewalks and right of ways, for any reason whatsoever; indeed, any time a person is present in public one's presence could and does impede or interfere with the movement of other pedestrians, should they happen upon the same route. If a couple is walking arm and arm down the sidewalk, and an individual is coming in the other direction and must move to the left or the right, has the couple's conduct become criminal? The statute fails for a failure to define "impede or interfere with the flow of traffic," and indeed, criminalizes lawful behavior such as strolling, stopping to window shop, or chat with passersby.

The ordinance fails to define "flow of traffic" and also fails to define "impede or interfere." It would appear from the ordinance, and indeed from the Defendant's prosecution in this case, that the most minimal conflict in attempted human space usage, or even a *potential* conflict in space usage in a public place subjects persons in Sarasota to criminal prosecution. The ordinance does not require actual inconvenience; rather it is a criminal event, under this ordinance as drafted and as applied to "attempt to place oneself ...in such a manner... as to impede the flow" and that actual obstruction of pedestrian traffic is not required.



DUE PROCESS

In a limited category of circumstances, the omission of a mens rea element from the definition of a criminal offense has been held to violate due process. A salient example of such circumstance is found in the Supreme Court's decision in *Lambert v. California,* 355 U.S. 225, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957), which addressed a Los Angeles municipal code provision requiring that felons present in the municipality for more than five days register with law enforcement. The code provision applied to "a person who has no actual knowledge of his duty to register." *Id.* at 227, 78 S.Ct. 240. In *Lambert,* the Supreme Court concluded that:

> **a legislative body may not criminalize otherwise entirely innocent, passive conduct—such as a convicted felon remaining in Los Angeles for more than five days—without sufficiently informing the population of the legal requirement.**

Id. at 227, 78 S.Ct. 240. As a result, the Supreme Court concluded that the registration requirement then at issue could be enforced only when the defendant was aware of the ordinance. *State v. Adkins*, 96 So. 3d 412, 419 (Fla. 2012).

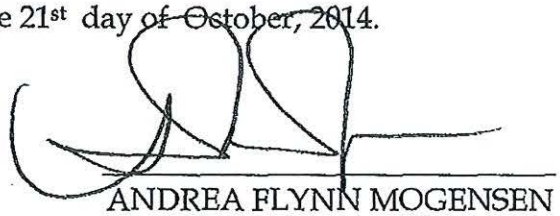
In this instance, there is no criminal intent required in City of Sarasota Ordinance 30-3. Indeed, the intent to impede the flow of traffic, nor the knowledge that one is impeding the flow of traffic, is not required. A person can be subject to arrest and criminal prosecution for merely using the public right of ways as they are intended to be used. Further, it is not apparent from the face of the statute whether actual traffic need exist to be impeded, as discussed above. This municipal ordinance criminalizes otherwise entirely innocent and passive conduct without sufficiently informing the population of the difference between innocent and prohibited conduct, and the legal requirements that differentiate them. As in *Lambert,* the City of Sarasota has criminalized otherwise entirely innocent, passive conduct, that is, being present on a sidewalk, without sufficiently informing the population, to include visitors to our City, of the legal requirements. Therefore, the ordinance violates due process, facially and as applied.

Defendant, through undersigned counsel, asserts that City of Sarasota Ordinance 30-3 is facially invalid, or in the alternative, unconstitutional as applied;

WHEREFORE, Defendant respectfully requests this Court to dismiss the above-styled charging document.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by electronic delivery at SAO rounds@scgov.net, 2071 Ringling Boulevard, 4th Floor, Sarasota, Florida, 34237, and a courtesy copy to The Office of the City Attorney at Robert.Fournier@scgov.com, this the 21st day of October, 2014.



ANDREA FLYNN MOGENSEN
Attorney at Law
Law Office of Andrea Flynn Mogensen PA.,
200 S. Washington Blvd, Suite 7
Sarasota, Florida 34236
Florida Bar No. 0549681
941.955.1066
Andrea@SarasotaCriminalLawyer.com
EJRossi@SarasotaCriminalLawyer.com

9:03:23 P.M.

A motion was made by Vice Mayor Arroyo, seconded by Commissioner Alpert for the Charter Review Committee (CRC) to come before the Commission at the March 07, 2022, Regular Sarasota City Commission Meeting to present their completed CRC Report, which carried by a 5-0 vote.

9:03:34 P.M.

11. **NEW BUSINESS (AGENDA ITEM X)**

1) **DISCUSSION RE: CREATION OF A NEW CITY ORDINANCE RELATED TO "SITTING, LYING ON A SIDEWALK IN A DESIGNATED ZONE" (AGENDA ITEM X-1)**

9:03:44 P.M.

Mayor Brody stated that this is a potential new Ordinance for a specific area of the City which would add a stronger prohibition regarding sitting or lying on the sidewalk in a designated zone which can be enforced.

9:04:23 P.M.

City Attorney Fournier stated that one misconception which needs to be corrected is the City currently does not have an Ordinance to address this issue; however, the City does have an Ordinance which was not included in the Agenda backup material since the Item was placed on the Agenda after the Agenda Review Meeting; that the Ordinance was emailed to the Commission.

9:05:16 P.M.

City Attorney Fournier continued and provided a brief overview of the current Ordinance and the challenges.

City Auditor and Clerk Griggs left and returned to her seat at 9:04 P.M.

9:11:46 P.M.

In response to a comment from Mayor Brody that the concern is on Main Street and some side streets where the need is to have a vibrant Downtown which is critical for success, and City Attorney Fournier stated that keeping good records prior to the adoption of a proposed Ordinance will show the City is addressing an existing problem, and afford an opportunity for merchants and people to come before the Commission to place their experiences on the record.

9:12:46 P.M.

Mayor Brody posed questions which were addressed by the City Attorney.

9:16:07 P.M.

Citizens' Input received from individuals at City Hall in the Chambers.

9:19:15 P.M.

Harmoni Krusing, Owner of Lotus, displayed photographs on the Chambers monitors, indicating individuals are obstructing the entrance of her business, and the proposed Ordinance is favored.

9:21:22 P.M.

Citizens' Input continued from individuals at City Hall in the Chambers.

City Auditor and Clerk Griggs left and returned to her seat at 9:22 P.M.

City Auditor and Clerk Griggs left and returned to her seat at 9:23 P.M.

9:24:06 P.M.

Mayor Brody stated that conversations were had with a number of people about possibly leasing some of the small portions of property between the sidewalk and the roadway in front of some stores Downtown, similar to the Sidewalk Cafes.

9:25:03 P.M.

Coordinator Homeless/Housing Joseph "Kevin" Stiff, Homeless Response, City Manager's Office came before the Commission to address questions.

9:25:09 P.M.

Commissioner Ahearn-Koch posed questions which were addressed by Mr. Stiff and the City Attorney.

9:30:21 P.M.

Vice Mayor Arroyo stated that today he sent the City Attorney and City Manager the McArdle vs. City of Ocala, Florida case from February 2021; that their Ordinance was challenged, and posed a question which was addressed by Mr. Stiff.

9:33:20 P.M.

Commissioner Alpert provided input on the McArdle vs. City of Ocala, Florida case from February 2021, asked what can be done legally, and requested Mr. Stiff to expand on the homeless services the City provides, and Mr. Stiff provided a brief overview.

City Auditor and Clerk Griggs left and returned to the Dais at 9:34 P.M.

City Auditor and Clerk Griggs left and returned to the Dais at 9:36 P.M.

9:38:34 P.M.

Commissioner Battie stated that perhaps the designated area can be extended to the Rosemary District.

9:46:29 P.M.

Mayor Brody stated that the belief is the Commission should move forward with directing the City Attorney to conduct research, draft a proposed Ordinance, and return back before the Commission; that the Commission should also hear from the public and business owners, and City Attorney Fournier stated that if the Commission's desire is to keep the discussion going, then the item should return back on an Agenda for discussion since any public input or testimony can be incorporated into a subsequent Public Hearing and referenced.

9:50:38 P.M.

Commissioner Ahearn-Koch cautioned the Commission to be respectful with this issue because these are human-beings and there is a need to be sensitive as well; however, the hope is there is a middle-ground to be respectful but also try to do what is in the best interest of the citizens as well.

9:51:50 P.M.

Mayor Brody provided input and spoke in favor of moving forward.

9:55:24 P.M.

A motion was made by Commissioner Alpert, seconded by Vice Mayor Arroyo to move forward with a discussion on how to draft an proposed Ordinance which will restrict in a very designated zone sitting and lying on the sidewalk, and for the City Attorney to provide to the Commission acceptable parameters to consider, and should the City Attorney deem the proposed draft Ordinance is helpful, then he should present a proposed draft Ordinance based on that criteria, which carried by a 5-0 vote.

9:56:37 P.M.

12. **ADJOURN (AGENDA ITEM XI)**

The Commission adjourned at 9:56 P.M.

ATTEST:

HAGEN BRODY, MAYOR

SHAYLA GRIGGS
CITY AUDITOR AND CLERK