



# City of North Port

## ORDINANCE NO. 2021-02

**AN ORDINANCE OF THE CITY OF NORTH PORT, FLORIDA, AMENDING THE CODE OF THE CITY OF NORTH PORT, FLORIDA TO ESTABLISH A PROCESS AND AUTHORIZE CITY LAW ENFORCEMENT OFFICERS TO TRESPASS AN INDIVIDUAL FROM PUBLIC PROPERTY, BY CREATING SECTION 46-2 – TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.**

1 **WHEREAS**, the City of North Port, Florida, owns and manages buildings, parks, amenities and other City-  
2 owned properties (“City property”) that are open to the public; and

3  
4 **WHEREAS**, the City Commission recognizes the need to regulate use of the public spaces of City property  
5 in the interest of public health and safety; and

6  
7 **WHEREAS**, Florida law authorizes the City of North Port Police Department (“Police Department”) to warn  
8 an individual violating the Code of the City of North Port, Florida (“City Code), a City facility rule, or any  
9 Florida law that the individual must leave the City property and not return for to the City property for one  
10 year; and

11  
12 **WHEREAS**, Florida law further authorizes the Police Department to arrest the individual for trespass if the  
13 individual does return to the City property after being properly warned; and

14  
15 **WHEREAS**, the City Commission desires to provide consistency and uniformity when an individual is  
16 trespassed from City property, and to formalize the process for the Police Department to issue trespass  
17 warnings on City property and on private property that is subject to a public access easement; and

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19 **WHEREAS**, pursuant to *Catron v. City of St. Petersburg*, 658 F.3d 1260 (11<sup>th</sup> Cir. 2011), and to ensure that  
20 an individual is not deprived of their constitutionally protected right to move at liberty in public places  
21 without due process of law, the City must have a process and procedure that allows an individual to appeal  
22 a trespass warning, challenge a trespass warning, and for a trespass warning to be rescinded; and

23  
24 **WHEREAS**, the City Commission seeks to maintain a safe, orderly, and pleasant environment on City  
25 property; and

26  
27 **WHEREAS**, the City Commission finds that the proposed amendments serve the public health, safety, and  
28 welfare of the citizens of the City of North Port, Florida.

29 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF NORTH PORT, FLORIDA:**

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31 **SECTION 1 – FINDINGS**

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33 1.01 The recitals outlined above are incorporated by reference as findings of fact as if expressly set  
34 forth herein.

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36 **SECTION 2 – ADOPTION**

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38 2.01 Section 46-2 of the Code of the City of North Port, Florida is hereby created as follows:

39

40 **“Chapter 46 – OFFENSES**

41 **ARTICLE I. –OFFENSES INVOLVING PROPERTY**

42

43 . . .

44

45 **Sec. 46-2 – Trespass warnings on public property.**

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47 (a) Authority. Any law enforcement officer employed by the city (“law enforcement officer”) is  
48 authorized to issue a trespass warning to any individual who violates a section of this Code,  
49 city facility rule, or Florida law, where the violation was committed while the individual was  
50 on or within any of the following locations:

51

52 (1) City facility. A violation occurring on or within any city owned or managed building, park,  
53 amenity, or the grounds thereof, and any other property owned or managed by the city  
54 for the purpose of conducting the operations of the city (“city facility”) (excluding public  
55 sidewalks and rights-of-way). A trespass warning is limited to the specific city facility and  
56 grounds thereof where the violation occurred.

57

58 (2) Other public property. A violation occurring on or within any public property not owned  
59 by the city, provided that the Police Department has received written authorization to  
60 issue trespass warnings from a duly authorized representative of the public property  
61 owner.

62

63 (3) Public access easements on private property. A violation occurring on private property  
64 that is subject to a public access easement, provided that the Police Department has  
65 received written authorization to issue trespass warnings from the private property  
66 owner. For purposes of this subsection, the term “public access easement” means an  
67 easement in favor of the city that grants general public access to private property, or  
68 limited public access to patrons and invitees of a business establishment or  
69 establishments.

70

71 (b) Enforcement.

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73 (1) Written warning.

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75 a. Issuance. Any law enforcement officer may initiate enforcement of this section by  
issuing a trespass warning.

76           b. Delivery and contents. A trespass warning must be issued in writing and provided by  
77           U.S. mail, return receipt requested, or by hand delivery to the person receiving the  
78           warning. A written trespass warning must advise of the right to appeal the warning,  
79           and how and where to initiate the appeal.

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81           c. Duration. A written trespass warning remains enforceable for a period not to exceed  
82           one year from the date of issuance.

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84           (2) Arrest. Any person determined to be in violation of a written trespass warning issued  
85           pursuant to this section may be arrested for trespassing, except as otherwise provided  
86           herein.

87  
88           (c) Exception. Where an individual has an active trespass warning in place, the city manager or  
89           designee may authorize the individual on or within the specific city facility where the violation  
90           occurred in order for the individual to exercise their First Amendment rights if there is no  
91           other reasonable alternative location for the individual to exercise those rights or to conduct  
92           necessary city business. Such authorization must be in writing, must specify the duration of  
93           the authorization, any conditions thereof, and must not be unreasonably denied.

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95           (d) Appeal of trespass warning. The city's hearing officer shall have the jurisdiction and authority  
96           to hear and decide the appeal of a trespass warning issued under this section.

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98           (1) Notice of appeal.

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100           a. A trespass warning must be appealed within ten days of its issuance by submitting a  
101           notice of appeal to the police department in person or by certified mail, return receipt  
102           requested, to the address identified on the warning. A notice of appeal must be  
103           submitted in writing and include the date and location of the violation, appellant's  
104           name, address, phone number, and email address if any.

105  
106           b. No fee shall be charged for an appeal requested under this section. Copies of  
107           documents in the city's control that the city intends to use at the hearing, and that  
108           directly relate to the issuance of the trespass warning to the appellant, shall be made  
109           available upon request to the appellant at no cost.

110  
111           (2) Notice of hearing. Upon receipt of a notice of appeal, the city shall schedule a hearing on  
112           the next available hearing date. Pursuant to the requirements of F.S. § 162.12, the city  
113           must provide written notice of the hearing to the appellant through one of the following  
114           methods:

115  
116           a. Hand delivery. Providing a copy of the notice of hearing by hand delivery to appellant  
117           at the time appellant submits their notice of appeal in person;

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119           b. Posting. By posting the notice of hearing at least ten days prior to the hearing at the  
120           North Port Police Department, at city hall, and at the property upon which the  
121           violation is alleged to have occurred. Proof of posting shall be as provided in F.S.  
122           § 162.12; or

124 c. Certified mail. By certified mail, return receipt requested, to the appellant. If any  
125 notice sent by certified mail is not signed as received within thirty days after the  
126 postmarked date of mailing, notice may be provided by posting as described herein.

127  
128 (3) Hearing.

129 a. The hearing shall be conducted in compliance with section 2-508 of this Code, except  
130 as provided in this subsection.

131 b. The burden of proof shall be on the city to show by clear and convincing evidence  
132 that the trespass warning was properly issued pursuant to the criteria of this section.

133 c. The hearing officer shall consider the testimony, documents, and any other evidence  
134 presented at the hearing.

135 d. If the appellant fails to attend a scheduled hearing, the hearing officer shall review  
136 the evidence presented and determine if the trespass warning was properly issued  
137 pursuant to the criteria of this section.

138 e. At the conclusion of the hearing, the hearing officer shall issue findings of fact, based  
139 on evidence of the record and conclusions of law, and if supported by the findings,  
140 shall issue an order maintaining the trespass warning for one year from the date of  
141 issuance.

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143 (4) Appeal.

144 a. The decision of the hearing officer shall be final, and the appellant shall be deemed  
145 to have exhausted all administrative remedies. Decisions of the hearing officer may  
146 be appealed pursuant to section 2-513 of this Code.

147 b. A trespass warning shall remain in effect during its appeal to the hearing officer and  
148 during any judicial review.”

149  
150 **SECTION 3 – CONFLICTS**

151 3.01 In the event of any conflict between the provisions of this ordinance and any other ordinance or  
152 provisions thereof, the provisions of this ordinance shall prevail to the extent of such conflict.

153 **SECTION 4 – SEVERABILITY**

4.01 If any section, subsection, sentence, clause, phase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

**SECTION 5 – CODIFICATION**

5.01 In this ordinance, additions are shown as underlined and deletions as ~~striketrough~~. Any additional codification information and notations appear in *italics*. These editorial notations shall not appear in the codified text.

**SECTION 6 – EFFECTIVE DATE**

6.01 This ordinance shall take effect immediately after adoption by the City Commission of the City of North Port, Florida.

READ BY TITLE ONLY at first reading by the City Commission of the City of North Port, Florida, in public session on the 12th day of January 2021.

PASSED and DULY ADOPTED by the City Commission of the City of North Port, Florida, on the second and final reading in public session this 26th day of January 2021.

CITY OF NORTH PORT, FLORIDA

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GISELE "JILL" E. LUKE  
MAYOR

ATTEST

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HEATHER TAYLOR, CMC  
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

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AMBER L. SLAYTON  
CITY ATTORNEY