

RESOLUTION NO. 2022-02

A RESOLUTION OF THE BENBROOK CITY COUNCIL ESTABLISHING AN ADMINISTRATIVE REGULATION FOR TRESPASS WARNING ON CITY PROPERTY

WHEREAS, the City of Benbrook recognizes its duty as a responsible steward of City assets; and

WHEREAS, the City of Benbrook desires to provide the public and City staff with an environment free from unlawful and disruptive behavior and activities that interfere with City and public business and activities on City Property; and

WHEREAS, the Administrative Regulation for Trespass Warning establishes a process to issue trespass warnings; and

WHEREAS, the Administrative Regulation for Trespass Warning designates the City Manager, or designee, as the responsible authority; and

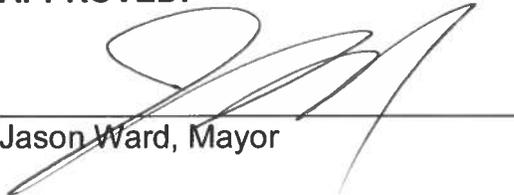
WHEREAS, the Administrative Regulation for Trespass Warning establishes an administrative review process for review of trespass warnings; and

WHEREAS, the Administrative Regulation for Trespass Warning recognizes the First Amendment rights of individual citizens.

NOW THEREFORE, BE IT RESOLVED that the Benbrook City Council establishes and approves the Administrative Regulation for Trespass Warning.

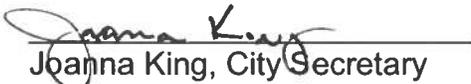
PASSED AND ADOPTED this 21st day of April, 2022

APPROVED:



Jason Ward, Mayor

ATTEST:



Joanna King, City Secretary



**CITY OF BENBROOK
ADMINISTRATIVE REGULATION
TRESPASS WARNING ON CITY PROPERTY**

I. PURPOSE

1.1 The City of Benbrook (City) recognizes its duty to be a responsible steward of City assets. The City also desires to provide the public and City staff at City Property, buildings and facilities, to the extent permitted by law, an environment free from unlawful and disruptive behavior and activities that interfere with City and public business and activities. This policy shall be posted on the City's website and shall remain on file with the City Secretary.

1.2 The City Council adopted Resolution 2022-02 authorizing and delegating authority to the City Manager and designees to act on its behalf as owner of City buildings and facilities to enact and enforce a trespass policy excluding criminal trespassers, trespassers, and any persons engaging in disruptive, illegal or harmful activities from City Property, buildings and facilities.

1.3 The City believes for public safety reasons it is in the best interest of the public and City staff, for the City to provide a trespass policy under the City Manager's authority to exclude unlawful and disruptive activities and persons from City Property, buildings and facilities while being within state and federal laws. This policy does not prohibit a person from exercising his or her First Amendment rights at any public forums.

1.4 To the extent of any irreconcilable conflict between this policy and terms of another more specific City policy concerning a specific department, facility, or premises, the term that is more specific shall control. To the extent of any irreconcilable conflict between this policy and the terms of an ordinance, the ordinance shall control.

II. DEFINITIONS

2.1 Trespass Warning means a verbal or written communication to a person that his or her presence or entry onto certain City Property is prohibited and the person must immediately leave such City Property. The Trespass Warning should address other items regarding this prohibition according to this policy.

2.2 City Property means City-owned buildings and surrounding City-owned property, any City-leased buildings and surrounding leased property and any area over which the City has control. City Property includes, but is not necessarily limited to, City park lands and other City-owned or operated recreational areas and facilities; City-owned parking garages, facilities, and parking lots; and all other City-owned lands, unless the City Manager specifically exempts a building or area from this policy in writing.

2.3 Authorized Employee means the City Manager and designees assigned by the City Manager having authority to issue a Trespass Warning according to this policy.

III. POLICY

3.1 General. The City's policy is to provide notice to people whose entry onto City Property, or continued presence on City Property, may be illegal, unreasonably disruptive or harmful to City Property or to conducting City business or to other persons' use or enjoyment of approved activities on City Property and to provide persons receiving a Trespass Warning with the opportunity for a prompt administrative review of the terms of the Trespass Warning. A person arrested on City Property for a criminal offense may receive a Trespass Warning.

3.2 Addition. This policy is in addition to and does not bar or preclude Benbrook Police Officers from performing their lawful duty to enforce any trespass laws or to issue a criminal trespass warning under other authority.

3.3 First Amendment Rights Acknowledged. The Authorized Employee shall have authority to consider and authorize a person subject to a Trespass Warning to enter City Property to exercise First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary City business.

IV. DELEGATION OF AUTHORITY

4.1 Authorized Employees. Authorized Employees have authority to issue a Trespass Warning to any person whose conduct on City Property violates this policy or constitutes a criminal offense. An Authorized Employee may also request a Benbrook Police Officer to issue a written criminal trespass warning according to the Texas Penal Code to a person violating this policy if it is reasonably believed such conduct constitutes a criminal offense. Specifically, the City Manager delegates the non-exclusive authority to issue a Trespass Warning under this policy to the following Authorized Employees:

- a. All Assistant City Managers;
- b. All Department Directors; and

4.2 Additional Authorized Employees. In addition to those listed above, the City Manager may delegate his or her non-exclusive authority to issue a Trespass Warning to any other City employee he or she deems appropriate in writing, given their general area of responsibility within the City.

4.3 Expiration. A delegation of authority under this policy expires upon the reassignment, employment separation, termination, or retirement of the Authorized Employee, or upon revocation by the City Manager at any time for any reason.

V. TRESPASS WARNING PROCEDURES

5.1 Verbal Warning. Unless a person's conduct violates section 5.3 below, an Authorized Employee should, before issuing a written Trespass Warning to that person:

- a. Verbally warn the person his or her conduct is in violation of law, City policy, rules, or guidelines or interfering with another person's reasonable use and enjoyment of City Property,
- b. Give the person a reasonable opportunity to cease violating the law, City policy, rules, or guidelines or interfering with another person's reasonable use and enjoyment of City Property; and
- c. Not issue a Trespass Warning to the person if the person promptly ceases the conduct at issue after receiving the verbal warning.

5.2 Written Trespass Warning after Verbal Warning. An Authorized Employee may authorize a peace officer to issue a criminal trespass warning and may issue a written Trespass Warning to a person for conduct occurring on City Property that may be illegal, unreasonably disruptive, and harmful to City Property or conducting City business, or interfering with another person's reasonable use or enjoyment of approved activities on City Property. The conduct includes, but is not limited to, conduct violating the following City ordinances, rules, policies or guidelines:

- a. Park and other curfew violations;
- b. Park rules violations;
- c. Failure to pay required fees for Facility use;
- d. Facility use violations;
- e. Noise ordinance violations;
- f. Interfering with another person's reasonable use and enjoyment of approved activities on City Property; and
- g. Any other City ordinance violation

5.3 Grounds for Issuing a Trespass Warning with No Verbal Warning. An Authorized Employee may authorize a peace officer to issue a criminal trespass warning and may issue a Trespass Warning to a person without a verbal warning if the person has engaged in conduct that is unreasonably disruptive or harmful to City Property, to conducting City business, or to another's reasonable use and enjoyment of approved activities on City Property, and that may:

- a. Be a state or federal criminal offense or ordinance violation or is an attempt, solicitation or conspiracy to commit a state or federal criminal offense or ordinance violation, including urinating or defecating in public; or

b. Have resulted in injury to any person or damage to any property or threatens to cause an immediate breach of the peace.

5.4 Contents of a Trespass Warning. A verbal or written Trespass Warning should include the following items:

a. Reasons for Exclusions. A statement of the reason the person is being notified or warned not to enter an area or to immediately depart from an area and explaining the conduct for the Trespass Warning.

b. Area of Exclusion. The Trespass Warning should describe the area or building, including the building name and address that the person shall not enter, so that a reasonable person may understand the specific area to which the person may not return.

c. Duration of Exclusion. A Trespass Warning should be for a specific time period based on the seriousness of the conduct. The specific time period a person may not return will be established by the Authorized Employee with written approval from the ranking Assistant City Manager based on relevant factors including:

1. Conduct involving intentional damage to City Property;
2. Conduct involving intentional injury or offensive contact with any person;
3. Conduct that is disruptive or harmful to City business or another's reasonable use and enjoyment of approved activities on City Property; and
4. Whether the person has previously engaged in similar conduct on City Property.

d. Reentry Warning. The Trespass Warning shall include notice that reentry may result in an arrest while such warning is in effect.

e. Notice of Administrative Review Process. A Trespass Warning will contain information that informs the person of the administrative review procedure.

f. Police Department Records. A copy of the Trespass Warning shall be sent to the Benbrook Police Department Records.

5.5 Trespass Warning Duration Guidelines. A Trespass Warning shall be in effect from the issue date:

a. Up to 365 days from the date the warning was issued;

b. Up to two (2) years if the person has received a Trespass Warning in the previous two years.

VI. ADMINISTRATIVE REVIEW OF A TRESPASS WARNING

6.1 Request for Review. The person receiving the Trespass Warning may request an administrative review of all or any part of the Trespass Warning. The request for review must be in writing and received by the City Secretary's office no later than three (3) business days after the Trespass Warning issue date. If the person does not meet this three-day requirement, the Trespass Warning becomes final. Such a request for review does not stay or suspend the Trespass Warning. The person receiving the Trespass Warning must submit information and argument in writing to be considered. The burden of proof is on the person requesting the review.

6.2 Review Procedures. The City Manager or designee shall perform an informal review. Findings should generally be issued by written memo upon receipt of a timely request. The City Manager or designee conducting the informal review should decide the issues based on the known evidence. The City Manager or designee should make a written determination on the issues not later than five (5) business days after receiving the review request. The City Manager may alter the response time if there is good cause. The written determination shall be promptly provided to the requestor at the provided address or made available in the City Secretary's Office. The determination shall be to affirm, reverse or modify the Trespass Warning, and shall state the reasons for the determination. The decision of the City Manager or designee on a request for review is final. The City Manager or designee should consider all relevant information provided and should include the following:

- a. Whether the Trespass Warning was issued for a reason set out or otherwise consistent with this policy; and
- b. Whether the area and duration of the Trespass Warning are appropriate under the facts and circumstances.

6.3 City Manager Authority. The City Manager in his or her sole discretion may determine good cause exists to modify the administrative review processes described in this section, accommodate review more quickly, informally, later or to make any other modifications as he or she determines is appropriate keeping in mind the legal rights and concerns of all.

6.4 Good Faith, Substantial Compliance. This policy is intended to provide notice, standard procedures, proper management, authority delegation, and consistency in due process. Failure to meet one or more of the provisions of this policy does not invalidate a Trespass Warning issued in good faith and with substantial compliance with this policy.