

ORDINANCE 3321-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER PARK, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF WINTER PARK CHAPTER 62 OFFENSES INVOLVING PUBLIC PEACE AND ORDER, BY CREATING SECTION 62-80 TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS, AND SETTING AN EFFECTIVE DATE.

WHEREAS, the City of Winter Park may lawfully designate the use of City facilities and public space for activities consistent with their purpose and the City Commission seeks to maintain a safe and orderly environment of City property;

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

WHEREAS, the City Commission 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 City Commission 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 Commission of the City of Winter Park, Florida, as follows:

SECTION I: AMENDMENT - Chapter 62, Code of Ordinances, City of Winter Park, is amended by adding Section 62-80, Trespass Warnings on Public Property, as follows:

Sec. 62-80. – Trespass warnings on public property.

- (a) City employees or officials, or their designees, having control over a City facility, building, or outdoor area, including municipal parks, are authorized to issue a trespass warning 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, for the specific property where the violation occurred.

- (b) When no other City employee or official having control over a City facility, building, or outdoor area, including municipal parks, is present, a Police Officer 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, for the specific property where the violation occurred. For the first violation, the individual may be issued a trespass warning for a period not to exceed one (1) year.
- (c) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two (2) years.
- (d) 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. The written trespass warning shall advise of the right to appeal and the location for filing the appeal.
- (e) 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.
- (f) 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 (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) The appeal shall be filed at the location specified in the trespass warning.
 - (3) The city shall contract with a special magistrate and/or the contracted Local Hearing Officer to hear all trespass appeals.
 - (4) Within thirty (30) days following the filing of the appeal, the special magistrate or Local Hearing Officer shall schedule a hearing. Notice of the hearing will be provided to the appellant by:
 - a. Posting the notice at City Hall located at, Winter Park, Florida 32789, and
 - b. Mailing a copy of the notice if an address is provided. In the event of non-delivery, the notice posted at City Hall shall suffice.
 - (5) The special magistrate or Local Hearing Officer shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven (7) days following the filing of the appeal and no later than sixty (60) days from the filing of the appeal.

- (6) 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.
- (7) 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. Any attorney appearing on behalf of the appellant shall file a notice of appearance with the office of the city attorney at least three (3) days prior to the hearing. The appellant shall have the right to bring a court reporter, at his or her own expense.
- (8) The special magistrate or Local Hearing Officer 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 issued pursuant to the criteria of this section.
- (10) If the appellant fails to attend a scheduled hearing, the special magistrate or Local Hearing Officer 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 or Local Hearing Officer shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at City Hall.
- (12) The decision of the special magistrate or Local Hearing Officer shall be final and 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 the decision of the special magistrate.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

SECTION II: AUTHORIZING INCLUSION IN CODE. The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the City of Winter Park, as additions or amendments thereto

SECTION III: SEVERABILITY. Should any word, phrase, sentence, subsection or section be held by a court of competent jurisdiction to be illegal, void, unenforceable, or unconstitutional, then that word, phrase, sentence, subsection or section so held shall be severed from this ordinance and all other words, phrases, sentences, subsections, or sections shall remain in full force and effect.

SECTION IV: CONFLICTING ORDINANCES. All ordinances or part thereof, in conflict herewith are, to the extent of such conflict, repealed.

SECTION V: EFFECTIVE DATE. That this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take effect and be in full force and effect immediately upon its passage and adoption.

ADOPTED at a regular meeting of the City Commission, held at City Hall, Winter Park, Florida, on the 17th day of October, 2024.

Mayor Sheila DeCiccio

ATTEST:

City Clerk Rene Cranis