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