

CITY OF BONITA SPRINGS, FLORIDA

BONITA SPRINGS ORDINANCE NO. 17-17

AN ORDINANCE OF THE CITY OF BONITA SPRINGS; ESTABLISHING A PROCESS AUTHORIZING ISSUANCE OF TRESPASS WARNINGS; CREATING AN APPEAL PROCESS FOR WHEN A PERSON IS TRESPASSED ON CITY PROPERTY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR CONFLICT OF LAWS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs, Florida is the governing body of Bonita Springs; and

WHEREAS, Florida Statutes §166.021 authorizes the City of Bonita Springs to establish, coordinate and enforce laws that are necessary for the protection of the public; and

WHEREAS, the City of Bonita Springs, Florida, desires to ensure that where there is a need to trespass a person on public property, there is an appeal process in place; and

WHEREAS, City Council finds that the adoption of this ordinance will create a process to ensure the constitutionality of everyone's rights in use of municipal property within the City's corporate boundaries.

THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: TRESPASS WARNINGS; AUTHORIZATION TO ISSUE TRESPASS WARNING FOR PUBLIC PROPERTY.

- (a) The City employees or officials, or their designees, having control over a City facility, building, or outdoor area, are authorized to issue a trespass warning for the specific property where the violation occurred, to any individual who violates any City ordinance, rule or regulation, or State law or lawful directive of a City employee or official which violation was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), and which violation disturbs or norms the peaceful or safe use or enjoyment at the City facility, building or outdoor area, by any individual, or which damages or harms the City facility, building or outdoor area.

- (b) When requested by the City employee or official having control over a City facility, building, or outdoor area, the Lee County Sheriff's Office ("LCSO") is authorized to issue a trespass warning to any individual who violates any City ordinance or State law which was committed while on or within a City facility, building, or outdoor area, including municipal parks, (but excluding rights-of-way), for the specific property where the violation occurred.
- (c) For the purpose of this section, right-of-way shall include those sidewalks which are closest to a paved street, provided that the street side edge of the sidewalk is within 20 feet of the curbline closest to the property.
- (d) In the event the demand by an individual refuses or fails to cease and desist from such violation upon the City employee or official, or their designee, trespass warnings shall be issued as follows:
 - (1) For the first violation, the individual may be issued a trespass warning for a period not to exceed six (6) months.
 - (2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed one (1) year.
 - (3) The trespass warning shall specify by name the City facility, building, or outdoor area in which it applies. An individual may not be trespassed from all City facilities, but only for the specific property where the violation occurred.
- (e) A copy of the trespass warning shall be provided by mail or hand delivery to the individual and to the City employee or official having control over the City park, facility, building or outdoor area.
- (f) The written trespass warning shall advise of the right to appeal and the location and telephone number for filing the appeal.
- (g) Any person found on or within any City facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.
- (h) The City employee or official having control over a City facility, building, or outdoor area, including municipal parks, may 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. The City will provide a copy of any authorization to the LCSO.
- (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) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:
- (1) An appeal of the trespass warning must be filed, in writing, within ten 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) The appeal shall be filed with the City Clerk, at the front desk of Bonita Springs City Hall, located at 9101 Bonita Beach Road, Bonita Springs, Florida, 34135.
 - (3) Appeals shall be heard by a Hearing Master which the City contracts with to provide this service.
 - (4) Notice. Within five days following the filing of the appeal, the Hearing Master shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of three ways:
 - a. At a physical address provided by the appellant.
 - b. By leaving or posting the notice at the front desk of Bonita Springs City Hall; or
 - c. By telephone if a telephone number has been provided. If appellant cannot be reached by telephone or is without a physical address, then notice at the front desk shall be sufficient.
 - (5) Hearings. The Hearing Master shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 30 days from the filing of the appeal.
 - a. 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.
 - b. The appellant and the City shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross examine witnesses and to present evidence.
 - c. The appellant shall have the right to bring a court reporter, at their own expense. The hearing will be recorded.
 - d. The Hearing Master 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.

- e. 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.
- f. If the appellant fails to attend a scheduled hearing, the Hearing Master shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- g. Within five days of the hearing, the Hearing Master shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided, the City and if applicable, the LCSO. If no address is provided, a copy of the decision shall be posted at the front desk of City Hall.
- h. The decision of the Hearing Master 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 by the appellant. The City may not appeal any decision of the Hearing Master.
- i. The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

(6) Violations. Any trespass violations on public property will be processed in accordance with Florida Statutes.

SECTION TWO: CONFLICTS OF LAW

Whenever the requirements or provisions of this amending ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION THREE: SEVERABILITY

If any part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reasons, such part, section, subsection, or other portion or the prescribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City declares that no invalid or prescribed provision or application was an inducement to the enactment of this Ordinance, and that it would have enacted this Ordinance regardless of the invalid or prescribed provision or application.

SECTION FOUR: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

It is the intention of the City Council for the City of Bonita Springs that the provisions of this ordinance shall become and be made a part of the Bonita Springs City Code; and that sections of this ordinance may be renumbered or re-lettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the City Manager, or the City Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the City Clerk.

SECTION FIVE: EFFECTIVE DATE

The effective date of this ordinance shall be thirty (30) days from its adoption date.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 2nd day of August, 2017.

AUTHENTICATION:

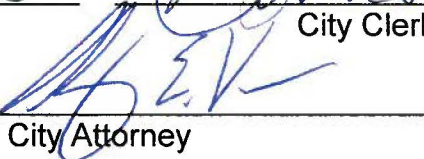


Mayor



City Clerk

APPROVED AS TO FORM:



City Attorney

Vote:

DeWitt	Aye	Quaremba	Aye
Forbes	Aye	Simmons	Aye
Gibson	Aye	Slachta	Aye
O'Flinn	Aye		

Date filed with City Clerk:

8/3/17