



**PERSSON & COHEN, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW

David P. Persson  
Andrew H. Cohen  
Kelly M. Fernandez\*  
Maggie D. Mooney-Portale\*  
R. David Jackson  
Regina A. Kardash\*

Telephone (941) 375-3565  
Facsimile (941) 451-8375  
Email: [dpersson@swflgovlaw.com](mailto:dpersson@swflgovlaw.com)

\* Board Certified City, County and Local Government Law

Reply to: Venice

December 5, 2017

The Honorable John W. Holic, Mayor  
and Members of the City Council  
Edward F. Lavalley, City Manager  
401 West Venice Avenue  
Venice, Florida 34285

RE: Interlocal Agreement Between the City of Venice and Sarasota County  
Regarding Parks and Recreation Services

Ladies and Gentlemen:

This letter is in response to your request for a legal analysis regarding the validity of "Sarasota County's official notification to terminate the subject agreement on October 1, 2018." The letter of termination is attached to this memorandum as Exhibit "A". It is my opinion that this official notification of termination is both procedurally and substantively invalid.

Procedurally, the letter was sent pursuant to a vote (3/2) of the Sarasota County Commission without notice to the general public that the County Commission was going to consider termination of an agreement that affects thousands of citizens interested or participating in recreation and park services. The agenda item where the vote was held is entitled "Discussion regarding the Fiscal Year 2018 Budget Reduction Process." It provides no indication, whatsoever, that termination of this ten-year commitment was going to be considered and potentially acted upon. While the Sunshine Law does not require an agenda to state each item on which action will be taken, the Florida Attorney General's Office has advised that, if the item is controversial or one of critical public concern, the public body should postpone taking any action on the issue until it has been noticed. See Inf. Op. to Evans, June 7, 1989.

The ten-year Inter-local agreement regarding parks and recreation services is to continue until October 1, 2021, but contains this provision for termination:

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Lakewood Ranch  
6853 Energy Court  
Lakewood Ranch, Florida 34240

St. Petersburg  
111 Second Avenue NE, Suite 536  
St. Petersburg, Florida 33701

Venice  
217 Nassau Street S.  
Venice, Florida 34285

### Section 3 – Term of Agreement

The term of this Agreement shall be for ten (10) years, commencing on October 1, 2011 and shall be automatically renewed for an additional five (5) years, unless terminated for cause in writing by either party no later than December 1<sup>st</sup> of any given year for termination on the following October 1<sup>st</sup>. Such written notification shall provide cause for termination, and provide the non-terminating party ninety (90) days to correct the stated cause. If a mutually satisfactory solution is not agreed upon by staff, an advertised public hearing shall be held to discuss the termination of this Agreement, and a majority vote shall be required of the Commission seeking termination before this Agreement can be canceled. Cancellation of this Agreement shall become effective at the start of the next fiscal year, October 1<sup>st</sup>.

Under Section 3, in order to terminate the parks and recreation agreement the notice must:

1. Be “for cause”,
2. Provide the cause for termination, and
3. Provide the City with ninety (90) days to correct the stated cause.

On its face, the notice does none of these.

The Agreement does not define what constitutes “for cause” which is required for early termination of the agreement. However, “for cause” has a well-established legal meaning and requires far more than mere inconvenience or budgetary vagaries. It generally requires the terminated party to have breached a material term of the contract. Additionally, the determination of cause for termination must be made in good faith.

The letter fails to specify the “cause” of the termination. Implicitly, it appears tied to the County “exploring options to reduce expenditure.” Even if stated explicitly, this “cause” fails to meet the legal standard cited above.

Finally, the notice must provide the City with ninety (90) days notice to correct the stated cause. No such notice is provided.

The notice of termination causes the City a timing dilemma. The City has relied upon the County to honor its commitments. The cost to the City of Venice of taking over regional parks is substantial. The City’s budget needs to reflect its obligations by June in order to adopt a budget for

The Honorable John W. Holic, Mayor  
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Edward F. Lavallee, City Manager  
December 5, 2017  
Page | 3

the next fiscal year. While it is apparent to me that the County's notice is without legal effect, I am not a judge. So in order to allow the City to properly prepare for its 2019 budget, the County's action will force the City to seek judicial review and have a court determine the validity of the termination. Since the court system takes time, the City will need to file its declaratory relief action no later than the end of January in order to have a good probability of obtaining an order from the court in time to properly and prudently prepare a budget.

My recommendation, therefore, is to respectfully request that the County withdraw its letter of November 30, 2017, on or before January 15, 2018.

Respectfully,

A handwritten signature in black ink, appearing to read 'D. Persson', with a large, sweeping loop at the end.

David P. Persson

DPP/dgb  
Attachment



**SARASOTA COUNTY**  
*"Dedicated to Quality Service"*

November 30, 2017

Edward F. Lavallee, City Manager  
City of Venice  
401 West Venice Avenue  
Venice, FL 34285

Dear Mr. Lavallee:

In October 2011, Sarasota County and the City of Venice entered into an Interlocal Agreement (Agreement) via Contract No. 2011-421, regarding Parks and Recreation Services. Section 3 of the Agreement specifies a ten-year term commencing on October 1, 2011 with automatic renewal for an additional five years, unless the Agreement is terminated for cause in writing by either party no later than December 1<sup>st</sup> of any given year for termination on the following October 1<sup>st</sup>.


Sarasota County values the partnership we have enjoyed over the years with the City of Venice. We are also proud of the level of services we have been able to jointly provide to our residents. However, due to projected shortfalls in the General Fund starting in FY19, the County is exploring options to reduce expenditures. We will be discussing potential budget reductions with the County Commission in late January 2018.

Pursuant to Section 3 of the Agreement, please consider this correspondence as Sarasota County's official notification to terminate the subject Agreement on October 1, 2018. Notwithstanding the County preserving its right to terminate the Agreement, there will be no change in the level of services provided by the County through the end of this fiscal year.

As County staff formulates our potential expenditure reductions, I would like us to have open communication about the impacts and potential solutions. The County's primary point of contact will be Parks, Recreation, and Natural Resources Director, Carolyn Brown, who can be reached at 941-861-5483 or [cnbrown@scgov.net](mailto:cnbrown@scgov.net). Please let us know who would be the primary contact on behalf of the City. We'd like to work together in planning a meeting for January so that this matter can be discussed further.

As always, thank you for your help, cooperation and consideration.

Sincerely,



Thomas A. Harmer, ICMA-CM  
County Administrator

- c: Sarasota County Commission  
Stephen DeMarsh, County Attorney  
Mark A. Cunningham, Assistant County Administrator  
Carolyn Brown, Parks, Recreation and Natural Resources Director

**OFFICE OF THE COUNTY ADMINISTRATOR**

1660 Ringling Boulevard, 2<sup>nd</sup> Floor • Sarasota FL 34236 • telephone 941.861.5111 • fax 941.861.5987