Policy: 1127.9, Trespass Warnings and Trespass Authorization Forms
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I. PURPOSE

The purpose of this directive is to establish a procedure for trespass warnings and the utilization of Trespass Warning Authorization forms.

II. POLICY

The Orlando Police Department will issue trespass warnings and trespass warning authorizations per Florida Statutes, Orange/Osceola State Attorney guidelines, rulings from the U.S. and Florida Supreme Court, and the Fifth District Court of Appeals.

III. DEFINITIONS

"Conveyance": Means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance.

"Dwelling": Means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.

"Person Authorized": Means any owner, lessee, agent, or any law enforcement officer whose department has received written authorization from the owner, lessee, or agent, to communicate an order to depart the property.

"Structure": Means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

"Trespass": Means a general intent crime that usually requires no evidence the defendant intended to commit the offense. The mere act of entering or remaining in a place without legal authority, or after being warned not to do so, is sufficient to establish guilt

"Unenclosed Curtilage": Is unenclosed land or grounds, outbuildings, etc., adjacent to a dwelling and habitually used in connection with the dwelling. This might include a tool shed, dog run, detached laundry area, etc., that does not fall within the continuous roofed area of the home, and which is not enclosed by fencing or a substantial hedgerow.

IV. PROCEDURES

1. AUTHORIZATION

1.1 TRESPASS

There are two general categories of Trespass After Warning crimes:

A. TRESPASS IN A STRUCTURE OR CONVEYANCE §810.08, Fla. Stat.: (examples include unauthorized entry into any place that might be considered a structure, such as a closed business or a restricted area within a business; unauthorized entry into a vehicle, train, bus, etc.);

- Whoever, without being authorized, licensed or invited, willfully enters or remains in any structure of conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

- A warning to leave the premises is not required to arrest an unauthorized subject found inside a closed business or in other structures or conveyances where the lack of authorization to enter is obvious.

- Valid trespass warnings must be provided by the property owner, lessee, or other authorized agent of the property owner. Warnings come in many forms: posting the structure or conveyance with signage to indicate that entry is prohibited or restricted (e.g., "Authorized Personnel Only"; locked or closed doors), written trespass warnings, and verbal warnings.

- Trespass in a structure or conveyance is a second-degree misdemeanor. If the structure or conveyance is occupied at the time of the trespass, the offense is a first-degree misdemeanor. If the trespasser is

armed or becomes armed during the trespass, the offense is armed trespass and is a third-degree felony.

B. TRESPASS ON PROPERTY OTHER THAN A STRUCTURE OR CONVEYANCE §810.09, Fla. Stat.: (examples include: unauthorized entry onto restricted parcels of land; remaining in a parking lot after being told to leave; being in certain places, like parks, after closing hours)

- A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

  1. As to which notice against entering or remaining is given; either by actual communication to the offender or by posting, fencing, or cultivation as described in §810.011, Fla. Stat.; or

  2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass, commits the offense of trespass on property other than a structure or conveyance.

- It is a first-degree misdemeanor if the offender defies an order to leave; if the offender opens a door, fence, or gate, or does anything that exposes animals, crops, or other property to waste; or if the offender dumps litter. §810.09(2)(b), Fla. Stat.

- Trespass on property other than a structure or conveyance is a first-degree misdemeanor. If the trespasser is armed, or becomes armed during the trespass, the offense is armed trespass and is a third-degree felony.

- Notice against trespassers may be provided by posting, fencing, cultivation, or actual communication (warning). See, generally, §810.011 for the definitions of posting, fencing, cultivation, etc. Some types of property are presumed to have notice against entering, such as residential property under five acres (§810.011 (5)(b), Fla. Stat.).

- Warning may be given by the property owner or by a person authorized to do so by the property owner, including an Orlando Police officer if the procedure outlined in this directive is properly followed.

- A warning may be in writing (by issuing a Trespass Warning form – see Attachment A) or may be verbal. A verbal warning by the property owner or their agent is sufficient to constitute a warning against remaining in or reentry onto the property. The inability to issue a written Trespass Warning to the subject does not prohibit a subsequent arrest for trespass if there is evidence through a sworn statement or other evidence to establish when the trespass warning was given and it was given to the same subject. The property owner or agent's sworn statement must clearly indicate how the verbal warning was communicated to the subject, and there must be proof to indicate that the subject was aware of that verbal warning. For example, the property owner might state, "I told him to his face that he had to leave and could not come back, and then the subject told me, 'I can come back any time I want.'"

- Trespass on certain special types of property is a third-degree felony, provided the property is properly posted with required signage as detailed by §810.09, Fla. Stat. §810.09(2)(d), Fla. Stat., addresses posting requirements for construction sites; §810.09(2)(e) deals with commercial horticultural property; 810.09(2)(f), Fla. Stat., addresses designated testing and research agricultural sites; and 810.09(2)(g), Fla. Stat. addresses felony trespass on domestic violence center property.

1.2 UNAUTHORIZED PRESENCE IN RESIDENCE

Section 82.036, Florida Statute permits property owners or their authorized agent to request action from the Sheriff's Office to remove unauthorized persons (persons without a lease or other permission from the owner/authorized agent) from a residence when the following conditions are met:

1. The requesting person is the property owner or authorized agent of the property owner.
2. The real property that is being occupied includes a residential dwelling.
3. The unauthorized person or persons have unlawfully entered and remain or continue to reside on the property owner's property.
4. The real property was not open to members of the public at the time the unauthorized person or persons entered.
5. The property owner has asked the person or persons to leave.
6. The unauthorized person is not a current or former tenant pursuant to a written or oral rental agreement authorized by the property owner.
7. The unauthorized person or persons are not immediate family members of the property owner.
8. No pending litigation related to the real property between the property owner and the unauthorized person.

Similar to evictions, the law only allows the Sheriff's Office to remove the unauthorized persons. When OPD receives a call for the removal of unauthorized persons from residential property, an OPD officer will respond and verify that the situation meets the above criteria, and is not a landlord/tenant dispute, a transient occupancy issue governed by section 82.035, Florida Statute, burglary, or other matter not covered by section 82.036, Florida Statute.

If the responding OPD officer determines that the matter involves an unauthorized person and it meets the above criteria, then the matter shall be turned over to Orange County Sheriff's Office.

- If the owner/authorized agent is on scene, then the OPD officer shall contact OPD Communications who will notify the Orange County Sheriff's Office to dispatch a deputy.
- If the owner/authorized agent is not on scene, then the OPD officer shall provide the owner/authorized agent the non-emergency number to the Orange County Sheriff's Office so that they can proceed accordingly.

1.3 UNAUTHORIZED PRESENCE IN UNOCCUPIED OR UNFINISHED BUILDING

§43.29, Code of the City of Orlando, provides it is unlawful for a person to be in an unoccupied or unfinished building or structure without the consent of the owner or agent. Due process requires a person must be put on "notice" that entry is unauthorized. A sign posted on the building provides that notice. If there is no sign posted warning against entry, an arrest under this section may still be made if the building's doors and windows are closed, boarded, or locked, indicating that entry is obviously unauthorized.

An immediate arrest may be made under this section if the misdemeanor is committed in the presence of the officer and:

a. There is probable cause to believe the elements of the offense have occurred and if a statement has been obtained from the owner or agent that the suspect's entry was unauthorized, or

b. The owner or agent of the owner has a letter on file with the City Prosecutor's Office authorizing OPD to arrest any unauthorized persons from the unoccupied or unfinished building.

An immediate arrest may not be made if the property owner has not given prior authorization to OPD through a letter to the City Prosecutor's Office or if the officer is unable to make contact with the property owner to obtain such authorization. In cases in which a letter is not on file with the City Prosecutor's Office, the officer should attempt to contact the property owner before any arrest.

2. COMPLETION AND DISTRIBUTION OF TRESPASS WARNING FORMS

2.1 COMPLETION OF FORMS

Any officer who issues a Trespass Warning under the provisions of this policy and procedure, or who witnesses a proper verbal trespass warning issued by a property owner or agent, shall complete a Trespass Warning form (Attachment A).

When an officer issues a Trespass Warning, the officer should inquire of the property owner or their agent as to the desired length of the Trespass Warning period. The officer may tell the complainant the most common length of time is for six-months. If the complainant wants the warning issued for a shorter or longer period, the officer shall so indicate on the Trespass Warning form. If the period is indefinite, the officer should write INDEFINITE in the space provided for the expiration date. If the subject refuses to provide a name or identification, a Trespass Warning form cannot be effectively entered into Report Review.

To be acceptable, a Trespass Warning form must contain the following:

a. Case number issued for Trespass Warning;
b. Whether the subject of the Trespass Warning was arrested (if yes, the arrest case number);
c. Subject's name; (cannot be "John Doe")
d. Subject's race and sex;
e. Subject's address;
f. Subject's driver's license or ID number and state of issuance;
g. Subject's height, weight, eye color, and hair color;
h. Name and address of the property from which the person is trespassed;
i. Name of the person who gave the warning;
j. Date and time the warning was given;
k. Name and employee number of the officer who completed the form;
l. Name of any witnesses including officers;
m. Reason for issuing Trespass Warning;

n. Date of expiration;
o. The property owner or agent's signature;
p. Date the form was completed.

In situations where the subject refuses to provide a name or identification but there is information sufficient to otherwise identify a subject, such as a clear photograph or unique features, the information will be scanned and entered into LERMS, only.

All forms shall be prepared in triplicate (i.e., white copy: OPD Records; yellow copy: property owner; pink copy: subject of the trespass warning). These forms are available in the Quartermaster Unit.

2.2 ISSUANCE OF TRESPASS WARNING FORMS

Consensual encounters: During a consensual encounter, an officer cannot compel a subject to identify themselves or require the subject produce identification, even if only to allow the officer to complete a trespass warning. A person may not be detained for the sole purpose of issuing a trespass warning unless there is separate reasonable suspicion or probable cause to detain that person apart from the issuance of the warning. A person who is not detained has no legal obligation to remain on scene while the officer issues a trespass warning, and the subject does not have to accept a warning form from the officer. Although the issuance of a trespass warning by an officer may be considered a "legal duty," detaining a person to do so without separate reasonable suspicion or probable cause is not lawful. Therefore, during a consensual encounter, a subject cannot be charged with obstructing or resisting merely for refusing to cooperate with the officer (e.g., refusing to give identifying information, refusing to accept the Trespass Warning form, walking away, or leaving the scene before the Trespass Warning is issued.)

Terry stops: In all Terry stop cases, a subject who refuses to provide identifying information may be temporarily detained on the scene to be photographed or fingerprinted for identification purposes. The subject's fingerprints and/or photograph should be attached to the Trespass Warning form. A detained subject who has refused to provide identification and who then refuses or resists being fingerprinted or photographed is subject to arrest under § 843.02, Florida Statute, Resisting an Officer without Violence.

Arrested persons: If a subject is under arrest for another charge and refuses to identify themself, their booking photograph and fingerprints may be attached to the Trespass Warning form for future identification purposes.

When an officer initiates a Trespass Warning, a copy of the form shall be given to the subject receiving the warning. If the property owner or their agent is present, an additional copy should be left with the property owner or agent.

Issuance of a Trespass Warning does not have to occur on the premises from which the subject is being trespassed. An officer may hand-deliver a Trespass Warning to the subject at any location where the subject can be found. However, to be effective, the warning must be personally provided to the subject; it cannot be given to a third party or left at another location for the subject. If a subject refuses to accept the Trespass Warning, the officer must note that refusal on the Trespass Warning form and indicate that a personal verbal warning was communicated to the subject. The officer should also indicate on the form how the officer knows the subject understood the verbal warning (e.g., any statements or indications made by the subject acknowledging the Trespass Warning).

The officer shall return the original form to the Department by the end of the officer's tour of duty for submission to the Records Unit via normal report channels.

Due to the high number of calls from certain commercial establishments, such as Universal Orlando, those establishments may issue written Trespass Warnings instead of calling an officer to issue the form. In those instances, an arrest for trespass after warning may be made if the commercial establishment completes the form previously approved by the department and provides it to the officer before arrest.

In the alternative, an agent of the property may provide a sworn statement indicating the subject was previously given an oral trespass warning.

The commercial establishment should maintain a copy of the Trespass Warning form for one year past the expiration date. The establishment is required to provide a quarterly update to Report Review on the status of all Trespass Warnings, including those issued for an indefinite period. The establishment must notify the OPD Report Review Unit immediately upon a change in ownership. Any appeal of a commercial establishment's Trespass Warning shall be directed to the business. OPD Records or Report Review may purge Trespass Warnings if there has been no update provided for one year.

2.3 REVOCATION OF TRESPASS WARNING FORMS

In cases where the owner requests to revoke a trespass warning or when the ownership of the premises has transferred to another, revocation of a trespass warning is necessary.

- If the officer becomes aware of a change in the owner's intent to trespass a subject, the officer shall provide the owner a Revocation of Trespass Warning form (Attachment E) to complete.
- If the officer becomes aware of a change in ownership, the officer shall complete the Officer section of the Revocation of Trespass Warning form.

All forms shall be provided to Report Review Personnel.

2.4 RETENTION OF TRESPASS FORMS AND DATA

The completed Trespass Warning form will be retained in Records for one year, and thereafter retained indefinitely on microfilm or digital media. Certified copies of the original will be available to officers who may need them for court purposes.

Trespass Warning data will be entered into the computer by Report Review personnel, and the data will be available through Records, Teletype, Service, or via LERMS.

3. ARRESTS FOR TRESPASS AFTER WARNING

3.1 GENERAL PROVISIONS

If an officer observes an individual trespassing on the property and has prior knowledge this individual has received a Trespass Warning or learns of the Trespass Warning through a Teletype check, the officer may arrest the individual for trespass after warning. Before any arrest is made, the officer must verify through Teletype that the Trespass

Warning is still in effect. It is not permissible to make warrantless arrests for misdemeanor trespass under §§ 810.08, Florida Statute **Trespass in a Structure or Conveyance** or 810.09, Florida Statute **Trespass on Property Other Than a Structure or Conveyance** unless the offense is committed in the officer's presence. The discretion to make a physical arrest lies with the officer, and if there is any question, the officer should discuss the matter with his or her supervisor.

§§ 812.015(4), Florida Statute **Retail and Farm Theft** and 810.097 **Trespass upon Grounds or Facilities of a School** authorize an officer to arrest, either on or off the premises and without a warrant, any person the officer has probable cause to believe has committed a trespass in a retail or wholesale establishment, on commercial or private farmlands, or upon the campus or any other facility owned by a school. This may be accomplished by obtaining a sworn statement from the property owner or their agent that the subject did not have permission to enter and was warned by signage or in person not to enter. The officer does not need to see the violation occur under this statute to make an arrest. Additionally, officers may arrest, either on or off the premises and without a warrant, any person the officer has probable cause to believe has committed felony trespass. Any enforcement action taken on juveniles must comply with Policy and Procedures 1203, Juvenile Civil Citation Program, and 1204, Juvenile Procedures.

For warrantless arrests or at-large cases, the officer should check with Teletype to verify the existence of the previous warning and include a copy of that warning and case number in the charging packet along with the sworn statement of the property owner.

Before an officer arrests for trespass, they should allow the suspect to dispel the officer's concerns by explaining the reasons for being there. If it becomes apparent the suspect may have received authorization from the owner or lessee to enter the property, the officer should contact the owner or lessee and make this determination before making an arrest. If the officer is unable to contact the owner or lessee and some doubt exists as to whether or not the subject is actually trespassing, an arrest should not be made. The officer should complete a Field Interview Report and release the subject. If the subject is obviously a trespasser (i.e., someone the officer knows does not have permission to enter the property), the officer may take appropriate action without contacting the owner.

The officer may submit a certified copy of the Trespass Warning Authorization form to the State Attorney's Office instead of a victim statement if the owner is not present at the arrest scene. Officers can obtain certified copies of the Trespass Warning Authorization from the Records Unit (these are filed by case number, which is available from Teletype).

3.1.1 EVIDENCE AND PROCEDURE

If an officer locates a subject trespassing and wishes to determine if a previous Trespass Warning has been issued, he/she may check by:

a. Calling Teletype and providing the trespasser's name, sex, race, and date of birth, if known.
b. Asking the owner, lessee, or agent to produce a copy of the Trespass Warning form.

An officer finding that a previously-warned subject has returned to the same property without an invitation to do so may arrest the subject for trespassing.

To successfully prosecute a case, it will be necessary for the agent or owner who gave or authorized the Trespass Warning to testify, as well as the officer who issued the initial Trespass Warning form and the arresting officer. The officer completing the warning form must be able to produce the form during the criminal proceedings. For this reason, certified copies of these completed forms may be obtained from the Records Unit. The arresting officer should attach a copy of the Trespass Warning form to the filing package to be forwarded to the Criminal Intake Unit.

When an arrest is made, the arresting officer should include the following information in the narrative of the arrest affidavit (available from Teletype):

a. The date the Trespass Warning form was issued;
b. The name of the issuing officer;
c. The complaint number issued on the Trespass Warning form;
d. The location of the premises for which the warning was issued; and
e. The date and time the subject returned.

Additionally, a victim/witness statement must be obtained and forwarded to the State Attorney. The victim/witness statement should include, but does not need to be limited to, the following information:

a. When (date and time) the victim/witness observed the trespasser on the premises;
b. Where on the premises the trespasser was seen;
c. Whether the victim/witness warned the trespasser to leave; and
d. Whether the trespasser made any statements/admissions, and to whom.

The arrest affidavit narrative must include a notation that a witness statement was obtained and a summary of the statement. A trespass after warning arrest requires a new case number to be placed in the appropriate space for "Police Case No." in the arrest affidavit. When such an arrest involves a previously documented warning, the old case number will be referenced only in the narrative of the arrest affidavit.

A copy of the previously-issued Trespass Warning should be attached to the filing package, which is sent to the Criminal Intake Unit.

3.2 RETAIL ESTABLISHMENTS, RESTAURANTS, AND BARS

Businesses that are open to the public, particularly retail establishments, are considered to have extended an open invitation to all members of the public. Any person going onto such property is an invitee and has an absolute defense to a charge of trespass. That invitation, however, is revocable at the discretion of the owner or agent in charge of the premises. When a subject has been duly warned to leave or stay off the premises, it is safe to assume that any invitation to enter was withdrawn. Any return by the subject, along with a complaint by the owner or agent, and the officer's verification of the existence of a current Trespass Warning form, justifies a charge of Trespass.

If an individual is trespassed from one business that is located in a larger complex of businesses, like a mall, shopping center, or office complex, the trespassed individual usually retains the right to enter the common areas and other establishments within the complex. Some business complexes have lease agreements among their tenants that permit their private security staff to act on behalf of the entire complex of businesses, and that also permit a

blanket trespass warning for all businesses. The officer should request a copy of such an agreement before issuing a Trespass Warning or making an arrest under this type of circumstance. If there is no such agreement, then an individual may be barred from one store, but not the others. Officers are cautioned to confirm the scope of any prior warning issued by another store or an agent on behalf of the shopping center itself.

Valid trespass warnings may be issued for any duration as determined by the authorized owner or agent.

3.3 APARTMENT COMPLEXES

Apartment complex owners and managers may generally exclude non-tenants from the common areas of the complex (pool, parking lots, clubhouse, etc.); however, a non-tenant may not be excluded or arrested for trespass if the non-tenant is in the common areas pursuant to a tenant's invitation. This holds true even if the non-tenant has an active Trespass Warning against them; a non-tenant with an active Trespass Warning may still use the common areas at the specific invitation of a tenant.

In the absence of a specific lease agreement between the landlord and the tenant, a tenant may invite non-tenants to use the common areas. Unless the lease agreement states otherwise, there is no requirement that the tenant must accompany the non-tenant in the common areas. **Non-tenants may be trespassed by the landlord or the landlord's agent only if all lease agreements reserve that specific right to the landlord** (e.g., "Tenant agrees that Landlord reserves the right to trespass any non-tenant from the leased premises or common areas").

3.4 CITY PARKS AND PARK FACILITIES

Park Service Specialists and other authorized agents of the City's Families, Parks and Recreation (FPR) Department are authorized to issue Trespass Warnings to persons who:

a. Violate state laws, municipal ordinances, or posted park rules while at a City park or park facility, or

b. Damage City property or otherwise behave in a manner that interferes with normal park or facility use.

Officers are authorized to issue Trespass Warnings at City parks or park facilities to persons who:

a. Have specifically been prohibited from coming onto the park or park facility by an authorized agent of the City of Orlando, whether identified in person, by name, or by photograph, or

b. Violate a state law, municipal ordinance, or posted facility rule while in a City park and/or park facility.

Before issuing a Trespass Warning at a City park and/or park facility for a violation of state law, municipal ordinance, or posted facility rule, the officer should first attempt to contact a Park Service Specialist or another agent of the FPR Department to issue the warning. If contact cannot be made with a Park representative (e.g., after business hours or when the park is closed), then an officer may issue a Trespass Warning. The FPR Department's phone number is 407.246.2283; Parks Administration's is 407.246.2287.

Trespass Warnings issued hereunder for parks shall be for a maximum of one year unless noted otherwise on the form. Persons who commit any offense (state statute or municipal ordinance) in a City park and/or park facility that

involves sexual misconduct shall be issued a Trespass Warning for an INDEFINITE period. Sexual misconduct shall include but is not limited to, offenses such as indecent conduct, exposure of sexual organs, prostitution, sexual assault, or sexual battery. Trespass Warnings issued hereunder shall only be applicable for the specified City park and/or park facility where the offense was committed unless noted otherwise. A watch commander's approval should be obtained before a Trespass Warning is issued for a City park and/or park facility where the offense was not committed. (NOTE: More than one City park may be addressed by a Trespass Warning if the warning is due to an offense of sexual misconduct, and the other parks are close to the park where the offense took place.)

For trespassers at any City park and/or park facility, an officer should use the Trespass Warning for City Hall, City Park, and/or Park Facility form (Attachment B). These forms are available in the Quartermaster Unit. The white copy of the form should be given to Records. The yellow copy of the form should be turned in to Criminal Intake, who will send it to the FPR Department. The pink copy should be given to the subject trespassed.

Note: Trespassed persons may reenter a City park and/or park facility only to engage in First Amendment activities so long as an agent of the City of Orlando FPR Department is first notified. For this purpose, the officer should provide the trespassed person with a Park representative's name and telephone number by writing it in the space provided on the Trespass Warning form (see Attachment B). Park representatives include a Park Service Specialist, an FPR Department head, or designee. An officer should verify with Communications if a trespassed subject states that he/she has been authorized to return to a City park for First Amendment activity.

3.5 FIRST AMENDMENT ACTIVITY ON PUBLIC PROPERTY

Officers should be aware that City parks and sidewalks are considered to be "traditional public forums" where the exercise of free speech and First Amendment activities (i.e., distributing literature or leaflets, soliciting signatures for a petition, preaching, or public speeches) are permitted. Therefore, as a general rule, officers should not interfere with a subject exercising free speech rights/First Amendment activity in a City park or upon a city sidewalk.

However, an officer may issue a Trespass Warning to a subject exercising his/her First Amendment rights if the subject is also:

a. Violating a state law or municipal ordinance,
b. Blocking ingress/egress from a building or blocking people's paths on sidewalks, or
c. Within a public area that has been exclusively rented for use by a group and a member of the group requests that person be removed from the rented area. Please note that the issuance of a free speech permit does not, by itself, constitute a "rental" – and therefore, a person holding a free speech permit cannot exclude or remove other persons from the public area.

Other limited situations may arise that warrant asking an individual engaged in expressive activity to leave a City park. However, caution should be exercised, and the Police Legal Advisor shall be contacted in any of those special circumstances. See Legal Bulletin 1301, Public Forums and The First Amendment, for more information.

3.6 FIRST AMENDMENT ON PRIVATE PROPERTY

The Office of the Police Legal Advisor, the City Attorney, and the Chief Administrative Officer's Office have approved the following guidelines:

When private property, such as a shopping center, is open for public use, the property owner, manager, or agent may restrict expressive activity, provided that the activity does not relate to the commercial or business nature of the property. Expressive activity includes but is not limited to, picketing, soliciting petition signatures, campaigning, public speaking, protesting, etc. Restrictions on expressive activity may not target a protected class member simply because of their class status (e.g., race, gender, religious affiliation, etc.). Persons violating restrictions may be asked to leave by the owner or owner's agent, and if they fail to leave, trespass laws may be enforced. This means that people may not engage in expressive activity that is unrelated to the private property without the permission of the property owner, manager, or agent.

If the expressive activity has a direct or indirect relationship to the property or a tenant of the property, then officers should not issue or enforce trespass warnings based on that expressive activity. Officers may stand by to keep the peace, if necessary. This would apply to situations involving labor picketing, or to persons engaged in peaceful protest of a property owner's or tenant's activities on the property (such as animal-rights activists protesting the sale of furs). The property owner will need to seek civil injunctive relief for the removal of such persons. Officers working off-duty in area malls or shopping centers should advise their employers of this policy, so they will be aware of their need to seek civil relief from protests targeting their property or their tenant(s). Of course, any activity threatening public safety or violates another law, such as blocking vehicular traffic, may be enforced. See Legal Bulletin 1301 for more information and contact the Police Legal Advisor's Office for questions regarding this section.

3.7 CITY HALL

Because of the public nature of City Hall, Trespass Warnings should only be issued in the most extreme cases and only with the prior approval of a watch commander. Emphasis should be placed on any primary law violation (e.g., disorderly conduct, battery, etc.) as opposed to the issuance of a Trespass Warning.

The Division Manager of the City Real Estate Management Division and other agents of the City designated by the Real Estate Division Manager are authorized to issue trespass warnings at City Hall to persons who:

a. Violate a state law, municipal ordinance or facility or property rule while on City Hall property; or

b. Damage City Hall property or otherwise behave in a manner that interferes with normal property or facility use.

Officers are authorized to issue Trespass Warnings at City Hall with a watch commander's approval in the following circumstances:

a. To persons who have specifically been prohibited from coming onto City Hall property by an authorized agent of the City of Orlando, whether identified in person, by name, or by photograph; or

b. To persons who commit any violation of a state statute or municipal ordinance while on City Hall property.

Before issuing a Trespass Warning at City Hall, an officer should first attempt to contact the Real Estate Management Division (REMD) at 407.246.2341 and request an agent of that division issue the warning. If an officer is unable to contact REMD, then an officer may issue a Trespass Warning following the above-listed standards.

City Hall is unique in that citizens may need to access certain areas within City Hall to secure permits, information, licenses, etc., even though the citizen may have been previously trespassed for valid reasons. Officers should use the Trespass Warning for City Hall, City Park, and/or Park Facility form (Attachment B) when trespassing anyone from City Hall. This form includes a provision informing the trespasser that they may contact an authorized agent of City Hall for reentry to the building to conduct official business. The authorized agent for City Hall is the OPD liaison officer assigned to the Mayor or the Chief Administrative Officer. The officer should provide this information to the trespasser in the space provided on the Trespass Warning form (see Attachment B). The white copy of the form should be given to Records. The yellow copy of the form should be turned in to Criminal Intake, who will in turn send it to the Mayor's authorized agent for City Hall. The pink copy should be given to the trespasser. An officer should verify with Communications if a trespassed individual states they has been authorized to return to City Hall for official business.

City Hall Trespass Warnings issued hereunder shall be for a maximum of one year unless noted otherwise on the form and shall be applicable for City Hall, the surrounding parking lot, and the plaza at One City Commons unless stated otherwise. All trespass warnings issued for City Hall shall be copied to REMD at OrlandoRealEstate@orlando.gov.

3.8 ORLANDO HOUSING AUTHORITY PROPERTIES

Trespass rules for OHA properties are slightly different than those for privately-owned apartment complexes, due to the public purpose served by OHA properties, and agreements between the governing bodies. Agents or managers of Orlando Housing Authority (OHA) properties may exclude non-tenants from the common areas of properties owned or controlled by OHA. Residents within OHA properties may exclude persons from their units. City Council has also adopted a resolution authorizing officers on behalf of OHA to issue Trespass Warnings in the following circumstances:

a. To persons who have specifically been prohibited by an OHA agent from coming onto OHA property by an OHA agent, whether identified in person, by name, or by photograph;
b. To persons who have previously been arrested two or more times within the last three years for any of the following offenses: any felony, any drug offense, any crime of violence, or any crime committed on or against property owned or controlled by OHA. (NOTE: The person need not be convicted but only be charged with the offenses listed.) Officers must verify the existence of these past charges/arrests before issuing the Trespass Warning; or
c. To persons, the officer has a legal right to detain according to a Terry stop and who do not dispel the officer’s suspicions.

Trespass Warnings issued hereunder shall be for an INDEFINITE period unless noted otherwise on the Trespass Warning form or unless requested for a shorter period by an OHA agent/manager. Trespass Warnings issued at one OHA property are effective for all OHA properties. If the trespasser lives in one OHA property but is trespassed from another, the Trespass Warning will be good for all OHA properties except the one where the trespasser resides.

Officers should use the Orlando Housing Authority Properties Trespass Warning form (Attachment C) when issuing a Trespass Warning for OHA properties. The OHA manager's signature may be obtained after the warning has been issued and will serve to document notification of OHA management.

Persons who are trespassed but who are specifically reinvited to enter by a tenant have the right to be on the property for the express purpose of visiting the tenant and must do so by the most direct route. Officers shall observe such trespassed persons for at least five minutes to assist in determining whether the trespassed person is approaching or departing a specific unit by a direct route. However, trespassed persons may not be in common areas, even if a tenant invites them onto the property.

3.9 ORLANDO POLICE LOCATIONS

Trespass Warnings may only be given by a person who exercises control over the premises in question or one who has been authorized to issue these warnings. Police officers are not generally empowered to issue those warnings on public property.

The Chief of Police, the Acting Chief of Police, and their designees, including all watch commanders are authorized to issue Trespass Warnings at Orlando Police Headquarters (OPH) and all other property leased, owned, or otherwise controlled by the Orlando Police Department.

4. PROCEDURE FOR USING TRESPASS WARNING AUTHORIZATION

4.1 DISTRIBUTION OF FORMS

Trespass Warning Authorization forms (Attachment D) will be made available to owners or lessees of commercial property, whether it be a structure or vacant land when the owner or lessee requests the assistance of the Police Department in keeping unauthorized individuals from trespassing upon their property.

Trespass Warning Authorization forms will also be made available to the owners and lessees of any unoccupied commercial residential property or unoccupied private property (to include vacant land or structure) when the same trespassing concerns exist. Officers should be warned that when commercial, commercial residential property, or private property becomes occupied, the warning is null and void. If an officer becomes aware of such a situation, they should contact Report Review to have the warning removed.

The Trespass Warning Authorization system intends to provide special assistance to property owners who are experiencing ongoing problems with trespassers, illegal activities, or other activities that may create an immediate threat to public safety or welfare.

If an officer is advised by a property owner that a Trespass Warning Authorization is desired, the officer should provide the owner with the name and telephone number of the on-duty watch commander. The property owner should be advised to call the watch commander and explain the problem. If the watch commander concurs with the request that a Trespass Warning Authorization form be completed, they will arrange for a Trespass Warning Authorization form to be delivered to the property owner by mail or hand delivery.

Officers who deliver Trespass Warning Authorization forms to owners or lessees of qualifying property should assist in completing the forms and ensure that they are filled out correctly. To be acceptable, the forms must contain the following:

a. The property owner or lessee's name;
b. The name of the business, if applicable;
c. The owner or lessee's business address;
d. The address of the property where access is to be limited (this may be different from the property owner's or lessee's business address);
e. The hours during which only authorized persons are to be allowed on the property or hours when the business is closed. If the property is currently not in use and the general public is not invited to enter at any time, the owner or lessee should write "24 hours a day" in the space provided for closure times;
f. The business and after-hours contact phone numbers of the owner or lessee;
g. The date the form was completed;
h. The owner or lessee's printed name and signature;
i. The witnessing officer's signature and employee number;
j. The date of expiration.

After the form is completed, the assisting officer should contact Communications and receive a case number. The case number should be written in the upper right-hand corner of the Trespass Warning Authorization form.

The bottom portion of the Trespass Warning Authorization form should also be completed when the Trespass Warning Authorization is for a building or structure. After the bottom portion of the form is completed, it should be posted conspicuously in a window or other location on or in the structure to be seen from the exterior of the structure. If an officer observes an individual trespassing on property that has such a form posted, the officer should call Teletype and confirm the Trespass Warning Authorization is valid. Before an arrest may be made, an officer must give the suspect a Trespass Warning as outlined in this directive.

The officer shall deliver a copy of the form to the patrol division commander in whose area the property is located. The officer shall submit the original through normal police incident report channels.

A Trespass Warning Authorization will be effective for one year from the date of execution and will remain on the computer for that time unless revoked. Owners or lessees should be advised that they must initiate any renewal of this authorization. If they fail to do so, the authorization will be purged from the computer and will no longer be in effect.

4.2 ISSUANCE OF TRESPASS WARNINGS

After the Department has received a Trespass Warning Authorization form applicable to certain properties, officers may issue Trespass Warnings to persons found trespassing on the property under the restrictions specified in the authorization. The owner or lessee of the property need not be present when the warning is given.

When the Department has received a Trespass Warning Authorization form, all the pertinent data will be entered into the computer and will be available through Teletype. Before issuing a Trespass Warning, the officer on the scene should check with Teletype to verify that:

a. The authorization is still in effect;
b. The time of the occurrence falls within the time limits outlined in the written authorization;
c. The suspected trespasser has not been authorized by the person who controls the property to be present after hours (if the suspected trespasser alleges that he/she has permission to be there, the officer will verify this information with the property owner); and that
d. The owner or lessee's contact telephone number will be available through Teletype should the officer deem it necessary to make contact before taking action.

4.3 REVOCATION OF TRESPASS AUTHORIZATION

If an owner requests to revoke a current Trespass Authorization or if the officer becomes aware of a change in ownership status, a Revocation of Trespass Authorization form (Attachment F) shall be completed.

In cases where the owner requests to revoke a Trespass Authorization form, the officer shall:

1. Provide the owner a Revocation of Trespass Authorization Form, and
2. Provide the completed form to Report Review Personnel by the end of the officer's tour of duty.

In cases where a current trespass authorization is in effect and an officer becomes aware the ownership of the premises has transferred to another, the officer shall complete the officer section of the Revocation of Trespass Authorization form and submit it to Records Review by the end of the officer's tour of duty. Officers are encouraged to follow up with the new owner to determine if they want to request a new Trespass Warning Authorization form.

All forms shall be provided to Report Review Personnel.

5. USE OF PHOTOGRAPHS IN TRESPASS CASES

Officers may use photographs of a person to show to the owner/authorized agent of the property who can then authorize the issuance of a Trespass Warning. These photographs may be taken with the person's consent or without the person's consent if the person is in a public place and the officer does not need to detain/pose the person to obtain the photograph.

V. FORMS AND APPENDICES

ATTACHMENT A-Trespass Warning
ATTACHMENT B-Trespass Warning for City Hall, City Park, and/or Park Facility
ATTACHMENT C-Trespass Warning for Orlando Housing Authority Properties
ATTACHMENT D-Trespass Authorization
ATTACHMENT E-Revocation of Trespass Warning
ATTACHMENT F-Revocation of Trespass Authorization

VI. REFERENCES

This policy rescinds Policy and Procedure 1127.8

Related Policies: Legal Bulletin 1301

Related Laws: Florida Statutes 82.036, 810.08, 810.09, and 810.011