

**CITY OF BRYAN
TRESPASS WARNING ON CITY PROPERTY POLICY**

I. PURPOSE.

1.1 The City of Bryan (“City”) recognizes its duty to be a responsible steward of City assets. The City also desires to provide the public and City staff at City Property, buildings, and facilities, to the extent permitted by law, an environment free from unlawful and disruptive behavior and activities that interfere with City and public business and activities. This policy shall be posted on the City’s website and shall remain on file with the City Secretary.

1.2 The City believes for public safety reasons it is in the best interest of the public and City staff, for the City Manager to provide a trespass policy warning under the City Manager’s authority to exclude unlawful and disruptive activities and persons from City Property, buildings, and facilities while being within state and federal laws. This policy does not prohibit a person from exercising his or her First Amendment rights at public forums.

1.3 To the extent of any irreconcilable conflict between this policy and terms of another more specific City policy concerning a specific department, facility, or premises, the terms of the more specific policy shall control. To the extent of any irreconcilable conflict between this policy and the terms of an ordinance, the ordinance shall control.

II. DEFINITIONS.

2.1 “Trespass Warning” means a verbal or written communication to a person that his or her presence or entry onto certain City Property is prohibited and the person must immediately leave such City Property. The Trespass Warning should address other items regarding this prohibition according to this policy.

2.2 “City Property” means City-owned buildings and surrounding City-owned property, any City-leased buildings and surrounding leased property, and any area over which the City has control, including rights-of-way and easements; City park lands and other City-owned or operated recreational areas and facilities; City-owned parking garages, facilities, and parking lots; and all other City owned or controlled lands, unless the City Manager exempts, in writing, a building or area from this policy.

2.3 “Authorized Employee” means the City Manager and designees having authority to issue a Trespass Warning according to this policy.

III. POLICY.

3.1 General. The City's policy is to provide notice to people whose entry onto City Property, or continued presence on City Property, may be illegal, unreasonably disruptive or harmful to City Property or to conducting City business or to other persons’ use or enjoyment of approved activities on City Property, and to provide persons receiving a Trespass Warning with the opportunity for a prompt administrative review of the terms of the Trespass Warning. A person arrested on City Property for a criminal offense may receive a Trespass Warning.

3.2 Addition. This policy is in addition to and does not bar or preclude Bryan Police Officers from performing their lawful duty to enforce any trespass laws or to issue a criminal trespass warning under other authority.

3.3 First Amendment Rights and Necessary City Business Exception Acknowledged. A person subject to a Trespass Warning wishing to enter specific City Property to exercise legitimate First Amendment rights or to conduct necessary City business shall contact the City Manager's Office. The City Manager or his designee shall have authority to consider and authorize a person subject to a Trespass Warning to enter City Property to exercise First Amendment rights or to conduct necessary City business, if there is no other reasonable alternative location or means to exercise such rights or to conduct necessary City business. The City Manager's Office may impose reasonable restrictions on such entry in order to minimize disruption, threat, damage, or injury.

IV. DELEGATION OF AUTHORITY.

4.1 Authorized Employees. Authorized Employees may request a Bryan Police Officer to issue a written Trespass Warning according to the Texas Penal Code to a person violating this policy, if it is reasonably believed such conduct constitutes a criminal offense. Specifically, the City Manager delegates the non-exclusive authority to request a Bryan Police Officer to issue a Trespass Warning under this policy to the following Authorized Employees:

- a. Deputy City Managers;
- b. BTU General Manager;
- c. Director of Public Works;

While such Authorized Employees have the delegated authority from the City Manager, they may not delegate the authority they possess to any other person.

4.2 Additional Authorized Employees. In addition to those listed above, the City Manager may delegate in writing his or her non-exclusive authority to issue a Trespass Warning to any other City employee he or she deems appropriate, given their general area of responsibility within the City.

4.3 Expiration. A delegation of authority under this policy expires upon the reassignment, employment separation, termination, or retirement of the Authorized Employee, or upon revocation by the City Manager at any time for any reason. The delegated authority is delegated to City positions/officers and not to any individual employee, by name.

V. TRESPASS WARNING PROCEDURES.

5.1 Verbal Warning. Unless a person's conduct violates section 5.3 below, an Authorized Employee should, before requesting a written Trespass Warning be issued to that person:

- a. Verbally warn the person his or her conduct is in violation of law, City policy, rules or guidelines, or interfering with another person's reasonable use and enjoyment of City Property;
- b. Give the person a reasonable opportunity to cease violating the law, City policy, rules or guidelines, or interfering with another person's reasonable use and enjoyment of City Property; and
- c. Not request the issuance of a Trespass Warning to the person, if the person promptly ceases the conduct at issue after receiving the verbal warning.

5.2 Written Trespass Warning after Verbal Warning. An Authorized Employee may request a peace officer to issue a criminal trespass warning and a written Trespass Warning may be issued to a person for conduct occurring on City Property that may be illegal, unreasonably disruptive, and harmful to City Property or conducting City business, or interfering with another person's reasonable use or enjoyment of approved activities on City Property. Such request does not obligate a peace officer to issue a criminal trespass warning, as the peace officer retains such discretion as well as such obligations and duties as provided by law. The conduct constituting the basis of a request includes, but is not limited to, conduct violating the following City ordinances, rules, policies or guidelines:

- a. Park and other curfew violations;
- b. Park rules violations;
- c. Library rules violations;
- d. Failure to pay required fees for Facility use;
- d. Facility use violations;
- e. Noise ordinance violations;
- f. Interfering with another person's reasonable use and enjoyment of approved activities on City Property; and
- g. Any other City ordinance violation including, but not limited to, camping, solicitation, and glass containers ordinance violations.

5.3 Grounds for issuing a Trespass Warning; No Verbal Warning. An Authorized Employee may request a peace officer to issue a Trespass Warning to a person without a verbal warning if the person has engaged in conduct that is unreasonably disruptive or harmful to City Property, to conducting City business, or to another's reasonable use and enjoyment of approved activities on City Property, and that may:

- a. Be a state or federal criminal offense or ordinance violation or is an attempt, solicitation or conspiracy to commit a state or federal criminal offense or ordinance violation, including urinating or defecating in public; or
- b. Have resulted in injury to any person or damage to any property, or threatens to cause an immediate breach of the peace.

5.4 Contents of a Trespass Warning. A verbal or written Trespass Warning should include the following items:

- a. Reasons for Exclusions. A statement of the reason the person is being notified or warned not to enter an area or to immediately depart from an area and explaining the conduct for the Trespass Warning.
- b. Area of Exclusion. The Trespass Warning should describe the area or building, including the building name and address that the individual shall not enter, and any specific regions the individual is not to enter, so that a reasonable person may understand the specific area to which the individual may not return.

c. Duration of Exclusion. A Trespass Warning should be for a specific time period based on the seriousness of the conduct. The specific time period a person may not return will be established by the Authorized Employee based on relevant factors including:

1. Conduct involving intentional damage to City Property;
2. Conduct involving intentional injury or offensive contact with any person;
3. Conduct that is disruptive or harmful to City business or another person's reasonable use and enjoyment of approved activities on City Property; and
4. Whether the person has previously engaged in similar conduct on City Property.

If no specific time is listed, then the duration shall be seventy-two (72) hours.

d. Re-entry Warning. The Trespass Warning shall include notice that re-entry may result in an arrest while such warning is in effect.

e. Administrative Order. The Trespass Warning issued by a peace officer also shall be considered an administrative order precluding re-entry on the identified property for the identified duration. Such administrative order is subject to the administrative review process outlined in this policy. The results of the administrative review process does not affect any criminal charges, one way or another, which may be pursued by an appropriate prosecuting authority.

e. Notice of Administrative Review Process. A Trespass Warning will contain information that informs the person of the administrative review procedure.

f. Police Department Records. A copy of the Trespass Warning, if in writing, shall be sent to the Bryan Police Department Records.

5.5 Trespass Warning Duration Guidelines. A Trespass Warning shall be in effect from the issue date:

- a. Up to 365 calendar days from the date the warning was issued; or
- b. Up to two (2) years if the person has received a Trespass Warning in the previous two years.

VI. ADMINISTRATIVE REVIEW OF A TRESPASS WARNING.

6.1 Request for Review. The person receiving the Trespass Warning may request an administrative review of all or any part of the Trespass Warning. The request for review must be in writing and submitted no later than three (3) business days after the Trespass Warning issue date, either online to citysecretaryweb@bryantx.gov or delivered in person to the Bryan Police Department to be forwarded to the City Secretary's Office. The person requesting an administrative review must include a completed form for the process as created by the City Manager's Office. If the person does not meet this three-business day requirement, the Trespass Warning becomes final. Such a request for review does not stay or suspend the Trespass Warning. The person receiving the Trespass Warning must submit information and argument in writing to be considered. The burden of proof is on the person requesting the review. Upon receipt of a request for an administrative review, the appeal shall be forwarded by the City Secretary's Office with a copy to the Authorizing Employee who made the request for the Trespass Warning. Upon receipt of a request for an administrative review, the Authorizing Employee shall cause any information necessary for the City Manager or designee to make a decision to be forwarded to the City Manager's Office within seventy-two (72) hours or make a request for an extension based on good cause for the extension.

6.2 Review Procedures. The City Manager or designee shall perform an informal review. Findings should generally be issued by written memo upon receipt of a timely request. The City Manager or designee conducting the informal review should decide the issues based on the known evidence, but also may include established written City policies, ordinances, and resolutions. After the City Manager or designee receives the review request, the City Manager or designee should provide a written determination on the issues within five (5) business days. The City Manager may alter the response time if there is good cause. The written determination shall be promptly provided to the requester subject to the Trespass Warning at the provided mailing address, physical address, email address, or made available in the City Secretary's Office. The determination shall be to affirm, reverse, or modify the Trespass Warning, and shall state the reasons for the determination. The decision of the City Manager or designee on a request for review is final. A Trespass Warning, which is final, shall be considered an administrative order. The City Manager or designee should consider all relevant information provided and should include the following:

- a. Whether the Trespass Warning was issued for a reason set out or otherwise consistent with this policy; and
- b. Whether the area and duration of the Trespass Warning are appropriate under the facts and circumstances.

6.3 City Manager Authority. The City Manager in his or her sole discretion may determine good cause exists to modify the administrative review processes described in this section; accommodate review more quickly, informally, or later; or make any other modifications as he or she determines is appropriate keeping in mind the legal rights and concerns of all.

6.4 Good Faith, Substantial Compliance. This policy is intended to provide notice, standard procedures, proper management, authority delegation, and consistency in due process. Failure to meet one or more of the provisions of this policy does not invalidate a Trespass Warning issued in good faith and with substantial compliance with this policy.


Kean Register, City Manager

8/28/2020
Date