



# Alachua County Attorney's Office

Sylvia E. Torres, County Attorney

## MEMORANDUM

TO: Commissioner Hutchinson, Board of County Commissioners Chair

VIA: Sylvia E. Torres, County Attorney 

FROM: Geena M. Cesar, Assistant County Attorney 

DATE: December 17, 2019

SUBJECT: *Trespass Ordinance and Policy*

Within the next several regular meetings of the Board of County Commissioners (“the Board”), the Board will have the opportunity to consider the adoption of a trespass ordinance and trespass policy. The trespass ordinance and trespass policy outline the process for issuing civil trespass warnings by designated County officials. Below is a brief explanation of the trespass ordinance and trespass policy we will presenting to you, as well as the public policy reasoning behind their creation and how the ordinance and the policy balance the constitutional liberties of the public with the efficient operations of County properties.

If the Board chooses to adopt the trespass ordinance and policy, as drafted, designated County officials would have the authority to issue trespass warnings in order to help discourage unlawful, destructive, or harassing behavior on County properties, as well as to maintain a safe and orderly environment by ensuring County properties will be able to be used for their intended and designated uses. This will, in turn, help to maintain an environment consistent with the efficient rendering of public services while recognizing the constitutional liberties of the public.

The purpose of this ordinance and policy is to provide a tool for controlling disruptive behaviors on a civil level without having to escalate trespass issues to criminal offenses. The County Attorney's Office and staff have coordinated this effort with specific constitutional officers within Alachua County, who occupy County-owned properties. Generally, the constitutional officers with whom we have spoken have reported to us that they agree with this in-house, civil (as opposed to criminal) method of issuing trespass warnings in order to help curb harassing, disruptive and unlawful behavior in their respective offices. Upon adoption of the ordinance, each constitutional officer would have the ability to create their own policies and rules regarding what constitutes disruptive behavior in the County properties that they occupy. The County's policy, if adopted as drafted, would apply only to the areas of general government operation, unless a constitutional officer chooses to opt-in.

The proposed trespass ordinance contains direction regarding the issuing of a trespass warning that will pertain to all County properties. The ordinance includes a definitions section, a list of County base-line property rules, authorization for certain personnel to issue trespass warnings, sheriff or sheriff deputy authorization to issue trespass warnings, and the right to an appeal. In essence, the trespass ordinance is an outline of the minimum requirements for behavior of the public in each County facility.

The trespass policy, by contrast, fills in what the trespass ordinance intentionally left out. The Board's proposed trespass policy specifically begins by stating that issuing a trespass warning is a last resort for dealing with disruptive members of the public; County staff should first attempt to resolve any behavioral issues through a progressive and interactive approach. The trespass policy goes on to state which facts and circumstances should be taken into consideration when deciding whether and for how long to issue a trespass warning, the information the trespass warning must include, and how to ensure receivers of the trespass warning are fully aware of their right to proper notice and appeal.

In order for the proposed trespass ordinance and trespass policy to remain constitutionally sound, constitutional interests, such as the right of the public to participate in local government and to receive due process prior to being deprived of that right, must be protected. To preserve these interests, the proposed trespass policy authorizes the County Manager or a designee to allow a trespassed individual to enter County property in order to exercise his or her First Amendment rights and to conduct any necessary County business, at a reasonable time, in a reasonable manner. The proposed policy further states that such a request shall not be unreasonably denied, further protecting a person's liberty interests.

Similarly, because a trespass warning may be viewed as a deprivation of a constitutionally protected liberty interest, the public's due process right would be preserved through notice and an opportunity for an appeal. The proposed trespass ordinance permits the trespassed person to appeal the issuance of a trespass warning, and the trespass warning itself must give information on this right, such as how and where to file an appeal. The trespass policy contains details regarding the appeal process, including the specific appeal information that must be included in a warning, how an appeal will be conducted, and the respondent's right to be represented.

In sum, the purpose of the proposed trespass ordinance and policy is to maintain safe and orderly environments on County properties, free of unlawful, destructive or harassing behavior by providing designated officials with the ability to issue civil trespass warnings. The ordinance and policy provide a way to meet this purpose through non-criminal means, with particular attention to the protection of the public's right to participate in County processes and to be afforded due process.

xc: Members of the Board of County Commissioners