

ORDINANCE NO. 1407

AN ORDINANCE OF THE CITY OF PANAMA CITY BEACH, FLORIDA, AMENDING THE CODE OF ORDINANCES TO CREATE A NEW SECTION 16-11 RELATING TO TRESPASS WARNINGS ON PUBLIC PROPERTY; ESTABLISHING A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING NOTICE REQUIREMENTS FOR TRESPASS WARNINGS; ESTABLISHING AN APPEAL PROCESS FOR TRESPASS WARNINGS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING AN IMMEDIATELY EFFECTIVE DATE.

WHEREAS, the City of Panama City Beach may lawfully designate the use of City facilities for activities consistent with their purpose and the City Council seeks to maintain a safe and orderly environment of City property; and

WHEREAS, the Council seeks to discourage unlawful, unsafe, destructive, harassing or otherwise prohibited activity on City property that interferes with the designated use of City property; and

WHEREAS, the Council finds that the presence of individuals who have violated City ordinances, rules or regulations, or State law on public property or on private property for which the City has a public access easement creates a threat to the safety and welfare of the citizens and visitors of the City as well as the City property and facilities and therefore deem this ordinance to promote such public safety, public welfare and protection of property; and

WHEREAS, the Council desires to provide for a method to allow for the issuance of trespass warnings for individuals committing violations of City ordinances, rules or regulations, or State law, followed by the opportunity for a hearing to address the alleged deprivation of any constitutionally protected liberty interest of such individual;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH:

SECTION 1. From and after the effective date of this ordinance, the Code of Ordinances of the City of Panama City Beach, Chapter 16 - Offenses, Article I, is amended by the creation of Section 16-11 entitled "Trespass Warnings on Public Property", which shall read as follows:

Sec. 16-11. Trespass Warnings on Public Property.

(a) Officers of the City 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, including municipal parks, and including beach access as that term is defined in Section 16-3 (but excluding other public rights-of-way). The trespass warning shall be limited to the specific property where the violation occurred.

(b) Trespass warnings shall be in writing and issued for a period of one (1) year.

(c) 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 appeal.

(d) Any person found on or within any city facility, building, or outdoor area, including municipal parks, and beach access, in violation of a trespass warning issued in accordance with this section may be arrested for trespassing, except as otherwise provided in this section.

(e) 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.

(f) This section shall not be construed to limit the authority of any officer of the City Police Department 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 officer; nor shall this section be construed to limit the authority of any officer of the City Police Department to arrest or cite individuals for violating any section of the City Code or the Florida Statutes.

(g) *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 20 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 the City Council at a regularly scheduled City Council meeting.

(3) Within five (5) days following the filing of the appeal, the City Clerk or his/her designee shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of three ways:

a. By providing the appellant a copy of the notice of hearing in person at the time he or she files the appeal. When it is not reasonably practical or 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 posting the notice at city hall; or

c. By telephone if a telephone number has been provided and mailing when a mailing address has been provided.

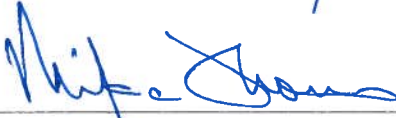
- (4) In no event shall the hearing be held sooner than seven (7) days following the filing of the appeal or later than 30 days from the filing of the appeal except that the appellant may request that the scheduled hearing be postponed up to an additional 30 days during the appeal period.
- (5) Copies 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, to testify and to call witnesses, cross examine witnesses and present evidence. The appellant shall have the right to bring a court reporter, at appellant's own expense.
- (7) The City Council 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.
- (8) 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.
- (9) If the appellant fails to attend a scheduled hearing, the City Council shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- (10) Within ten (10) days of the hearing, the City Council shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided.
- (11) The decision of the City Council 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.
- (12) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

SECTION 2. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 3. The appropriate officers and agents of the City are authorized and directed to codify, include and publish in electronic format the provisions of this Ordinance within the Panama City Beach Code, and unless a contrary ordinance is adopted within ninety (90) days following such publication, the codification of this Ordinance shall become the final and official record of the matters herein ordained. Section numbers may be assigned and changed whenever necessary or convenient.

SECTION 4. This Ordinance shall take effect immediately upon passage.

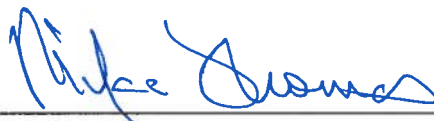
PASSED, APPROVED AND ADOPTED at the regular meeting of the City Council of the City of Panama City Beach, Florida, this 9th day of February, 2017.


MAYOR

ATTEST:


CITY CLERK

EXAMINED AND APPROVED by me this 9th day of February, 2017.


MAYOR

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