

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)