



## COLUMBIA COUNTY BOARD OF COUNTY COMMISSIONERS AGENDA ITEM REQUEST FORM

The Board of County Commissioners meets the 1st and 3rd Thursday of each month in the Columbia County School Board Administrative Complex Auditorium, 372 West Duval Street, Lake City, Florida 32055. The first meeting of every month is at 9:30AM while the second meeting of every month takes place at 5:30PM. All agenda items are due in the Board's office one week prior to the meeting date.

Today's Date: 9/13/2022 Meeting Date: 9/20/2022

Name: Joel Foreman Department: County Attorney

Approved By:

A handwritten signature in blue ink, appearing to be "J. Foreman", is written over a light blue horizontal line.

**1. Nature and purpose of agenda item:**

Adoption Hearing: Ordinance 2022-10, Trespass Warning on County Property

**2. Recommended Motion/Action:**

To adopt Ordinance 2022-10

**3. Fiscal impact on current budget.**

This item has no effect on the current budget.

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**MEMORANDUM**

To: Board Agenda, September 20, 2022

From: Joel F. Foreman

**Re: Adoption Hearing: Ordinance 2022-10, Trespass Warning on County Property**

Date: September 13, 2022

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In recent months County administration has invoked its power to trespass individuals from County facilities. While this power is provided by general law, a lack of clarity on the County's administrative appeal process creates vulnerabilities to legal challenges to this exercise of power.

The attached ordinance, if adopted, will clearly define when and how administration may wield the power to trespass individuals from County property and creates an administrative appeal mechanism to better protect the Fourteenth Amendment due process rights of individuals who are trespassed from County property.

Recommended motion: To adopt Ordinance 2022-10, Trespass Warning on County Property

## ORDINANCE NO. 2022-10

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLUMBIA COUNTY RELATING TO TRESPASS WARNINGS ON COUNTY PROPERTY; ESTABLISHING SCOPE; PROVIDING DEFINITIONS; MAKING FINDINGS OF FACT; IDENTIFYING PERSONNEL AUTHORIZED TO ISSUE A TRESPASS WARNING; DEFINING PROHIBITED CONDUCT; PROVIDING FOR CONTROLLED ACCESS FACILITIES AND SECURE AREAS; PROVIDING FOR TRESPASS WARNINGS; PROVIDING FOR APPEALS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLUMBIA COUNTY:

### Section 1. SCOPE.

This ordinance shall apply to all County property within Columbia County.

### Section 2. DEFINITIONS.

- A. Authorized personnel means those persons with the authority granted by this ordinance, acting in their official capacity for the County government, to petition a law enforcement officer to issue a trespass warning.
- B. Board means the Columbia County Board of County Commissioners.
- C. Controlled access building means any County property to which access is controlled by either a security system or a security post.
- D. Conveyance shall have the same meaning as defined in Chapter 810, Florida Statutes, as may be amended from time to time.
- E. County means Columbia County, Florida.
- F. County property means any building or property owned, leased, operated, managed, or controlled by the Columbia County Board of County Commissioners or one of its agencies, divisions, units, or entities, including all buildings, structures, conveyances, 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 properties generally used by the public.

- G. Courthouse means the Columbia County Courthouse including the courtyard and any facility identified by a duly adopted judicial order as a courthouse extension or annex.
- H. Hearing officer means the County's Special Magistrate as appointed from time to time by the Board or another designated officer appointed by the County Manager to hear appeals made pursuant to this part.
- I. Law enforcement officer means a deputy sheriff with the Columbia County Sheriff's Office or any other sworn law enforcement officer certified pursuant to Chapter 943, Florida Statutes.
- J. Posted land shall have the same meaning as defined in Chapter 810, Florida Statutes, as may be amended from time to time.
- K. Respondent means a person who is issued a trespass warning.
- L. Secure area means any area on County property to which access is controlled by either a security system or a security post.
- M. Security personnel means a County employee, law enforcement officer, or contract security staff employed or assigned to carry out security functions on County property.
- N. Security post means any location on County property that is manned by a contract security officer, law enforcement officer, or other County security personnel.
- O. Security system means any magnetometer, x-ray device, card-operated entry system, operating regulations and related measures, or any combination thereof, installed, promulgated, or operated on County property to ensure that persons entering secure areas are authorized to enter such areas and/or are not in possession of prohibited weapons.
- P. Structure shall have the same meaning as defined in Chapter 810, Florida Statutes, as may be amended from time to time.
- Q. Trespass shall have the same meaning as defined in Chapter 810, Florida Statutes, as may be amended from time to time.
- R. Trespass warning means a written document that bars the respondent from entering or remaining on specified County property.
- S. Weapon shall have the same meaning as defined in Section 790.001, Florida Statutes, as may be amended from time to time.

### **Section 3. FINDINGS OF FACT.**

The Board makes the following findings of fact in support of this ordinance:

A. The Board seeks to maintain a safe and orderly environment on County property which is conducive to the designated use of County property and to the efficient rendering of public services.

B. The Board seeks to discourage unlawful, unsafe, destructive, harassing, or otherwise prohibited conduct on County property that interferes with the designated use of County property or the efficient rendering of public services.

C. The Board may lawfully designate the use of County property for activities consistent with its purpose and for the conduct of official County business only.

D. The Board recognizes an individual's constitutionally protected liberty interest to be lawfully on County property when using such property for its designated purpose and when engaging in official County business, when such property is open to the public.

E. The Due Process Clause of the Fourteenth Amendment of the United States Constitution requires that the deprivation of a liberty interest necessitates notice and an opportunity to be heard at a meaningful time and in a meaningful manner.

F. Trespass warnings may be issued to stop or discourage unlawful, unsafe, destructive, harassing, or otherwise prohibited conduct on County property and shall be followed by the opportunity for a hearing to address the deprivation of any constitutionally protected liberty interest.

#### **Section 4. AUTHORITY TO ENFORCE.**

The following persons shall be authorized personnel who may petition a law enforcement officer to issue a trespass warning pursuant to this ordinance:

A. Any County employee with management or oversight responsibility over the County property in question at the time the trespass warning is issued; or

B. Security personnel for any County property at the time the trespass warning is issued;

C. Any law enforcement officer when persons in subsections A and B are not present.

#### **Section 5. PROHIBITED CONDUCT.**

The following acts shall be prohibited conduct for the purposes of this ordinance:

A. Any action that violates any federal, state, or local law, ordinance, rule, or regulation;

B. Any action that violates any County rule or policy, including facility rules or any directive on any sign or notice posted at a County property;

C. Use of language which by its very utterance inflicts injury or tends to incite an immediate breach of the peace;

D. Obstruction of any proceedings before a County agency, including the refusal to comply with the presiding officer of any public meeting of the Board or any County advisory board or committee;

E. Engaging in disorderly conduct, creating a nuisance, or disturbing the peace on County property;

F. Loitering or prowling on County property in such a manner as to create a justifiable and reasonable alarm or immediate concern for the safety of persons or property in the vicinity;

- G. Sleeping or camping on County property except as may be permitted by County rule or policy;
- H. The unauthorized posting of any sign, advertisement, or notice on County property;
- I. Overnight parking on County property except where specifically permitted; or
- J. Refusing to comply with the request of security personnel to leave the premises of County property pursuant to Section 6 below.

## **Section 6. CONTROLLED ACCESS BUILDINGS AND SECURE AREAS.**

A. Except as provided below, any person desiring to enter a controlled access building or secured area shall comply with the security measures in effect, enter through the designated public entrance to the building, and pass through a security system if one is present.

B. A County employee or contractor assigned to work in a secure area who possesses a valid County identification badge, with pre-approved access to the secure area may enter through a designated employee entrance, without being subjected to a search upon presenting a valid County identification badge. Pre-approved access may be coded into an employee or contractor's identification badge and is evident when the badge is passed through an electronic card reader, allowing access through a door.

C. A law enforcement officer wearing the official uniform and conducting official duties may enter through a designated employee or public entrance, without being subjected to a search upon presentation of a valid identification badge issued by the officer's agency.

D. Any person who activates a magnetometer or other scanning device shall be free to leave the premises, without further search or questioning. However, such person may not under any circumstances be allowed to continue into the controlled access building or secure area without resolving the cause for the magnetometer activation to the satisfaction of security personnel.

E. Security personnel shall have reasonable discretion to make accommodations for persons having surgically implanted metal devices, persons wearing surgical or orthopedic clothing or devices that contain metallic support parts, and persons utilizing crutches, wheelchairs, or carts containing metallic parts to assist their mobility.

F. A person who has a pacemaker or defibrillator may state that he or she cannot pass through a magnetometer or other scanning device on advice of a doctor. In such circumstances, the security personnel shall request that the person display the Medical Device ID Card identifying the person and the device. The person must consent to a pat-down search in order to be allowed entry into the controlled access building or secure area.

G. Except as provided in subsections B and C above, all packages, briefcases, and other containers in the immediate possession of any person seeking entry to a controlled access building or a secure area shall be subject to inspection. No person shall be permitted to carry a package, briefcase, or other container into a controlled access building or a secure area unless the package, briefcase, or other container has been inspected by security personnel to determine that it does not contain a weapon. Inspection of packages, briefcases, or other containers may be carried

out by security personnel by visual inspection of the interior of such containers or by x-ray or other electronic survey of the contents thereof.

H. The County shall comply with the requirements of Section 790.06, Florida Statutes, with respect to any person in lawful possession of a concealed weapon or firearm who desires to enter a controlled access building or secure area.

## **Section 7. TRESPASS WARNINGS.**

A. Authorized personnel may have cause to remove any person from County property upon making a determination that such person is engaging in any activity defined in Section 5 above as prohibited conduct. In determining that a trespass warning is needed in a particular situation, the authorized personnel may consider:

1. The gravity of the alleged violation;
2. Such person's refusal to conform to any verbal requests or warnings to desist or cease the prohibited conduct;
3. Any previous violations committed by such person; or
4. The harm or potential harm to County employees, the public, or County property threatened by the prohibited conduct.

B. After determining that a trespass warning is needed in a particular situation, the authorized personnel shall contact the law enforcement agency having jurisdiction over the County property in question and request that a law enforcement officer issue a trespass warning.

C. The trespass warning shall be administered in writing to the respondent and shall:

1. State the facts and circumstances justifying its issuance;
  2. Designate with specificity which County rule or policy, or which federal, state, or local law, rule, ordinance, or regulation has been violated;
  3. Identify the scope of its prohibition by address, parcel identification number, or other description so that a reasonable person would understand its meaning;
  4. Advise the respondent of the right to appeal and that any appeal must be filed with the Office of the County Attorney in writing no later than ten days after the issuance of the trespass warning.
- D. The maximum duration for a trespass warning shall be one year. During the duration of the trespass warning, the respondent shall be prohibited entry onto the property identified in the trespass warning for any reason. Should the respondent require access to the property identified in the trespass warning for official business or for the lawful exercise of his or her First Amendment rights, if there is no other reasonable alternative to conduct such business or exercise such First Amendment rights, the respondent shall contact the County Attorney who will arrange for temporary access limited to that necessary to the conduct of official business or the lawful exercise of First Amendment rights.
- E. It shall be a violation of this ordinance for any respondent to remain on County property after being issued a trespass warning or to return to County property in violation of any

trespass warning issued pursuant to this ordinance. Such respondent may be arrested for, and charged with, trespass consistent with the provisions of Chapter 810, Florida Statutes, as may be amended from time to time.

- F. This section shall not be construed to limit the authority of law enforcement officers to arrest or cite individuals for violating any other federal, state, or local law, ordinance, rule, or regulation.

## **Section 8. APPEAL.**

- A. An appeal of a trespass warning shall be filed, in writing, no later than ten days after the respondent's receipt of the trespass warning. The appeal shall be filed with the Office of the County Attorney and shall set forth the grounds on which the trespass warning should be overturned. No fee shall be charged for filing an appeal.
- B. An appeal of a trespass warning shall be quasi-judicial and shall be heard by the hearing officer. The hearing officer shall have the authority to control the order and presentation of evidence at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern the proceedings. The respondent shall have the right to be represented by counsel, the right to testify, the right to call and cross-examine witnesses, and the right to present evidence.
- C. The hearing officer shall schedule a hearing no later than seven days after the filing of the appeal. The hearing shall be held no later than thirty days after the filing of the appeal. Notice of the hearing shall be provided to the respondent through regular U.S. Mail to the respondent's address as provided on the notice of appeal.
- D. The hearing officer shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. The County shall bear the burden of proof by a preponderance of the evidence that the trespass warning was properly issued pursuant to the criteria set forth in this ordinance.
- E. The failure of the respondent to appear at the hearing either personally or through legal counsel shall result in dismissal of the appeal and an order affirming the issuance of the trespass warning.
- F. The hearing officer shall issue a written decision on the appeal no later than 7 days after the hearing. The hearing officer's decision shall be provided to the respondent through regular U.S. Mail to the respondent's address as provided on the notice of appeal.
- G. The hearing officer's decision shall be final. Upon issuance of the hearing officer's decision, the respondent shall be deemed to have exhausted all administrative remedies. The decision of the hearing officer may be appealed by petition for writ of certiorari to the circuit court in accordance with the Florida Rules of Appellate Procedure. The review shall be limited to the administrative record.
- H. The trespass warning shall remain in effect during the appeal process, including any judicial review.



**Section 9. PENALTIES.**

Any person violating any provision of this ordinance shall be prosecuted in the same manner as misdemeanors are prosecuted and shall, upon conviction, be punished by a fine not to exceed \$500.00, by imprisonment not to exceed 60 days, or by both such fine and imprisonment. Each day that an offense or violation continues shall be deemed a separate offense. The Columbia County Sheriff, or any other competent law enforcement agency having jurisdiction, is authorized to enforce the provisions of this ordinance.

**Section 10. INCLUSION IN COUNTY CODE.**

The provisions of this Ordinance, Sections 1 through 9, shall be codified as part of Chapter 74, Article II of the Columbia County Code of Ordinances.

**Section 10. SEVERABILITY**

If any section, phrase, sentence, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

**Section 11. EFFECTIVE DATE**

This Ordinance shall take effect immediately upon a certified copy hereof being filed with the Florida Department of State.

**DULY ADOPTED** by the Board of County Commissioners of Columbia County, Florida, this \_\_\_\_ day of \_\_\_\_\_, 2022.

**BOARD OF COUNTY COMMISSIONERS  
COLUMBIA COUNTY, FLORIDA**

By: \_\_\_\_\_  
**ROBBY HOLLINGSWORTH, Chair**

Approved as to form and legality:

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Joel F. Foreman, County Attorney

ATTEST: JAMES M. SWISHER, Jr., Clerk of Court

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Deputy Clerk

Effective Date: \_\_\_\_\_