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MEMORANDUM

TO: Atlantic Beach City Commission

THROUGH: Shane Corbin, City Manager

FROM: Brenna Durden, City Attorney *BMD*

DATE: June 17, 2020

SUBJECT: 18th Street Parking Area

Pursuant to a request from Mayor Glasser and City Manager Shane Corbin, this memorandum addresses the potential liability of the City arising from the current design and potential future design of the 18th Street public parking area (lying between Seminole Road and Beach Avenue). Currently, the parking design includes parking stalls with dimensions of 17 feet or 18 feet by 9 feet which is, in some cases, less than the standard parking stall requirements of 18 feet by 9 feet set forth in the Land Development Regulations. The two-way paved width is approximately 19.5 feet wide total, which is slightly less than the 20 foot minimum paved width for new streets and less than the 22 foot minimum for two-way travel lanes in parking lots set forth in the Land Development Regulations. This memorandum very briefly describes the general case law and its application to the issues at hand.

The general law in Florida is that a discretionary decision on the part of government will not subject it to tort liability. Trianon Park Condo. Ass'n, Inc. v. City of Hialeah, 468 So.2d 912 (Fla. 1985). Examples of discretionary decisions include, without limitation, design of roadways, the location and alignment of roads, the width and number of lanes and the placement of traffic control devices, and are thus not actionable. Dep't of Transp. v. Neilson, 419 So.2d 1071 (Fla. 1982). Adoption of new standards does not require a governmental entity to upgrade or modernize or improve an improvement that was built prior the adoption of the new standards. See Neilson. In addition, decisions to upgrade and modernize an obsolete improvement also fall within the discretionary function and are generally immune from liability. See Neilson.

Once a governmental entity does build or take control of property or an improvement, there is a duty to safely maintain an improvement in accordance with its original design. See Trianon. If the government creates a known dangerous condition, which is not readily apparent to persons who could be injured,

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then a duty to warn will arise. See Neilson. In the context of roadway-related cases, the courts have looked to accident data to determine whether a known dangerous condition exists. Dep't of Transp. v. Konney, 587 So.2d 1292 (Fla. 1991).

Generally speaking and using these and other cases to interpret the circumstances at hand, the former decision to design the 18th Street parking lot area falls within the discretionary function and would not be subject to tort liability. Moreover, based on my knowledge to date regarding the lack of accidents in the area as reported by Chief Gualillo to the Commission at its Workshop held on April 20, 2020, the fact that some of the parking stalls are somewhat shorter than the standard length set out in the Land Development Regulations and that the travel lanes on 18th Street between Seminole Road and Beach Avenue are narrower than the City's Code standard requirements for roadways and parking lots, does not appear to have created a known dangerous condition as typically interpreted by the courts. Furthermore, a decision in the future to design a new modernized and upgraded parking lot area, even with shorter parking stalls and narrower lanes, would likewise fall within the discretionary function category and thus, would not be subject to tort liability provided the City determines at the time of the design that the shorter stalls and narrower travel lanes do not create a known danger. In any such determination, which could be in the form of a staff report or other analysis, it is advisable to set forth the reasons for determining that the design would not create a known danger and why it is in the best interests of the City, its residents and visitors to allow for the smaller dimensions. On the other hand, if the City decided at the time of design that a known danger would arise, the City could still design the parking area with the shorter stalls and narrower lanes, citing to the reasons why the determination is still in the best interests of the City, but the City must also take steps to warn the public of the danger in order to avoid tort liability. Finally, once any new upgrade and modernization of the design of the parking area is constructed, the City must maintain the parking area in a safe manner and, if the existence of any known dangerous condition is established thereafter, a duty to warn will arise at that time.

Please do not hesitate to call me if you have any questions.