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**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING CHAPTER 42, ARTICLE I OF THE TOWN'S CODE OF ORDINANCES TO PROVIDE A FORMAL MECHANISM FOR THE ISSUANCE OF TRESPASS WARNINGS FROM PUBLIC PROPERTY; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Ponce Inlet desires to protect the health, safety and welfare of the citizens of the Town by ensuring that public properties are used for their intended purpose, and are well-maintained and in good condition; and

**WHEREAS**, the Town has an interest in ensuring that its public properties are not used for criminal activities or other violations of the law; and

**WHEREAS**, the Town Council desires to implement an option to prevent misuse of public properties that is less severe than arresting and prosecuting the offender; and

**WHEREAS**, the Town desires to formalize a mechanism where Town officials and law enforcement officers can trespass individuals from Town properties for a period of time in response to violations of the law on Town properties while providing such trespassed individuals with due process as required under *Catron v. City of St. Petersburg*; and

**WHEREAS**, this ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

**NOTE:** Underlined words constitute additions to the Town of Ponce Inlet Code of Ordinances, ~~strikethrough~~ constitutes deletions from the current Code, and asterisks (\*\*\*) indicate an omission from the existing text which is intended to remain unchanged.

**NOW, THEREFORE, BE IT ENACTED** by the Town Council of the Town of Ponce Inlet, Florida as follows:

**SECTION 1. Findings.** The above recitals are true and correct and incorporated herein by this reference.

**SECTION 2. Amendments to Chapter 42.** Chapter 42, Article I of the Town of Ponce Inlet Code of Ordinances is hereby amended as follows:

\*\*\*

Sec. 42-9. – Trespass warnings on public property.

- 47 (a) Law enforcement officers and the Town manager or his/her designee may issue trespass  
48 warnings to any individual who violates any Town ordinance, rule or regulation or state  
49 law when said violation was committed on or within any Town-owned public property,  
50 including Town buildings and public parks.
- 51 (b) Trespass warnings shall be effective for one year. If the individual has previously received  
52 a trespass warning under this Section that was not reversed on appeal, all subsequent  
53 trespass warnings shall be effective for two years. The Town Manager may reduce the  
54 length of any trespass warning at his/her sole discretion.
- 55 (c) Trespass warnings shall be written and shall include statements informing the individual  
56 of the length of the warning, that they may not return to the property until the expiration of  
57 the warning, identifying the property the individual is trespassed from, and advising the  
58 individual of their right to appeal.
- 59 (d) A copy of the trespass warning shall be provided by mail or hand-delivered to the person  
60 receiving the warning. If an individual refuses to sign the warning, refuses to provide their  
61 mail address, or flees the person providing the warning, the individual shall be deemed to  
62 have waived their right to contest the trespass warning and the Town shall keep a copy of  
63 the warning for its own record.
- 64 (e) Trespass warnings issued under this section are considered to be authorized warnings and  
65 orders to leave as defined in Chapter 810, *Florida Statutes*. Except as otherwise provided  
66 herein, persons violating trespass warnings may be arrested and charged for trespass or  
67 burglary as otherwise provided under Florida law.
- 68 (f) The Town Manager may authorize an individual who is subject to an active trespass  
69 warning to enter the property trespassed from for limited purposes when necessary for  
70 attendance at Town meetings or as otherwise necessary for Town business. Such  
71 authorization must be made in writing and specify the time, purpose and conditions of the  
72 authorization.
- 73 (g) A person who is issued a trespass warning under this section may appeal as follows:
- 74 (1) The appeal of the trespass warning must be filed, in writing, within ten days of the  
75 issuance of the warning. The appeal shall include the appellant's name, address and  
76 phone number, if any. No fee shall be charged for filing the appeal.
- 77 (2) The appeal shall be filed at the location specified in the trespass warning.
- 78 (3) The appeals shall be heard by the Code Enforcement Board. The hearing shall be  
79 scheduled at the Board's next regular meeting at least ten days after the filing of  
80 the appeal. Notice of the hearing shall be posted at Town Hall and on the City's  
81 website, as well as sent by mail to the trespassed individual.
- 82 (4) The Code Enforcement Board shall first determine whether the appellant violated  
83 one or more statutes or Town ordinances, rules or regulations as alleged by the  
84 Town. Should the Board find that the Town has proven a violation by a  
85 preponderance of the evidence, the Board may reduce the duration of the trespass  
86 warning at its discretion. The appellant and the Town shall have the right to attend  
87 with an attorney, to testify, to call witnesses, to cross-examine witnesses and to

88 present evidence. Formal rules of evidence shall not apply; however, fundamental  
89 due process shall be observed and shall govern the proceeding.

90 (5) The Code Enforcement Board shall issue a written decision on the appeal within  
91 five days of the hearing, which shall be provided to the appellant by mail. The  
92 decision of the Code Enforcement Board shall be final. Such decision may be  
93 subject to judicial review by petition for writ of certiorari or as otherwise provided  
94 by law.

95 (6) The trespass warning shall remain in effect during the appeal and review process,  
96 including any judicial review.

97  
98 Secs. 42-910-42.30. – Reserved.  
99

100 \*\*\*

101 **SECTION 3. Conflicts.** If any section, subsection, clause, phrase, or portion of this  
102 ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction,  
103 such portion shall be deemed a separate, distinct, and independent provision and such holding shall  
104 not affect the validity portion thereto.  
105

106 **SECTION 4. Codification.** It is the intention of the town council of the Town of Ponce  
107 Inlet, Florida, that this Ordinance shall be codified into the Code of Ordinances of the Town of  
108 Ponce Inlet. The Code's codifier is hereby granted that authority as necessary for that purpose.  
109

110 **SECTION 5. Severability.** If any section, sentence, phrase, word or portion of this  
111 Ordinance is determined to be invalid, unlawful or unconstitutional, said determination shall not  
112 be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase,  
113 word or portion of this Ordinance not otherwise determined to be invalid, unlawful or  
114 unconstitutional.  
115

116 **SECTION 6. Effective date.** This ordinance shall become effective immediately upon its  
117 adoption.  
118

119 It was moved by Vice-Mayor Paritsky and seconded by Councilmember Caswell that said  
120 Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted  
121 as follows:

122	Mayor Smith, Seat #1	Yes
123	Councilmember Milano, Seat #2	Yes
124	Councilmember Caswell, Seat #3	Yes
125	Councilmember Israel, Seat #4	Yes
126	Vice-Mayor Paritsky, Seat #5	Yes

127

128 Passed on first reading this 15<sup>th</sup> day of April 2021.  
129

130 It was moved by Vice-Mayor Paritsky and seconded by Councilmember Israel that said  
131 Ordinance be passed on second reading. A roll call vote of the Town Council on said motion  
132 resulted as follows:

133	Mayor Smith, Seat #1	Yes
134	Councilmember Milano, Seat #2	Yes
135	Councilmember Caswell, Seat #3	Yes
136	Councilmember Israel, Seat #4	Yes
137	Vice-Mayor Paritsky, Seat #5	Yes

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139 Passed and adopted on second reading this 20<sup>th</sup> day of May 2021.

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Town of Ponce Inlet, Florida

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Gary L. Smith, Mayor

146 ATTEST:

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Jeaneen Witt, CMC

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Town Manager/Town Clerk

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