



OFFICE OF THE
CITY ATTORNEY
THE CITY OF DAYTONA BEACH

301 South Ridgewood Avenue, Suite 220,
Daytona Beach, FL 32114
Mailing address: P.O. Box 2451, Daytona Beach, FL 32115
Telephone: (386) 671-8040 Facsimile: (386) 671-8049

ROBERT F. JAGGER, City Attorney

BENJAMIN S. GROSS, Deputy City
Attorney, Board Certified in City, County &
Local Government Law

ANTHONY E. JACKSON, Assistant City
Attorney, Police Legal Advisor

GARY GLASSMAN, Assistant City Attorney

CARLY MEEK, Assistant City Attorney

ROBERT ABRAHAM, Assistant City
Attorney

MEMORANDUM

TO: The City Commission
FROM: Robert Jagger, City Attorney *RJ*
DATE: July 24, 2018
RE: Amending Chapter 86 – Adding a New Code Section for Issuance of Trespass Warnings.

Pursuant to the City Commission's direction at the Commission meeting of July 18, 2018, this agenda item is to amend Chapter 86 of the Code of Ordinances, to add a code section entitled "Trespass warnings on public property and other property generally open to the public".

The proposed ordinance provides for the City Manager and Daytona Beach Police Officers to issue a trespass warning to any individual who violates any city ordinance, rule or regulation, or state law while on or within a city facility, building, or outdoor area, including municipal parks, but excluding public right-of-way. The trespass warning may not exceed one year for a first violation. A second violation or subsequent violations will result in the individual being issued a trespass warning for a period not to exceed two years. The trespass warning is limited to the specific property where the violation occurred. Any person found on or within a city facility, building, or outdoor area in violation of a trespass warning may be arrested for trespass. The City Manager may authorize a person subject to a trespass warning, to access such public facility for purposes of First Amendment expression if there is no other reasonable alternative location, or to conduct necessary municipal 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.

The ordinance additionally provides for an appeals process that shall be heard by a Special Magistrate appointed by the City Commission. The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

The proposed ordinance is modeled after trespass warning regulations adopted by the City of St. Petersburg (Section 20-30, St. Petersburg City Code). The St. Petersburg trespass warning regulations were upheld by the Eleventh Circuit Court of Appeals in *Wright v. City of St. Petersburg, Fla.*, 833 F.3d 1291 (11th Cir. 2016). In that case, the trespass warning was challenged on First Amendment and Due Process (vagueness) grounds. The Court held that the regulations were not a restriction on access to a traditional public forum for expressive activity in violation of the First Amendment, and that the plaintiff failed to show that he received the trespass warning as a pretext to suppress his speech.

cc: City Manager
City Clerk