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TO: Mayor and City Council  
FROM: Scott E. Simpson, City Attorney  
DATE: January 24, 2019  
RE: Trespass Ordinance

\* \* M E M O R A N D U M \* \*

Attached please find Ordinance 18-20 which is being proposed for second and final reading. Since the first reading in November, I had a meeting with Daytona Beach City Attorneys and we had a conference call with the St. Petersburg City Attorney who handled these issues. Based on this meeting, I have made changes to the ordinance, which are summarized below.

1) The trespass warning is 1 year for first time violations and 2 years for repeat violation. Previously it said up to 1 year and 2 years and the St. Petersburg attorney recommended deleting the language to insure that all trespass warnings are the same duration. Also it is proposed that a repeat violation would be a second violation within 5 years of the previous violation.

2) There are 3 potential violations that could result in a trespass warning: violation of state law; a violation of city code enforced through the normal code enforcement process; and a violation of city code enforced by City citation. The issuance of the trespass warning and appeal will be handled differently for each as discussed below.

-For a violation of state law, the trespass warning will be issued, the individual has the option to appeal to the Special Master the issuance of the trespass warning, the trespass warning stays in effect during the underlying criminal case and if the individual is found not guilty or charges are dropped the individual can request the trespass warning be rescinded.

-For a violation of City Code enforced by City citation, the individual has the option to pay the fine or contest the citation. If the fine is paid, this will be deemed acceptance of the trespass warning and waiving all rights to appeal. If the individual challenges the citation, the City's Special Master will consider any basis for appeal or rescission of the trespass warning.

-For a violation of City Code enforced through the normal code enforcement process, the trespass warning will be presented to the Special Master when the code violation is considered. The Special Master will consider any basis for appeal or rescission after ruling on the code case.

ORDINANCE NO. 18-20:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA, CREATING CHAPTER 10 (OFFENSES AND MISCELLANEOUS PROVISIONS); ARTICLE VI (TRESPASS WARNINGS ON PUBLIC PROPERTY), SECTION 10-81 (TRESPASS WARNING ON PUBLIC PROPERTY AND OTHER PROPERTY GENERALLY OPEN TO THE PUBLIC) TO ADOPT REGULATIONS FOR THE ISSUANCE AND ENFORCEMENT OF TRESPASS WARNINGS ON PUBLIC PROPERTY AND PROPERTY OPEN TO THE PUBLIC; PROVIDING FOR APPEALS; PROVIDING FOR DURATION OF TRESPASS WARNING; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING ORDINANCES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council believes that if a person violates either a City ordinance or regulation or a State law on public property, the City should have the ability to preclude said person from entering said public property upon which the violation occurred for a certain period of time.

WHEREAS, the ability to issue trespass warnings to persons who engage in unlawful activity on public property will allow law abiding members of the public the ability to enjoy and use public property without the concern or threat of being subject to unlawful activity.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF SOUTH DAYTONA, FLORIDA:

Section 1. The City Council of the City of South Daytona hereby creates Chapter 10 (Offenses and Miscellaneous Provisions), Article VI (Trespass Warnings on Public Property), Section 10-81

(Trespass Warnings on Public Property and Other Property Generally Open to the Public) to read as follows:

**Article VI (Trespass Warnings on Public Property and Other Property Generally Open to the Public).**

**Section 10-81** (Trespass warnings on public property and other property generally open to the public).

(a) The City Manager, code enforcement officers and officers of the South Daytona Police are authorized to issue a trespass warning to any individual who violates any city ordinance, rule or regulation or state law, which violation was committed while on or within a city facility, building, or outdoor area, including municipal parks, but excluding public right-of-way. The trespass warning shall be limited to the specific property where the violation occurred.

(b) For the purpose of this section "right-of-way" shall only include those sidewalks, which are adjacent to a paved street, if the street-side edge of the sidewalk is within 20 feet of the curb line.

(c) Trespass warnings shall be issued as follows:

(1) For the first violation, the individual may be issued a trespass warning for one year.

(2) For a second or subsequent violation which occurs within five (5) years of the issuance of the previous trespass warning, the individual may be issued a trespass warning for two years.

(d) A copy of the trespass warning shall be provided at the same time as the arrest or citation by hand deliver and if this is not possible, the copy shall be delivered by mail. The written trespass warning shall advise of the right to appeal and the location at which to file the appeal.

(e) Any person found on or within any city facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section. If the individual is found guilty or pleads no contest to the charge that was the basis of the trespass warning, the trespass warning shall remain in full force and effect, unless otherwise determined on appeal. If the individual is found not guilty or the charges are otherwise dismissed or dropped, and if the individual desires to have the trespass warning rescinded, the individual shall provide all necessary documentation evidencing the outcome of the underlying court case and the City shall submit it to the Special Master with notice provided to the individual of the date of the hearing.

(f) The City Manager may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

(g) This section shall not be construed to limit the authority of any city employee or official to issue a trespass warning to any person for any lawful reason for any city property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the city employee or official.

(h) This section shall not be construed to limit nor expand the authority of officers of the South Daytona Police Department or South Daytona Code Enforcement Officers to cite or arrest individuals for violating any section of the South Daytona Code of Ordinances or Florida Statutes.

(i) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:

(1) An appeal of the trespass warning must be filed, in writing, within ten (10) days of the issuance of the warning, and shall include the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal.

(2) The appeal shall be filed at the location specified in the trespass warning.

(3) A Special Master with whom the city contracts to provide this service shall hear appeals.

(4) Within five (5) days following the filing of the appeal, the City shall schedule a hearing. Notice of the hearing shall be provided to the appellant in the following ways:

(a) By posting the notice at the South Daytona City Hall, and

(b) By mail if an address has been provided. In the event of non-delivery, then the notice posted at the South Daytona City Hall shall be sufficient.

(5) The Special Master shall hold the hearing as normally scheduled monthly. In no event shall the hearing be held sooner than seven (7) days following the filing of the appeal and no later than forty-five (45) days from the filing of the appeal.

(6) Copies of documents in the city's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.

(7) The appellant and the city shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses, and to present evidence. The appellant shall have the right to bring a court reporter, at his or her own expense.

(8) The Special Master shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

(9) The city shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section. The Special Master shall

not consider evidence or argument about the underlying charge that was the basis for the trespass warning.

(10) If the appellant fails to attend a scheduled hearing, the Special Master shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.

(11) Within five (5) days of the hearing the Special Master shall issue a written decision on the appeal, which shall be mailed, to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the South Daytona City Hall.

(12) The decision of the Special Master shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law to the appellant. The city may not appeal any decision of the Special Master.

(13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review and all judicial proceedings on any underlying charge that is the basis for the trespass warning.

(14) For trespass warnings issued for violation of city codes, rules or regulations that is enforced without a city citation, the trespass warning shall be presented to the Special Master as part of the code enforcement case. Upon a finding of violation, the Special Master shall consider any grounds for appeal

of the trespass warning and rule accordingly. If the person is found not in violation, the Special Master shall consider revocation of the trespass warning.

(15) For trespass warnings issued for violation of City codes, rules or regulations enforced by City Citation, payment of the fine amount shall constitute consent and acceptance of the trespass warning and waiver of all appeal rights and the citation shall so state. If the citation is challenged and the person is found in violation, the Special Master shall consider any grounds for appeal of the trespass warning and rule accordingly. If the person is found not in violation, the Special Master shall consider revocation of the trespass warning.

**Section 2.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or application hereof, is for any reason held invalid or unconstitutional by any Court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application hereof.

**Section 3.** That all ordinances made in conflict with this Ordinance are hereby repealed.

**Section 4.** That this Ordinance shall become effective immediately upon its adoption.

PASSED upon first reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the 13th day of November, 2018.



PASSED AND ADOPTED upon second and final reading at a regular meeting of the City Council of the City of South Daytona held in the City of South Daytona, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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William C. Hall, MAYOR

ATTEST:

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James L. Gillis, Jr.  
City Manager