

# **Board of County Commissioners Policies**

## **Alachua County, Florida**

Policy No.:

Effective: 01/01/2020

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Review Date:

### **TRESPASS POLICY**

#### **Purpose:**

To protect the safety of County facilities and properties by allowing for Alachua County (the "County") staff to identify disruptive, harmful or unlawful behaviors, and cite offending individuals to prevent them from entering County facilities and properties for a limited period of time.

#### **Policy:**

It is the policy of the County to maintain an environment that is open and accessible to the public. However, it may be necessary to deny persons access to Alachua County facilities or properties for a period of time when their actions: are harmful or disruptive to others or government operations, violate County's policies, rules or regulations, or violate the law.

Denying a person access to and use of County facilities or properties is an action that the County does not take without due consideration. Therefore, the County has established an appeals process for individuals who wish to have their right to access and use County facilities and properties restored.

#### **Definitions:**

The following definitions shall apply to the interpretation and enforcement of this Policy:

*Authorized Personnel* means those persons with the authority granted by this Section, acting in their official capacity, to issue a Trespass Warning, and includes any employee with management or oversight responsibility over the County facility or property in question at the time the Trespass Warning is issued, Constitutional officers and their designees, security personnel for any public property at the time the Trespass Warning is issued, and any Law Enforcement Officer.

*Conveyance* means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the Conveyance.

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*County Facility or County Property* means property owned, leased, operated, managed or controlled by the Alachua County Board of County Commissioners or one of its agencies, divisions, units or entities, including but not limited to, all buildings including administration buildings, structures, conveyances, parks, beach parks, public natural areas, public recreation areas, trails, playgrounds, streets, sidewalks, rights of way, libraries, docks, pavilions, parking lots, vacant lots, fenced land, posted land, easements, and other property generally used by the public.

*Law Enforcement Officer* means a deputy sheriff with the Alachua County Sheriff's Office or any other sworn Law Enforcement Officer certified pursuant to F.S. Ch. 943.

*Respondent* means the person who was issued the Trespass Warning.

*Structure* means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under Chapter 252 and within the area covered by such executive order or proclamation and for purposes of Section 810.02, Florida Statute, and Section 810.08, Florida Statute only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

*Trespass* means a person, without being authorized, licensed, or invited, willfully enters or remains in any Structure or Conveyance, or, having been authorized, licensed, or invited, is warned by the owner or designee of the premises to depart and refuses to do so.

*Trespass Warning* means a written document that bars the Respondent from entering or remaining on specified County Facility or County Property.

### **Procedures:**

The issuance of a Trespass Warning to a person should be the last resort when attempting to resolve inappropriate behavior or conduct. County departments and employees should attempt to resolve the issues through a progressive, documented, interactive approach before the issuance of a Trespass Warning, unless the inappropriate behavior or conduct is an immediate and substantial threat to persons or County Property. County departments and employees may summon a Law Enforcement Officer to issue Trespass Warnings to individuals whose behavior interferes with County business, violates rules, laws, or threatens the safety and well-being of employees or other citizens. In most cases, Authorized Personnel should make the request for law enforcement to Trespass a person. County departments may also have a standing order with a law enforcement agency that allows a Law Enforcement Officer to Trespass a person if Authorized Personnel are not available.

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- (1) *Procedures for issuing Trespass Warnings.* The following procedures govern the issuance of Trespass Warnings:
- a. Authorized personnel may have cause to remove any Respondent from a County Facility or County Property if the Authorized Personnel has good reason to believe that the Respondent is or has recently committed:
    - 1. Acts in any manner which violates, or is reasonably suspected to violate, any federal, state or local law, ordinance, rule or regulation.
    - 2. Acts in any manner which violates any County rule or policy contained in a County Ordinance, County Policy, County Administrative Order, Alachua County Department Operations Manual, facility rules, or any directive on any sign or notice at the public property; or disrupts normal county business or interferes with the ability of others to use the County Facility or County Property for its intended purpose.
    - 3. Uses language which by its very utterance inflicts injury or tends to incite an immediate breach of the peace.
  - b. The initial determination by Authorized Personnel, or their designee, that a Trespass Warning is needed may take into consideration the facts and circumstances of the individual situation, including but not limited to the following:
    - 1. The severity of the alleged violation;
    - 2. The Respondent's refusal to conform to any verbal requests or warnings to desist or cease the violation;
    - 3. Any previous violations committed by the Respondent; or
    - 4. The harm or potential harm to employees, to the public or public property threatened by the Respondent's actions.
  - c. A Trespass Warning may be administered in writing to a Respondent by Authorized Personnel, or their designee, or by Law Enforcement Officers authorized and requested to do so. The County Manager or designee may create the forms associated with a Trespass Warning, including the Trespass Warning itself, and may amend the forms at any time.
  - d. The Trespass Warning shall include:
    - 1. The name and address of the Trespass Warning Respondent;

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2. The date of the issuance of the Trespass Warning;
  3. The facts and circumstances justifying its issuance including a brief description of the offending conduct;
  4. The location of the offense;
  5. The name of the person issuing the Trespass Warning;
  6. The County rule or policy, or which federal, state or local law, rules, ordinance or regulation has been violated; and
  7. A description of the County Facility or County Property, by address or other description, to which the Respondent shall not return during the trespass notice period described in subsection (h) of this policy.
- e. The Trespass Warning shall advise of the right to appeal and the manner for filing the appeal. The Trespass Warning shall include a warning that any person found in the County Facility or on County Property in violation of a trespass notice may be arrested for trespassing.
- f. Trespass Warnings may be issued for a single location or for multiple locations depending on the severity or circumstances of the situation.
- g. A copy of the Trespass Warning shall be provided by mail or hand delivery to the Respondent with a copy provided to the employee or official having control over the County Facility or County Property which are subject to the Trespass Warning, to the designee of the County Manager who will keep track of Trespass Warnings, and to the County Attorney's Office.
- h. Any person issued a trespass notice shall be prohibited from returning to the County Facility or County Property specified in the trespass notice as follows:
1. For the first violation, the individual may be issued a Trespass Warning for a period not to exceed one year.
  2. For a second or subsequent violation, the individual may be issued a Trespass Warning for a period not to exceed two years.
- i. Authorized Personnel, or their designee, may authorize individuals who has received Trespass Warnings to enter the property or premises to exercise their First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary county business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

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- (2) *Authority of law enforcement preserved.* This policy shall not be construed to limit the authority of Law Enforcement Officers to arrest or cite individuals for violating any other federal law, Florida law, or local government ordinance.
- (3) *Appeal.* The Trespass Warning shall advise the Respondent of the right to appeal and the location at which to file the form to initiate the appeal. A Respondent shall have the right to appeal the issuance of the Trespass Warning as follows:
  - a. An appeal of the Trespass Warning may be filed, in writing, within ten days of the issuance of the Trespass Warning, and shall include:
    - 1. the Respondent's name, address, e-mail address, and phone number, if any;
    - 2. copy of the Trespass Warning; and
    - 3. a statement of the basis for the appeal.
  - b. The appeal may be filed in the County Manager's Office, 12 SE 1<sup>st</sup> Street, Gainesville, FL 32601. No fee shall be charged for filing the appeal. Failure to file a written appeal within ten days of issuance of the Trespass Warning is a waiver of the right to appeal.
    - 1. An appeal may be submitted by a representative, parent or guardian should the Respondent be a minor or disabled.
    - 2. Anyone who requires an auxiliary aid or service for effective communication, or a modification of policies or procedures to participate in a County program, service or activity, should contact the Equal Opportunity Office at (352) 374-5275 as soon as possible but no later than 48 hours before a hearing on the appeal.
  - c. Appeals will be heard by the County Manager, or designee. Formal rules of evidence shall not apply, but procedural due process shall govern the proceedings.
  - d. Within seven days following the filing of the appeal, the County Manager, or designee, will schedule a hearing. Notice of the hearing will be provided to the Respondent through regular U.S. Mail, electronic mail, or hand delivery to the Respondent's address as provided on the notice of appeal. Additionally, the County will provide notice using one of the two methods listed below:
    - 1. By leaving or posting the notice on the bulletin board at the first floor of the County Administration Building, 12 SE 1<sup>st</sup> Street, Gainesville, FL 32601; or

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2. By contacting the Respondent through the telephone number provided on the notice of appeal.
- e. The County Manager, or designee, will hold the hearing as soon as possible. In no event shall the hearing be held later than thirty days from the filing of the appeal, unless agreed-upon by both the County and the Respondent.
- f. Copies of the documents in the County's control which are intended to be used at the hearing, and which directly relate to the issuance of a Trespass Warning to the Respondent, shall be made available to the Respondent upon request at no cost to the Respondent.
- g. The Respondent has the right to attend the hearing with an attorney or another person representing the Respondent, the right to testify, and to call witnesses and present evidence relevant to the Trespass Warning issued. Any attorney appearing on behalf of the Respondent shall file a Notice of Appearance with the Office of the County Attorney at least three business (3) days prior to the hearing.
- h. The County Manager, or designee, shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing.
- i. The County has the burden of proof by a preponderance of the evidence that the Trespass Warning was properly issued pursuant to the criteria of this policy.
- j. If the Respondent fails to attend a scheduled hearing, the County Manager, or designee, will review the evidence presented and determine if the Trespass Warning was properly issued pursuant to the criteria of this policy.
- k. Within seven business days of the hearing, the County Manager, or designee, will promulgate a written decision on the appeal which shall be mailed to the Respondent at the address provided. If no address is provided, a copy of the decision shall be posted on the bulletin board at the first floor of the County Administration Building, 12 SE 1<sup>st</sup> Street, Gainesville, FL 32601.
- l. The decision of the County Manager, or designee, shall be final and the Respondent shall be deemed to have exhausted all administrative remedies. The Respondent may exercise any further legal rights as permitted under Florida or federal law.
- m. Unless otherwise determined by the County Manager, the Trespass Warning shall remain in effect during the appeal and review process, including any judicial review.