

CITY OF NORTH PORT  
SARASOTA COUNTY, FLORIDA  
CODE ENFORCEMENT HEARING

CITY OF NORTH PORT, FLORIDA, )  
    Petitioner, )  
  )  
vs. )  
  )  
MARK ALAN STERN )  
    Respondent. )

CASE NO.: Case # 23-009779

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**PETITIONER CITY OF NORTH PORT’S BRIEF**

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On March 23, 2023, the Hearing Officer held the first hearing on the above-referenced case and ordered Petitioner City of North Port (“the City”) to provide legal briefing within ten days in response to the Hearing Officers question regarding Trespass on City Property.

The City provided proper notice and due process to the Respondent for the *Trespass on City Property* and appropriate time for an appeal. The following portions of this brief include the legal precedent to properly issue a trespass warning and the legal implications of a trespass warning on City Property.

In sum, the City would respectfully ask this court to extend the trespass hearing for a term of one year. The Respondent has a legal right to be in all portions of City Hall that he is conducting legal business in, as well as present at all public meetings. The City Manager can permit additional authorization within City Hall as needed by the Respondent as long as the approval is in writing.<sup>1</sup>

Accordingly, the facts support a finding of violation and enforcement of same.

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<sup>1</sup> See City of North Port Code, Art. I, § 46-2 (c) (attached as Exhibit A).

## I. The Violation and Notice

The North Port Police Department issued a trespass warning to Mr. Mark Alan Stern for violating Article I, Section 46-2 of the Code of the City of North Port, Florida (“City Code”), related to Offenses Involving Property.<sup>2</sup> Applicable provisions include:

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.<sup>3</sup>

On February 8, 2023, the North Port Police Department properly served a *Notice of Trespass Warning* to Mark Alan Stern. The factual basis of the violation was argued in its entirety during the Code Enforcement Hearing dated March 23, 2023, and therefore those facts are not at issue for purposes of this legal briefing.

### A. Enactment and intent of the City Commission - Ordinance No. 2021-02

City Ordinance No. 2021-02, amended the City Code to establish a process and authorize City Law Enforcement Officials to Trespass an individual from Public Property. The Ordinance was enacted on February 9, 2021, to “regulate the use of public spaces of City Property in the interest of public health and safety” as well as “maintain a safe, orderly, and pleasant environment on City Property.”<sup>4</sup>

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<sup>2</sup> See City of North Port Code, Art. I, § 46-2 (attached as Exhibit A).

<sup>3</sup> *Id.*

<sup>4</sup> (Attached at Exhibit B)

Prohibited conduct under the Section 46-2 of the City Code include but are not limited to:

- (9) Use of insulting or fighting words which by their very utterance inflict injury or tend to incite a breach of the peace.
- (10) Disruptive or unsafe behavior, including conduct which intentionally interferes with employees or contractors in the performance of their duties or intentionally interferes with the proper use of a facility by others.

The Petitioners testimony and behavior of the Respondent during the court proceedings, the Respondents actions leading up to the trespass on February 8, 2023, as well as the events that day, would undoubtable fall within the intent of the City Commissioners of the behavior and decorum intended to regulate.

#### **B. Proper Notice and Due Process**

The City recognizes the right of its citizens to have a constitutionally protected liberty interest to be on City Lands of his or her choosing that are open to the public generally.<sup>5</sup> However, the Courts deemed this a fundamental right for the purpose of substantive due process, and therefore a person may forfeit this liberty right by trespass or other violations of law.<sup>6</sup>

City Ordinance 2021-02 cites to *Catron v. City of St. Petersburg*, 658 F. 3d 1260 (11th Cir. 2011) wherein “We 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.”

In *Catron*, four homeless residents brought an action against the City of St. Petersburg challenging the constitutionality of the city’s trespass ordinance. In *Catron*, the plaintiffs argued

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<sup>5</sup> See *Catron v. City of St. Petersburg*, 658 F. 3d 1260 (11th Cir. 2011)

<sup>6</sup> *Id.*; see U.S.C.A. Const. Amend. 14.

that the City of St. Petersburg had deprived them of their liberty interest in patronizing a public park by “enforcing the trespass ordinance to prohibit them from having access to a specific park” and by “carrying out a policy of enforcing the ordinance to prohibit their use of all parks in the City open to the public generally.” The 11th Circuit Court of Appeals struck down St. Petersburg’s trespass ordinance *to the extent* that it did not have an appeal process for those residents. The City of North Port recognizes this right of due process, and the applicable portions of the Respondent’s rights are clearly documented in the Section 46-2 of the City Code and City Ordinance No. 2021-02.

To satisfy due process, the City’s Hearing Officer has the jurisdiction and authority to hear and decide the appeal of a trespass warning issued pursuant to Subsection 46-2(d) of the City Code.

Applicable provisions of Subsection 46-2(d) of the City Code include:

- (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.<sup>7</sup>
- (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:  
...

- (3) Hearing.

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<sup>7</sup> See City of North Port Code, Art. I, § 46-2 (d) (1) (attached as Exhibit A).

- 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.

Here, the record demonstrates that the City provided adequate notice of the alleged violations of City Code and of the procedures for challenging those violations. Mr. Stern properly asserted his rights to appeal his trespass order with the Hearing Officer.

Accordingly, Respondent is receiving due process.

### **C. First Amendment Rights**

The City emphasizes that the scope of the trespass warning does not infringe on the Respondents First Amendment Rights.<sup>8</sup> As stated above, the City would respectfully ask this court to extend the trespass hearing for a term of one year and allow for the Respondent to conduct lawful business within North Port City Hall, as well as attend all public meetings.

For First Amendment purposes, “the existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated, differ depending on the

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<sup>8</sup> See *Cuellar v. Bernard*, Not Reported in F.Supp.2d (2013) (“For First Amendment purposes, ‘[t]he existence of a right of access to public property and the standard by which limitations upon such a right must be evaluated differ depending on the character of the property at issue.’ issue.” *Chiu v. Plano Independent School Dist.*, 260 F.3d 330, 344 (5th Cir.2001) (per curiam) (quoting *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)).

character of the property at issue.”<sup>9</sup> The Supreme Court has distinguished between traditional public forums, designated public forums, limited public forums, and non-public forums.<sup>10</sup> The City recognizes that a public meeting constitutes a designated public forum.<sup>11</sup> To exclude speakers from a traditional and designated public forum would be “subject to rigorous first amendment scrutiny.”<sup>12</sup> If an exclusion is sought after at a public meeting, there would be additional scrutiny. To enforce a content-based exclusion, the requestor must show that the regulation is “necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end.”<sup>13</sup> “The state may also enforce regulations of the time, place, and manner of expression which are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.”<sup>14</sup> If the City wished to ban the Respondent in a public forum, the ban must be narrowly tailored.<sup>15</sup> In *Cuellar*, the facts presented are different than the present. The court ruled that because the “criminal trespass notice completely bans Plaintiff’s presence at City Hall and the Municipal Plaza Building at all times and for all purposes” that the ban is not narrowly tailored.<sup>16</sup> At least one federal court of appeals opinion supports a finding that

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<sup>9</sup> *Chiu v. Plano Independent School Dist.*, 260 F.3d 330, 344 (5th Cir.2001) (per curiam) (quoting *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 44, 103 S.Ct. 948, 74 L.Ed.2d 794 (1983)).

<sup>10</sup> *See Id.* at 344–47.

<sup>11</sup> *See Mesa v. White*, 197 F.3 1041, 1044 (10<sup>th</sup> Cir. 1999)(“The City Commission designated their meeting a public forum when the commission intentionally opened it to the public and permitted public discourse on agenda items.”)

<sup>12</sup> *Chiu*, 260 F.3d at 344

<sup>13</sup> *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. at 45.

<sup>14</sup> *Id.*

<sup>15</sup> *See Cuellar v. Bernard*, Not Reported in F.Supp.2d (2013) (“There is no indication that the ban has been narrowly tailored. The criminal trespass notice completely bans Plaintiff’s presence at City Hall and the Municipal Plaza Building at all times and for all purposes. At least one federal court of appeals opinion supports a finding that banning an individual from speaking at a city council meeting constitutes a First Amendment violation. *See Surita v. Hyde*, 665 F.3d 860 (7th Cir.2011) (holding that a mayor violated an individual’s First Amendment rights when the mayor intentionally barred the individual from speaking at a city council meeting.”)

<sup>16</sup> *See Cuellar v. Bernard*, Not Reported in F.Supp.2d (2013).

banning an individual from speaking at a city council meeting constitutes a First Amendment violation.<sup>17</sup>

In accordance with the law, the City does not wish to ban the Respondent from public meetings or anywhere else the Respondent is conducting legal business in City Hall. The City recognizes the rights of its citizens and only seeks to ban the unruly and dangerous behavior exhibited by the Respondent, as testified to. In the event the Respondent needs additional clarification on the areas designated, guidance is provided in the North Port City Code.

Section 46-2 of the City Code provides the following exception:

- (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.

**Thus, the City Manager can authorize additional areas, as needed.**

## **II. Conclusion**

The City holds a right to maintain a safe, orderly, and pleasant environment on City Property. The Respondent forfeited his right to move freely on City grounds when he violated the applicable portions of the City Code.

The applicable legal precedent challenging the due process requirements of a trespass ordinance have been satisfied here. The Respondent was properly trespassed and given the opportunity to appeal that trespass as designated by City Code. In the March 23, 2023 hearing,

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<sup>17</sup> See *Surita v. Hyde*, 665 F.3d 860 (7th Cir.2011) (holding that a mayor violated an individual's First Amendment rights when the mayor intentionally barred the individual from speaking at a city council meeting).

the City provided testimony and entered evidence of a violation. The City in no way wishes to infringe on the Respondent's First Amendment Rights and he remains legally authorized to attend all public meetings held in City Hall. Any additional lawful business can be authorized by the City Manager as needed.

### **III. Prayer**

Wherefore, the City prays that the Hearing Officer enter the appropriate findings that: (1) a violation has occurred; (2) that Respondent is authorized to be in and on the City Hall premises while attending any public meeting for purposes of asserting his First Amendment rights; and (3) that Respondent is authorized to be in and on the City Hall premises to conduct any additional lawful business for which the City manager may authorize in writing.

Respectfully submitted this April 3, 2023.

/s/ Katlyn Coughlin

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on \_\_\_\_\_, a true and correct copy of the foregoing was mailed to Respondents at the following address via certified mail, return receipt requested:

Mark Stern



P.O. Box 584  
Venice, Florida 34184-0584

/s/ Katlyn Coughlin  
Katlyn Coughlin

## **EXHIBIT A**

### **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 30 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.

( Ord. No. 2021-02 , § 2.01, 2-9-2021)

**EXHIBIT B**