



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.

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

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

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

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

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

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that allows an individual to appeal a trespass warning, challenge a trespass warning, and for a trespass warning to be rescinded; and

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

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

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

SECTION 1 – FINDINGS

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

SECTION 2 – ADOPTION

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

“Chapter 46 – OFFENSES

ARTICLE I. –OFFENSES INVOLVING PROPERTY

...

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

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

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

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

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

(b) Enforcement.

(1) Written warning.

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

- b. Delivery and contents. A trespass warning must be issued in writing and provided by U.S. mail, return receipt requested, or by hand delivery to the person receiving the warning. A written trespass warning must advise of the right to appeal the warning, and how and where to initiate the appeal.
 - c. Duration. A written trespass warning remains enforceable for a period not to exceed one year from the date of issuance.
- (2) Arrest. Any person determined to be in violation of a written trespass warning issued pursuant to this section may be arrested for trespassing, except as otherwise provided herein.
- (c) Exception. Where an individual has an active trespass warning in place, the city manager or designee may authorize the individual on or within the specific city facility where the violation occurred in order for the individual to exercise their First Amendment rights if there is no other reasonable alternative location for the individual to exercise those rights or to conduct necessary city business. Such authorization must be in writing, must specify the duration of the authorization, any conditions thereof, and must not be unreasonably denied.
- (d) Appeal of trespass warning. The city's hearing officer shall have the jurisdiction and authority to hear and decide the appeal of a trespass warning issued under this section.
- (1) Notice of appeal.
- a. A trespass warning must be appealed within ten days of its issuance by submitting a notice of appeal to the police department in person or by certified mail, return receipt requested, to the address identified on the warning. A notice of appeal must be submitted in writing and include the date and location of the violation, appellant's name, address, phone number, and email address if any.
 - b. No fee shall be charged for an appeal requested under this section. Copies of documents in the city's control that the city intends to use at the hearing, and that directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
- (2) Notice of hearing. Upon receipt of a notice of appeal, the city shall schedule a hearing on the next available hearing date. Pursuant to the requirements of F.S. § 162.12, the city must provide written notice of the hearing to the appellant through one of the following methods:
- a. Hand delivery. Providing a copy of the notice of hearing by hand delivery to appellant at the time appellant submits their notice of appeal in person;
 - b. Posting. By posting the notice of hearing at least ten days prior to the hearing at the North Port Police Department, at city hall, and at the property upon which the violation is alleged to have occurred. Proof of posting shall be as provided in F.S. § 162.12; or

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

(3) Hearing.

- a. The hearing shall be conducted in compliance with section 2-508 of this Code, except as provided in this subsection.
- b. The burden of proof shall be on the city to show by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.
- c. The hearing officer shall consider the testimony, documents, and any other evidence presented at the hearing.
- d. If the appellant fails to attend a scheduled hearing, the hearing officer shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- e. At the conclusion of the hearing, the hearing officer shall issue findings of fact, based on evidence of the record and conclusions of law, and if supported by the findings, shall issue an order maintaining the trespass warning for one year from the date of issuance.

(4) Appeal.

- a. The decision of the hearing officer shall be final, and the appellant shall be deemed to have exhausted all administrative remedies. Decisions of the hearing officer may be appealed pursuant to section 2-513 of this Code.
- b. A trespass warning shall remain in effect during its appeal to the hearing officer and during any judicial review.”

SECTION 3 – CONFLICTS

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

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 9th day of February 2021.

CITY OF NORTH PORT, FLORIDA

GISELE "JILL" E. LUKE
MAYOR

ATTEST

HEATHER TAYLOR, CMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS

AMBER L. SLAYTON
CITY ATTORNEY