

ORDINANCE 24-__

AN ORDINANCE OF MARION COUNTY, FLORIDA, RELATING TO TRESPASS ON PROPERTY OWNED BY MARION COUNTY; CREATING CHAPTER 11, ARTICLE VII, SECTIONS 11-300 THROUGH 11-306 OF THE MARION COUNTY CODE; PROVIDING AUTHORITY, INTENT, SCOPE, AND PURPOSE; PROVIDING DEFINITIONS; PROVIDING FOR DESIGNATED PERSONS AUTHORIZED TO ISSUE TRESPASS WARNINGS; PROVIDING A METHOD FOR WARNINGS; PROVIDING FOR THE DURATION OF WARNINGS; PROVIDING FOR A PROCEDURE FOR APPEAL OF WARNINGS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL; PROVIDING FOR INCLUSION IN CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Marion County, Florida, a political subdivision of the State of Florida, owns land and buildings throughout Marion County, Florida, that are provided for the use of Marion County's residents and visitors, and to enable local government to carry out its duties; and,

WHEREAS, some County-owned lands and buildings are administered and used by the government of Marion County, acting through the Board of County Commissioners, the County Administrator, and the various Departments of the County; and,

WHEREAS, some County-owned lands and buildings are used by other Constitutional Officers, including the Clerk of Court and Comptroller, the Property Appraiser, the Public Defender, the Sheriff, the State Attorney, the Supervisor of Elections, and the Tax Collector, as well as the Fifth Judicial Circuit of the State of Florida, to carry out their lawful duties, as required by law; and,

WHEREAS, from time-to-time, while upon County-owned lands or in County-owned buildings, persons may commit acts that are unlawful, disruptive, or contrary to the rules and regulations of the County and Constitutional Officers; and,

WHEREAS, in order to ensure the proper function of government, it may be necessary for such persons to be removed from County-owned lands and buildings, be prohibited from returning for a period of time, and face arrest and prosecution for trespass if they return in violation of this prohibition; and,

WHEREAS, the County recognizes that trespassing persons from County-owned land and buildings requires that there be cause to trespass them, as well as a procedure through which the decision to trespass them may be appealed; and,

WHEREAS, the County recognizes the need for each Constitutional Officer to determine, within the bounds set by law, whether and when to trespass persons from the property allocated to their use; and,

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Marion County, Florida as follows:

Section 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein, but need not be set forth in the Marion County Code.

Section 2. Chapter 11, Article VII of the Marion County Code shall be amended to read as follows:

Sec. 11-300: Authority; Intent; Purpose; Scope; Exceptions.

- (a) This Article is adopted in the interest of the public health, safety, and general welfare of the citizens and inhabitants of Marion County, Florida, pursuant to Chapter 125, Florida Statutes and Florida Constitution Article VIII.
- (b) The intent and purpose of this article is to provide for a uniform system of issuing trespass warnings to persons who commit certain acts on property owned by the County, protect the Constitutional rights of all persons, and promote the efficient functioning of government.
- (c) The provisions of this ordinance apply to all property owned by the County, except as provided in Section 11-300, Paragraph (d) of this ordinance.
- (d) This ordinance does not apply to property administered by a Constitutional Officer if the Constitutional Officer has adopted his/her own policies and procedures related to the trespass of persons from property administered by him/her. If a Constitutional Officer has adopted such policies and procedures, then their own policies and procedures shall preempt this ordinance and shall govern any issues arising out of or relating to the trespass of persons on properties administered by that Constitutional Officer, and the terms of this ordinance shall not be applicable to properties administered by that Constitutional Officer.

Sec. 11-301: Definitions.

For the purpose of this article, certain terms shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

- (a) "Constitutional Officer" refers, individually and collectively, to the Clerk of Court and Comptroller, the Property Appraiser, the Public Defender, the Sheriff, the State Attorney, the Supervisor of Elections, and the Tax Collector;
- (b) "Right-of-way" includes only those sidewalks which are adjacent to a paved street, provided that the street-side edge of the sidewalk is within 20 feet of the curb line.
- (c) "Property administered by the County" means property owned by the County, that is not devoted or allocated to use by a Constitutional Officer in carrying out their duties;

- (d) "Property administered by a Constitutional Officer" means property owned by the County, that is devoted primarily to use by a Constitutional Officer in carrying out his/her official duties; and
- (e) "Property owned by the County" means:
 - (1) Real property owned or leased by Marion County, Florida, or the Board of County Commissioners of Marion County, Florida, including any county facility, outdoor area, park, and recreation area, together with any structures or buildings located on the real property;
 - (2) Structures or buildings owned or leased by the County; and
 - (3) Conveyances owned or leased by the County.
 - (4) Property owned by the County, for the purposes of this ordinance, does not include any County-owned right-of-way.

Sec. 11-302. Persons authorized to issue warnings.

- (a) For property owned and administered by the County, the County Administrator and/or his/her designee shall be authorized to issue trespass warnings for property owned and administered by the County.
- (b) For property owned by the County but administered by a Constitutional Officer, the Constitutional Officer is authorized to issue trespass warnings, except that the Constitutional Officer may, by internal rule or policy, specifically designate which of his or her employees are authorized to issue trespass warnings on his/her behalf for the property.
- (c) The Sheriff of Marion County and his/her deputies, the officers of the Belleview Police Department, Dunnellon Police Department, and Ocala Police Department, and all other law enforcement officers (as that term is defined in s. 784.07(1)(d), Florida Statutes) are hereby designated as "authorized persons" or "persons authorized" for the purposes set forth in Florida Statutes 810.08 and 810.09, and are authorized to communicate an order to depart or leave property owned by the County in cases of a threat to public safety or welfare.
 - (1) A copy of any trespass warning issued by a law enforcement officer pursuant to this Section shall be delivered to the County Administrator as soon as practicable, together with any document provided to the subject of the warning.
 - (2) A trespass warning issued by a law enforcement officer pursuant to this Section shall substantially conform to the requirements of this Article.
 - (3) If a Constitutional Officer has adopted internal policies and procedures related to trespass on property administered by him/her, it shall be presumed that the foregoing law enforcement officers are authorized persons or persons authorized, unless the internal policies and procedures of the Constitutional Officer specifically prescribed that they are not authorized persons or persons authorized.

Sec. 11-303. Method of Warning.

- (a) Warnings to depart and/or not return to property owned and administered by the County may be communicated verbally by an authorized person but shall thereafter be immediately reduced to writing and delivered to the trespassed person.

- (1) If a person is requested to leave County owned and administered property and complies, a written trespass warning may thereafter be delivered to them in any manner sufficient to ensure that the warning is communicated to them.
- (2) A record shall be made of the manner in which the warning was communicated to them.
- (3) A person may not be detained solely to issue them a trespass warning.
- (b) When a person is issued a written trespass warning, it shall be reduced to writing in a form to be provided by the County or, if issued by law enforcement officer, in a form used by that officer's employing agency.
- (c) All pertinent information regarding the subject of the trespass warning shall be included to the extent that required information is available.
- (d) All written trespass warnings must set forth with specificity the ground(s) for the issuance of the trespass warning.
- (e) In addition to the trespass warning, the person trespassed shall be provided a copy of the form entitled "Trespass – County Property (Appeal Process)" by a County employee.
 - (1) If a trespass warning is issued by a law enforcement officer, outside of the County's normal business hours or at a time when this form is not readily available, then the form shall be transmitted to the subject of the trespass warning by the County, and shall made available to the subject of the warning in the same manner as an Appeal Petition.
 - (2) If a written trespass warning cannot be delivered to the subject of the warning, then the form shall be made available to the subject of the warning in the same manner as an Appeal Petition.

Sec. 11-304. Grounds for Issuance of Warning.

- (a) A person may be ordered to depart and/or not return to the property administered by the County, and may be issued a written trespass warning, for committing any of the following acts upon property administered by the County:
 - (1) Any act that constitutes a violation of state or federal law, rule, or regulation;
 - (2) Any act that constitutes a violation of a county or municipal ordinance;
 - (3) Any act that materially disrupts the business of the County, including the ability of other members of the public to be provided services by any employee or volunteer of the County.
 - (A) When feasible, prior to issuing a trespass warning for committing an act that materially disrupts the business of the County, the person shall be advised that their actions are materially disrupting the business of the County and be asked to cease. If their disruptive actions continue, or if after stopping they resume their disruptive actions, a trespass warning may be issued.
 - (4) Any act that poses a threat to the public safety or welfare, including any act that physically harms or threatens to physically harm any employee or volunteer of the County, or any member of the public.
- (b) A person may be ordered to depart and/or not return to the property administered by the County, and may be issued a written trespass warning, for committing any act that creates

a reasonable and well-founded belief that the individual will commit an act on property administered by the County that:

- (1) Violates state or federal law, rule, or regulation;
 - (2) Violates a county or municipal ordinance;
 - (3) Materially disrupts the business of the County, including the ability of other members of the public to be provided services by any employee or volunteer of the County; or
 - (4) Will constitute a threat to the public safety or welfare, including any act that would result in physical harm to any employee or volunteer of the County, or any member of the public.
- (c) A person may not be ordered to depart and/or ordered not to return to property administered by the County, nor may a person be issued a written trespass warning, for engaging in activity protected by the laws or Constitution of the United States or of the State of Florida.

Sec. 11-305. Duration and scope of trespass warnings.

- (a) A trespass warning shall be issued for a period:
- (1) Not to exceed one (1) year, for a first trespass warning; and
 - (2) Not to exceed five (5) years, for any second or subsequent trespass warning from the same property, or for any act that constitutes a violation of an existing trespass warning or order from a court.
- (b) A trespass warning may be issued only for:
- (1) The property or properties upon which the person committed the act that gave cause for issuance of the warning; or
 - (2) The property or properties for which there is a reasonable and well-founded belief that the person will commit a specified act.
- (c) If a person is issued a trespass warning for more than one location administered by the County, the person issuing the trespass warning may note each location on the warning or may issue a separate warning for each location.
- (d) The County Administrator may rescind any trespass order at any time. A trespass warning may also be rescinded by the County Administrator, or his/her designee, pursuant to the appeal process set forth in Section 11-306 of this Ordinance.
- (e) Upon the request of the trespassed individual, the County Administrator may authorize an individual who has received a trespass warning to enter the property or premises from which they were trespassed for the limited purpose of exercising his or her First Amendment rights or any other right guaranteed by the United States or Florida Constitution, if there is no other reasonable alternative location to exercise such rights or to conduct necessary County business. Such authorization must be in writing and shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

Sec. 11-306. Procedure for Appeal of trespass warning.

The following procedure sets forth the appeal process applicable to trespass warnings issued pursuant to this Article:

- (a) To appeal a trespass warning issued for property administered by the County, the subject of the trespass warning, or their attorney, may file a written appeal, requesting the trespass warning be rescinded or modified.
- (b) Appeals shall be made on the form entitled “Trespass – County Property (Appeal Petition).”
- (c) Written copies of the appeal petition shall be provided to any person upon request, without charge. Copies of an appeal petition may be obtained:
 - (1) Via telephone request, to (352) 438-2300, during normal business hours;
 - (2) Via e-mail, by e-mailing CountyAdministrator@marionfl.org;
 - (3) Via US mail, by mailing Marion County Board of County Commissioners, Attn: County Administrator, 601 SE 25th Ave, Ocala, Florida 34471.
- (d) Completed appeal petitions may be filed:
 - (1) Via e-mail, sent to CountyAdministrator@marionfl.org; or
 - (2) Via U.S. mail, sent to Marion County Board of County Commissioners, Attn: County Administrator, 601 SE 25th Ave, Ocala, Florida 34471.
- (e) Upon receipt of an appeal petition, the person receiving the appeal petition shall notify the County Administrator.
- (f) The County Administrator shall schedule a date and time to hold a hearing to consider the appeal petition.
 - (1) The County Administrator may designate another employee of the County to consider the appeal and preside at a hearing.
 - (2) The hearing shall occur within fifteen (15) business days of the date of receipt of the appeal petition.
 - (3) The hearing shall be open to the public.
 - (4) Notice of the hearing shall be communicated to the trespassed person, and shall include
 - (A) The time, date, and location of the appeal hearing;
 - (B) A copy of the trespass warning that is the subject of the appeal hearing; and,
 - (C) A statement that the appellant is responsible for the creation of a transcript of the appeal hearing.
 - (5) At the appeal hearing, the trespassed person shall have an opportunity to present evidence and argument on all issues involved, to conduct cross examination and submit rebuttal evidence, and to be represented by counsel. At the appeal hearing, the County Administrator, or his/her designee, may receive written or recorded statements or other documents. Formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings.
- (g) Within five (5) business days of the appeal hearing, the County Administrator, or his/her designee, shall file a written decision on the appeal. The written decision may maintain, modify, or rescind the trespass warning. The written decision shall constitute a final order of Marion County.
- (h) The trespassed person may appeal a final order to the Circuit Court of the Fifth Judicial Circuit. Such an appeal shall not be a hearing *de novo*¹, but shall be limited to appellate

¹ “*De novo*” refers to a hearing in which the court makes factual findings, weighs evidence, or enters judgments or rulings on the merits of the issuance of the trespass warning.

review of the record created before the County Administrator, or his/her designee, to determine whether procedural due process was accorded, whether the essential requirements of law were observed, and whether the findings set forth in the written decision on the appeal were supported by competent substantial evidence. An appeal shall be filed within thirty (30) days of the date of the written decision of the appeal/final order of the County.

(1) The record of the hearing of appeal petitions shall consist of:

- (A) The challenged trespass warning;
- (B) The completed "Trespass – County Property (Appeal Process)" form;
- (C) The completed "Trespass – County Property (Appeal Petition)" form and any attachments, including those provided by the trespassed person;
- (D) All notices;
- (E) Evidence received or considered;
- (F) A transcript of the hearing (if available);
- (G) Any correspondence related to the trespass warning;
- (H) The written decision on the appeal; and
- (I) A copy of this ordinance.

SECTION 3. CONFLICTS. In the event that the provisions of this ordinance are in conflict with any other ordinance, then the provisions of this Ordinance shall prevail.

SECTION 4. SEVERABILITY. It is hereby declared to be the intent of the Board of County Commissioners of Marion County that if any section, subsection, clause, phrase, or provision of this ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

SECTION 5. REPEAL OF ORDINANCES. All ordinances or parts of ordinances, in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 6. INCLUSION IN COUNTY CODE

It is the intent of the Board of County Commissioners of Marion County, Florida, and it is hereby provided that the provisions of this ordinance be incorporated into the Marion County Code of Ordinances, that the sections of this ordinance may be re-numbered or re-lettered to accomplish such intent.

SECTION 7. EFFECTIVE DATE.

A certified copy of this ordinance shall be filed with the Secretary of State by the Clerk within ten days after enactment by the Board of County Commissioners, and shall take effect upon such filing as provided in F.S. §125.66(2)(b).

DULY ADOPTED this ____ day of ____, 2024.

BOARD OF COUNTY COMMISSIONERS
MARION COUNTY, FLORIDA

MICHELLE STONE, CHAIRMAN

ATTEST:

GREGORY C. HARRELL, CLERK

DRAFT