

Sec. 21-46. - Trespass warnings on public property and other property generally open to the public.

- (a) Officers of the Sarasota Police Department are authorized to issue a trespass warning 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). The trespass warning shall be limited to the specific property where the violation occurred.
- (b) Officers of the Sarasota Police Department are authorized to issue a trespass warning to any individual who violates any city ordinance or state law or who violates any applicable ordinance, rule or regulation of another governmental entity which violation was committed while on or within any public property not owned by the city when written authorization to do so has been obtained from a duly authorized representative of the governmental entity owning such public property.
- (c) Officers of the Sarasota Police Department are authorized to issue a trespass warning to any individual who violates any city ordinance or state law which violation was committed while on private property subject to a public access easement when written authorization to do so has been obtained from the owner of the private property subject to the public access easement. For purposes of this section 21-46, the term public access easement shall mean an easement in favor of the City of Sarasota granting general public access to private property or limited public access to patrons and invitees of a particular business establishment or establishments.
- (d) Trespass warnings shall be in writing and issued for a period not to exceed one (1) year.
- (e) 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.
- (f) 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.
- (g) Any person found on or within any public property belonging to another governmental agency other than the city or found on or within any private property subject to a public access easement, in violation of a trespass warning issued in accordance with this section may be arrested for trespassing.
- (h) 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.

- (i) 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 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.
- (j) This section shall not be construed to limit the authority of officers of the Sarasota Police Department to arrest or cite individuals for violating any section of the Sarasota City Code or the Florida Statutes.
- (k) 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, 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 (1) of three (3) 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 the Sarasota Police Department or on the bulletin board at 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.
  - (8)

The special magistrate shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

- (9) 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.
- (10) 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.
- (11) 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.
- (12) 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.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

(Ord. No. 12-5008, § 1, 7-16-12; Ord. No. 13-5037, § 1, 1-22-13)