

City of Palm Coast, Florida Agenda Item

Agenda Date : 01/14/2020

Department	CITY CLERK	Amount
Item Key	7565	Account
Subject	ORDINANCE 2020-XX ESTABLISHING A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY	
Background : Over the past decade, there have been times the City has trespassed citizens from certain City facilities for public safety and welfare. The Flagler County Sheriff's Office, as allowed by state law, has issued "trespass warnings" to individuals on City of Palm Coast owned property who are warned that if they return to the property, they will be arrested for trespass. Such trespass warnings are given to individuals who were acting in violation of City ordinances or Florida state statutes. The practice has not been formally memorialized within the City Code previously. The presence of individuals who violate state statutes or city ordinances, rules or regulations on public property creates a threat to the public safety and welfare, therefore this Ordinance is necessary to promote public safety and public welfare. Staff recommends adoption in order to provide consistency and uniformity for the issuance of these "trespass warnings." Staff also recommends that City Council approve the process for individuals to appeal these trespass warnings.		
Recommended Action : ADOPT ORDINANCE 2020-XX ESTABLISHING A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY		

ORDINANCE 2020-____
ESTABLISHING A PROCESS
FOR TRESPASS WARNINGS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, CREATING A NEW SECTION CHAPTER 9 OF THE CITY CODE ESTABLISHING A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING NOTICE REQUIREMENTS FOR TRESPASS WARNINGS; ESTABLISHING AN APPEAL PROCESS FOR TRESPASS WARNINGS; EXPANDING THE JURISDICTION OF THE SPECIAL MAGISTRATE TO INCLUDE THE HEARING OF APPEALS FROM ISSUED TRESPASS WARNINGS; PROVIDING FOR THE REPEAL OF PRIOR INCONSISTENT ORDINANCES AND RESOLUTIONS, INCORPORATION INTO THE CODE SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS, the Flagler County Sheriff's Office, as allowed by state law, has issued "trespass warnings" to individuals on City of Palm Coast owned property who are warned that if they return to the property, they will be arrested for trespass; and

WHEREAS, such trespass warnings are given to individuals who were acting in violation of City ordinances or Florida state statutes; and,

WHEREAS, the practice has not been formally memorialized within the City Code; and

WHEREAS, the City Council wishes to provide consistency and uniformity for the issuance of these "trespass warnings"; and

WHEREAS, further the City Council desires to create a process for individuals to appeal these trespass warnings; and

WHEREAS, the City Council finds that the presence of individuals who violate state statutes or city ordinances, rules or regulations on public property creates a threat to the public safety and welfare and deems this Ordinance necessary to promote public safety and public welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AS FOLLOWS:

Section 1. The Code of the City of Palm Coast; Chapter 9, is created and entitled “Trespass Warnings on Public Property”, which shall provide as follows:

Sec. 9-1 - Trespass warnings on public property and other property generally open to the public.

a) A trespass warning issued to any individual who violates any City ordinance, rule or regulation, or State law which violation was committed while on or within any City facility, building, or outdoor area that is open to the general public, including municipal parks and including public sidewalks adjacent to municipal parks where there is also a public sidewalk on the opposite side of the street (but excluding other public rights-of-way) may be issued by the City Manager or designee, or the Flagler County Sheriff's office, when necessary. The trespass warning shall be limited to the specific property where the violation occurred.

(b) Trespass warnings shall be in writing and issued for a period not to exceed two (2) years.

(c) A copy of the trespass warning shall be provided by mail or hand delivery to the individual given the warning. The written trespass warning shall advise of the right to appeal and the location at which to file the form to initiate the appeal.

(d) Any person found on or within any City facility, building, or outdoor area, including municipal parks, in violation of a trespass warning issued in accordance with this section may be arrested for trespassing, except as otherwise provided in this section.

(e) The City Manager, or his/her designee, may upon request, authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

(f) This section shall not be construed to limit the authority of any City employee or official to issue a trespass warning to any person for any lawful

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reason for any City property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or official.

(g) This section shall not be construed to limit the authority of Deputies of the Flagler County Sheriff's Office to arrest or cite individuals for violation any section of the Palm Coast City Code or the Florida Statutes.

(h) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal the issuance of the trespass warning as follows:

(1) An appeal of the trespass warning must be filed, in writing to the City Clerk, within ten (10) days of the issuance of the warning, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.

(2) Appeals shall be heard by a Special Magistrate with whom the City contracts to provide this service.

(3) Within seven (7) days following the filing of the appeal, the Special Magistrate shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of three ways:

_____ (a) By providing the appellant a copy of the notice of hearing in person at the time he or she files the appeal. This shall be the preferred method of notice. When it is not possible to provide notice in this manner, the appellant shall be informed that notice of the hearing will be provided in accordance with either paragraph (b) or (c) below.

_____ (b) By leaving or posting the notice at the front desk of City Hall; or

_____ (c) By telephone if a telephone number has been provided.

(4) The Special Magistrate shall hold the hearing as soon as possible. In no event shall the hearing be held later than forty (40) days from the filing of the appeal.

(5) Copies of documents in the City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.

(6) The appellant shall have the right to attend with an attorney, the right to testify, and to call witnesses and present evidence. The appellant shall have the right to bring a court reporter, at his or her own expense.

(7) The Special Magistrate shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Form rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

(8) The City shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.

(9) If the appellant fails to attend a scheduled hearing, the Special Magistrate shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.

(10) Within five (5) days of the hearing, the Special Magistrate shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided.

(11) The decision of the Special Magistrate shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law.

(12) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

Section 2. Repeal of Prior Inconsistent Ordinances and Resolutions. All prior inconsistent Ordinances and Resolutions adopted by the City Council, or parts of prior Ordinances and Resolutions in conflict herewith, are hereby repealed to the extent of the conflict.

Section 3. Incorporation Into Code. This Ordinance shall be incorporated into the Palm Coast City Code and any section or paragraph, number or letter, and any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical, and like errors may be corrected and additions, alterations, and omissions, not affecting the construction or meaning of this ordinance and the City Code may be freely made.

Section 4. **Severability.** If any section, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. **Effective Date.** This Ordinance shall become effective immediately upon adoption by the City Council of the City of Palm Coast, Florida.

APPROVED on first reading the ____ day of _____ 2020.

ADOPTED on second reading the ____ day of _____ 2020.

CITY OF PALM COAST, FLORIDA

ATTEST:

Millissa Holland, Mayor

Virginia A. Smith, City Clerk

Approved as to legal form for the City of Palm Coast:

William E. Reischmann, Jr., City Attorney