

MEMORANDUM

TO: Marlon Brown, City Manager

FROM: Robert M. Fournier, City Attorney *RMF*

RE: Permanent private use of public parking spaces

DATE: November 29, 2022

During the recent pandemic, the City of Sarasota, through Administrative Order, authorized restaurants to *temporarily* expand their dining areas into "on street" public parking spaces provided certain applicable requirements were met. The ability to use these public parking spaces for the benefit of these restaurants is scheduled to terminate on December 31, 2022. This has prompted a request from at least one restaurant to allow the private use of these public spaces on a permanent basis. You have requested that I provide a written explanation of the legal impediment to allowing this situation to continue on a permanent basis.

Pursuant to Florida law, the City of Sarasota does not "own" the streets in the City which have been dedicated for public use in the same way that a private landowner "owns" their property. Rather, the City has an easement to use the streets and adjacent sidewalks for vehicular and pedestrian travel, including parking and for utilities serving the public. Under the general rule in Florida, the interest acquired by a municipality when a street is acquired through dedication on a plat is held in trust by the municipality for the benefit of all the public. Consequently, the City does not have unfettered discretion as to how it will allow the public streets (including on street parking spaces) to be utilized without considering whether the allowed use serves a valid public purpose for use of a right-of-way.

A dedication of a street for public use is typically accomplished when a private landowner prepares and files a subdivision plat in the public records and subsequently sells the lots in the subdivision with reference to the plat. When the dedication is accomplished, it does not have the effect of transferring legal title to the street from the landowner/subdivider to the local jurisdiction that approved and accepted the plat. To the contrary, the fee simple ownership of the dedicated streets remains in the dedicator, or more typically in the grantees of the dedicator and their successors. As noted, the City, when it accepts the dedication, acquires only a right of easement in trust for the public, but only *for as long as the dedicated street is used (primarily) for the purposes for which it was dedicated.*

The legal title of the original landowner/dedicator to the dedicated street passes to the buyers or grantees of those lots that are sold with reference to the plat, which lots abut the dedicated streets. Their title extends to the center line of the public street, but it is subject to the public easement held by the City. This is why when a street in which the City has held an easement in trust for the public is properly vacated by ordinance, that the public easement goes away and the abutting property owners on each side of the strip of property that was once a public street obtain full rights of ownership to the center line of the former street free of the public easement. This reversionary interest held by abutting property owners is also why a municipality in Florida is prohibited from charging adjacent landowners to vacate a public street. The City holds no legal title to the street that it can convey or transfer upon vacation. Under these circumstances there is no legal basis to enable the City to require landowners abutting a vacated street to pay for an interest in property that they already have.

So, the City's claim to the continued control of the public street hinges on its use of the public street primarily for vehicular travel and parking. Likewise, the adjacent sidewalk must be used for the primary purpose of pedestrian travel. The use of the public right of way must primarily be for the benefit of the public at large. Some incidental private benefit is permissible, for example in the case of a sidewalk café' (allowed by an annual revocable permit) or in the case of a street closure for a special event. Although private interests do benefit from these uses, there is also a primary public benefit in that both the sidewalk cafes and the special events attract people to the area where they happen to be, which should very arguably benefit other business establishments in the area.

Outdoor dining in "on street" parking spaces was allowed during the pandemic as a means to keep restaurants in business when their interior occupancy was limited or restricted. There was a general economic benefit to the community in keeping these restaurants viable and keeping people employed. But the public purpose being served was to keep the restaurants solvent during the pandemic, by reducing or perhaps even eliminating their business losses that otherwise would have occurred. These restaurants survived before the pandemic without having tables set up in on street public parking spaces. Allowing these private businesses to expand into the public right of way *on a permanent basis* after any losses arising from the pandemic have been made up primarily serves the private business purpose of these establishments at the expense of the general public and at the expense of other businesses. The general public is deprived of access to these parking spaces which exist on land that was dedicated for a public purpose. Likewise, other business establishments in the vicinity of the restaurants using these spaces are deprived of

the benefits their businesses derive from having public parking in close proximity to their businesses. Allowing the permanent private use of these parking spaces makes the private use of the spaces the primary use, which is contrary to the purposes for which the right of way was dedicated.

The only lawful way to accommodate such permanent exclusive private use would be to vacate the street to allow the abutting property owner to have full ownership to the centerline of the street. However, when the general public is using the roads and streets in question (including public service vehicles such as garbage trucks, police, fire and emergency vehicles) then the vacation could well be inappropriate if it is detrimental to the public welfare or if it impaired access to other property owners not requesting the vacation by impairing access to their property.

Another potential problem with the use of these on street public parking spaces to permanently benefit private restaurant owners is the issue of liability for injuries to patrons in the event of an accident involving a motor vehicle crossing over into the area reserved for dining. I am certainly not conceding or admitting in advance that the City would be held liable if this ever happened, I am only saying that the City may find itself in a position where someone alleges that the City should be liable. However, because my opinion is that the permanent private use of these public spaces is unlawful in any event, I am not going to further discuss potential liability issues presented.

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