

ORDINANCE NO. G-4-14

AN ORDINANCE CREATING A NEW SECTION ____ OF THE CITY CODE OF ORDINANCES; ESTABLISHING A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING NOTICE REQUIREMENTS FOR TRESPASS WARNINGS; ESTABLISHING AN APPEAL PROCESS FOR TRESPASS WARNINGS; PROVIDING FOR A SPECIAL MAGISTRATE TO HEAR APPEALS FROM ISSUED TRESPASS WARNINGS; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; PROVIDING AN EFFECTIVE DATE

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT LAVACA, TEXAS.

SECTION 1. PURPOSE

The City recognizes its duty to the citizens of Port Lavaca to be a responsible steward of the public buildings and lands under its ownership or control, to maintain these public buildings and lands in a manner that promotes public safety and health, and to provide City-owned facilities where the City and the public conduct business and other approved activities free from unlawful and disruptive interference.

The City also recognizes the right of its citizens to engage in legitimate activities protected by the First Amendment to the U.S. Constitution that may occur in or on public buildings and lands owned by the City.

Under the City's Charter, the City Manager has the general authority and responsibility to control and maintain the City's public buildings and lands in accord with these interests.

In light of these interests, this Ordinance establishes rules and procedures for issuing and reviewing a criminal trespass notice resulting from activities that occur in a City-owned or occupied building, or on public lands owned by the City.

SECTION 2. POLICY

The policy of the City of Port Lavaca is:

- a. To provide notice in accord with the procedures set out in this Ordinance to a person whose entry onto City property, or continued presence on City property, is unreasonably disruptive or harmful to City Property, to the conduct of City business, or to the conduct of approved non-City activities occurring on City Property; and

b. To provide persons who receive a criminal trespass notice under the procedures in this Ordinance with the opportunity for a prompt administrative review of the terms of the criminal trespass notice.

This Ordinance is separate from, and does not affect or supersede, the authority of the City Council under the City Code to maintain order and decorum in its meetings.

SECTION 3. DEFINITIONS

a. “Criminal Trespass Notice” means oral or written communication to a person that:

1. Entering by that person onto City Property is forbidden; or
2. The person must immediately depart from City Property.

b. “City Property” includes: the City Hall building and surrounding property; any other City-owned building or portion of a non-City owned building over which the City has control; City park lands or other recreational areas; and all other City-owned lands, unless such building or area has been exempted from the scope of this Ordinance in a written document signed by the City Manager.

c. “Authorized Employee” includes the City Manager and any other employee of the City to whom authority to issue a Criminal Trespass Notice has been delegated in accord with the Procedures for Delegation of Authority, below.

SECTION 4. ROLES AND RESPONSIBILITIES

a. The City Manager has the general authority and responsibility under the City Charter to manage and control access by the public to City Property. The City Manager may delegate this authority to other Authorized City Employees as provided in this Ordinance.

b. Authorized Employees have authority to issue a Criminal Trespass Notice to any person whose conduct on City Property violates the standards set out in the Criminal Trespass Notice Procedures, below.

SECTION 5. DELEGATION OF AUTHORITY

a. The City Manager delegates the non-exclusive authority to issue a Criminal Trespass Notice under this Ordinance to:

- Public Works Director;

- Chief of Police or any duly licensed peace officer employed by the City of Port Lavaca.

b. The City Manager may make a written delegation of non-exclusive authority to issue a Criminal Trespass Notice to any other City employee.

c. A delegation of authority under this Ordinance expires upon the reassignment, voluntary or involuntary termination of employment, or retirement of the designated employee, or upon revocation by the City Manager at any time on any basis.

SECTION 6. CRIMINAL TRESPASS NOTICE PROCEDURES

a. Standards for Issuing a Criminal Trespass Notice

1. Prior Warning. Unless a person's conduct violates the standards in 6.a.3. of this Section, an Authorized Employee should, prior to issuing a Criminal Trespass Notice to that person:

- Inform the person that their conduct is in violation of law or a City policy; and
- Give the person a reasonable opportunity to cease the violation of the law or City policy.

If the person promptly ceases the conduct at issue after receiving the warning described above, a Criminal Trespass Notice should not be issued to the person.

2. Grounds for Issuing a Criminal Trespass Notice -With Prior Warning. An Authorized Employee may issue a Criminal Trespass Notice to a person for conduct occurring on City Property that is unreasonably disruptive or harmful to City Property, to the conduct of City business, or to the conduct of approved non-City activities occurring on City Property, including but not limited to conduct that violates the Port Lavaca City Code in areas such as:

- Park and other curfew violations;
- Noise and amplified sound ordinance violations; and
- Other prohibited unauthorized possession of alcohol, activities, such as camping, solicitation, sitting/lying on downtown sidewalk, urinating or defecating in public, and glass containers ordinance violations.

3. Grounds for Issuing a Criminal Trespass Notice- Exception to Prior Warning. An Authorized Employee may issue a Criminal Trespass Notice to a person without following the procedure in the preceding two sections, above, if the person has engaged in conduct that is unreasonably disruptive or harmful to City Property, to the conduct of City business, or to the conduct of approved non-City activities occurring on City Property, and either:

i. Is an offense under Texas law, or is an attempt, solicitation or conspiracy to commit such an offense, including but not limited to conduct such as:

- Crimes against a person, including homicide, kidnapping, unlawful restraint, sexual offenses and assaultive offenses;
- Crimes against property, including arson, criminal mischief, robbery, burglary and criminal trespass, theft, and fraud offenses;
- Obstructing governmental operation, including hindering proceedings by disorderly conduct, and interference with public duties;
- Offenses against public order and decency, including disorderly conduct, obstruction of highway or other passageway, and disrupting meeting or procession;
- Weapons offenses, public intoxication and driving while intoxicated; and
- Possession and delivery of controlled substances (drugs).

or-

ii. Has resulted in injury to any person or damage to any property, or threatens to cause an imminent breach of the peace.

b. Contents of a Criminal Trespass Notice. A Criminal Trespass Notice may be verbal or written, but in either case should include:

A. Reasons for Exclusion. A statement of the reason(s) the person is being notified not to enter an area or to depart from an area. This statement need not be detailed, but should relate to the grounds under Section 6.a., above, upon which the notice is issued.

B. Area of Exclusion. A description of the area from which the person is excluded. The notice should describe the area or building from which the person is to be excluded so that a reasonable person may understand the specific area to which the person may not return.

C. Duration of Exclusion. A Criminal Trespass Notice will be for a time period that is based on the seriousness of the conduct. The duration of the Criminal Trespass Notice will be established by the Authorized Employee based on factors that include:

- Whether the conduct involves intentional damage to City Property;
- Whether the conduct involves intentional injury or offensive contact with any person;
- Whether the conduct was intentionally disruptive to City business or to an authorized non-City event; and
- Whether the person has previously engaged in similar conduct.

Following are guidelines that the Authorized Employee may use to determine the appropriate duration of a Criminal Trespass Notice:

No harm to persons or property, some disruption to City business or other event, and no similar past conduct	0-30 days duration
Some harm to persons or property, no disruption of City business or other event, and no similar past conduct	30-60 days duration
Some harm to persons or property, or some disruption of City business or other event, and history of similar past conduct	30-120 days duration
Significant harm to persons or property, or significant disruption of City business or other event, and no similar past conduct	90-180 days duration
Significant harm to persons or property, or significant disruption of City business or other event, and history of similar past conduct	90 days - 1 year duration
Significant harm involving serious bodily injury or the threat of serious bodily injury to a person or to property, and threat of similar future conduct.	1 year- Permanent

D. Notice of Administrative Review Process. A Criminal Trespass Notice will contain information that informs the person of the administrative review procedure described below, including the time in which to request a review and the person to whom a request for review should be addressed.

c. Administrative Review of a Criminal Trespass Notice

1. Request for Review. The person to whom the Criminal Trespass Notice is issued may request an administrative review of all or any part of the notice.

The request must be in writing and received by the Department Director or other individual designated in the notice, not later than the 30th calendar day after the notice was received. If the person does not meet this 30- day requirement the Criminal Trespass Notice becomes final, unless the City Manager determines that good cause exists to consider a late request for review. Such a request for review does not stay or suspend the Criminal Trespass Notice.

i. Review Procedures. The Chief of Police, or designee, shall hold an informal review hearing promptly, but not later than the 14th day after the request for a review is received. In any such review hearing, the issues for decision shall be: (i) whether the Criminal Trespass Notice was issued for a reason set out herein; and (ii) whether the area and duration of the Criminal Trespass Notice are appropriate under the facts and circumstances. At the review hearing:

- The person receiving the Criminal Trespass Notice may appear in person, or may submit information and argument in writing, and may be represented by any individual of the person's choosing.
- The burden of proof is on the person who requested the hearing.
- If an in-person hearing is convened, the Chief of Police, or his designee, conducting the review hearing will provide for the recording of the hearing, and will furnish a copy of the recording to the person receiving the Criminal Trespass Notice upon request. No other audio or visual recording of the review hearing will be permitted.
- The rules of evidence as used in court do not apply, and hearsay evidence may be considered if it is deemed otherwise reliable by the individual conducting the review hearing.

The individual conducting the review hearing shall decide the issues based on the preponderance of the evidence presented, and shall make a written determination on the issues not later than the 5th business day after the hearing. The written determination shall be promptly provided to the person who requested the review hearing. The determination shall be to affirm, reverse, or modify the Criminal Trespass Notice, and shall state the reasons for the determination.

ii. City Manager Review. The person receiving the Criminal Trespass Notice may request review of the determination from the preceding subsection, in writing to the City Manager not later than the 10th day after notice of the determination is sent to the person.

The person must include a statement of the reasons for the request. Such an appeal does not stay or suspend the Chief of Police or his designee's determination.

The City Manager shall determine in the appeal whether the Criminal Trespass Notice was proper under the standards and procedures in this Ordinance. The City Manager may consider such information as he/she deems appropriate to the issues, and may request additional information from City management, from the person requesting the review, or from others. The City Manager shall provide a written decision on the request for review within 15 business days of receiving the request for review, unless the City Manager determines that additional time is needed based on the complexity of the issues.

The decision of the City Manager on a request for review is final.

iii. Application of Review Procedures. This administrative review procedure will be available to any person who has received a Criminal Trespass Notice or after the effective date of this Ordinance, or during the ninety days prior to the effective date of this Ordinance.

d. Good Faith, Substantial Compliance. The standards set out herein, are intended to provide consistency of process, standardized procedures, and proper delegation of management authority. The technical failure to meet one or more of the standards set out in this Ordinance does not invalidate a Criminal Trespass Notice, so long as that notice was issued in good faith and in substantial compliance with the standards in those Sections.

SECTION 7. EFFECTIVE DATE

This ordinance shall take effect on March 20, 2014 after its adoption and enactment by the City Council and publication as required by the Texas Local Government Code.

FIRST READING this 10th day February, 2014

Mayor

SECOND AND FINAL READING this 10th day of March, 2014

Mayor

APPROVED AND ADOPTED this 10th day of March, 2014

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM:

City Attorney

RECORD OF VOTE

	First Reading	Second and Final	Passed and Approved
Councilman Felder	Aye	Aye	Aye
Councilman Perez	Aye	Aye	Aye
Councilman Rivera	Aye	Aye	Aye
Councilwoman Padron	Aye	Aye	Aye
Councilman Ward	Aye	Aye	Aye
Councilman Barr	Aye	Absent	Absent

Record of approval by City Council: City Council Minute Records, Volume 3C, Page ____.

Pursuant to the Home Rule Charter of the City of Port Lavaca, passed and approved by the registered voters of the City of Port Lavaca on November 06, 2007, Article 3, Section 3.17(c)(d) governing ordinances, it states that:

“The City Secretary shall give notice of the passage of every ordinance imposing a penalty, fine or forfeiture of a violation of the provisions thereof, by causing the caption of title, summary of its purpose including the penalty for violation of any such ordinance to be published in accordance with State Law at least twice within ten (10) days after the passage of said ordinance”;

“It shall be noted on every ordinance, the caption of which is hereby required to be published, the date of such publications, which shall be prima facie evidence of the legal publication, and promulgation of such ordinance; provided, that the provisions of this section shall not apply to the correction, amendment, revision, and codification of the ordinances of the City for publication in book or pamphlet form”.

and therefore in accordance, has been so published in the Port Lavaca Wave Newspaper on:

Saturday, March 15, 2014; and
Wednesday, March 19, 2014

Record of approval by City Council: City Council Minute Records, Volume 3C, Page ____.