



Parks, Recreation and Cultural Affairs Department	No. 8.1
Subject: <u>Prohibited</u> Department Conduct Code and Issuance of Trespass Warnings	Issued: 12-01-2008  Revised: insert date
<p style="text-align: center;">Approval: _____  <span style="margin-left: 150px;">Steven R. Phillips, Director</span> <span style="float: right;">■</span></p> <p style="text-align: center;">Approval: _____  <span style="margin-left: 150px;">Anthony Lyons, Interim City Manager</span></p>	

The purpose of this procedure is to promote the public health, safety, and general welfare of the people of Gainesville and to assure compliance with the City of Gainesville Parks, Recreation and Cultural Affairs Department's ("Department") goals and values for adhering to proper conduct in the City's parks, as identified in Chapter 18 of the City of Gainesville Code of Ordinances.

The Department strives to provide clean and safe parks and programs for children, adults, and families to enjoy, as well as provide a clean and safe work environment for Department staff. In order to do so, the Department stands firm on this procedure and will not tolerate conduct inconsistent with this procedure.

Code of Prohibited Conduct:

Unauthorized destruction of property, fighting or other violent acts, disorderly conduct as defined by Florida Statutes, including verbal abuse amounting to disorderly conduct, and any other act which constitutes a crime as defined by Florida Statutes or violation of specified ordinances (attached) will not be tolerated in Department programs or City parks.

Direction to Cease Conduct or Leave

Individuals who engage in such conduct may be directed to cease the conduct or leave the Department's program and/or City park, property, or facility immediately by a member of the Department or the Gainesville Police Department ("GPD") or may be subject to law enforcement action. If a direction to leave is given by Department staff under this procedure and the individual refuses to leave, staff should contact GPD for assistance by calling the Alachua County Combined Communication Center at 352-955-1818 or, in the case of an emergency, 911. If Department staff directs an individual to leave the Department's program and/or City park, property, or facility and/or contacts GPD under this procedure, staff must immediately notify his/her direct supervisor and submit a written report on the Department's Incident Form within twenty-four (24) hours of the incident.

Issuance of Trespass Warnings:

If a sworn officer member of GPD has probable cause to believe an individual engaged in conduct prohibited by this procedure (i.e., an act which constitutes a crime under Florida law or an ordinance park regulation listed in Exhibit A hereto), the officer member may issue a Trespass Warning to such an individual. Reasonable efforts should first be made to try to handle the matter without issuance of a Trespass Warning. The purpose of the Trespass Warning is to warn an individual that he or she engaged in conduct prohibited by this procedure and due to this conduct, he or she is no longer authorized to enter or remain in the particular City park, property, or facility where the prohibited conduct occurred for a specific period of time. If an individual enters or remains in a City park, property, or facility for which he has been issued a Trespass Warning, he or she may be subject to arrest for trespass under Florida Statute Sections 810.08 or 810.09. The scope of the Trespass Warning shall not include public sidewalks adjacent to the park boundaries.

Trespass Warnings issued under this procedure shall be in writing and in the form included in this procedure, and shall state the facts and circumstances justifying its issuance, designate with specificity the laws or ordinances that were violated, and identify the scope of its prohibition(s) by address, parcel identification number, or other description so that a reasonable person would understand its meaning. A copy of the Trespass Warning must be provided to the individual ~~at~~ the time he or she is trespassed from the City park, property, or facility and a copy should also be kept for the City's records.

#### Duration of Trespass Warnings:

The following is a guideline for the duration of Trespass Warnings issued under this procedure:

- ~~1. If an individual violates an or a park regulation listed in Exhibit A hereto, a member of GPD may issue a Trespass Warning prohibiting such individual from entering the City park where the offense was committed for a duration of three (3) months.~~
- ~~2. If an individual commits a misdemeanor (including the ordinances listed in Exhibit A) at a City park, property, or facility, a sworn officer member of GPD may issue a Trespass Warning prohibiting such individual from entering the City park, property, or facility where the offense was committed. During any six (6) month period, the first misdemeanor committed in said park, property, or facility shall result in a trespass duration of three (3) months; and the second and any additional misdemeanor shall result in a trespass duration of six (6) months.~~
- ~~23. If an individual commits a felony at a City park, property, or facility, a sworn officer of member GPD may issue a Trespass Warning prohibiting such individual from entering the City park where the offense was committed. During any two (2) year period, the first felony committed in said park, property, or facility shall result in a trespass duration of one (1) year; and the second and any additional felonies shall result in a trespass for a duration of two (2) years.~~

In the case of multiple Trespass Warnings, the duration of the Trespass Warning shall run for whichever warning ends later in time.

#### Appeal Process for Trespass Warnings:

Any individual who is issued a Trespass Warning under this procedure may file a written request for a hearing within ten (10) calendar days of the issuance date of the Trespass Warning, or of acquittal or dropping of criminal charges with documentation provided, with the City Manager or designee at the Office of the City Manager, City Hall, 200 East University Avenue, Gainesville, Florida. The written request for a hearing shall state the basis for the appeal. Failure to request a hearing within the ten

(10) calendar-day period shall constitute a waiver by the trespassed individual of any rights to a hearing. Within five (5) calendar days following the filing of the appeal, the City Manager or designee may rescind the Trespass Warning or shall schedule a hearing. Notice of the hearing shall be provided to the trespassed individual by leaving or posting the notice at the information desk of the Gainesville Police Department, or by telephone if a telephone number has been provided. If the trespassed individual cannot be reached by telephone, then notice at the information desk shall be sufficient. The hearing shall be held as soon as possible, but in no event later than thirty (30) calendar days from the filing of the appeal. 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, shall be made available upon request to the appellant at no cost. At the due process hearing, the trespassed individual shall have the opportunity to be represented by counsel, to present any testimony and/or other evidence he/she believes negates or mitigates the Trespass Warning, to cross-examine witnesses, and to bring a court reporter at the appellant's own expense. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings. Upon a review of the evidence presented at the hearing, the City Manager or designee may decide to affirm, rescind, or modify the Trespass Warning through the issuance of a written decision, which shall be issued within five (5) calendar days of the hearing. In regard to the duration of the Trespass Warning, the City Manager or designee shall consider (1) the gravity of the violation; (2) the potential or actual harm or danger to persons or property; and (3) any mitigating circumstances. The decision of the City Manager or designee shall be the final administrative action by the City. The Trespass Warning shall remain in effect during the appeal and review process, including any judicial review, except as modified on appeal/review.

First Amendment Exception:

If an individual trespassed under this procedure wishes to enter a City park, property, or facility in order to exercise his/her First Amendment rights during the effective time period of the Trespass Warning, he/she must apply to the City Manager or designee for a temporary waiver to allow him/her to exercise his/her First Amendment rights. Such waivers shall be issued in writing within three (3) business days and shall not be unreasonably withheld by the City Manager or designee. Types of First Amendment activities include, by example, religious services or ceremonies, press conferences, press coverage of breaking news, voter registration, collecting signatures on petitions or voter initiatives, public demonstration, picketing, assembly or rally for expressing opinion and views, and sale or distribution of printed material related to free expression of opinion. If a trespassed individual visits the subject City park, property, or facility while the Trespass Warning is in effect, the individual shall carry the written waiver on their person and provide it to City staff or GPD officer upon request.

Notice Requirement:

A copy of this procedure should be posted at City park facilities and on the Department's webpage.



## **EXHIBIT A**

**Sec. 4-4 - Alcoholic Beverages - Sale, dispensing, consumption and possession generally ("Open Container")**

**Sec. 17-4 - Disorderly conduct**

**Sec. 17-5 - Weapons, explosives, or destructive devices in city-owned/leased buildings**

**Sec. 17-6 - Synthetic drugs**

**Sec. 17-7 - Items designed or marketed for use with illegal cannabis or drugs**

**Sec. 17-8 - Urinating or defecating**

**Sec. 17-16 - Nudity prohibited in public places**

**Sec. 18-19 - Park hours**

**Sec. 18-20 - Prohibited activities**

- (1) Construct or erect any hut, shanty or other shelter. Park users may temporarily set up a sun/shade apparatus up to ten feet by ten feet in size (larger sizes may be approved by request for special events conducted in the park areas upon the issuance of a facility use agreement by the city manager or designee in charge of that park area). Such apparatus must be made of flexible material, and any support lines which extend beyond the length and width of the covering, must be flagged for visibility and cannot be within 15 feet of any game court, sport's field, or children's play equipment. No sun/shade apparatus shall remain in place overnight in any park without a special use permit or facility use agreement being issued by the city manager or designee. All parks listed under section 18-18(b) are exempt from the temporary sun/shade apparatus provision as stated in this subsection (1);
- (13) Write on, draw on, paint on, or otherwise deface, damage, remove or destroy any park facility or any part of the park grounds;
- (23) Engage in the removal, alteration or destruction of archaeological or cultural resources from any park property and water body except as authorized by the city manager or designee. For purposes of this article "archaeological or cultural resources" means any associated physical artifacts and features below the ground service indicating the past use of a location by people which may yield information on the city's history or prehistory, including but not limited to artifacts, fossils, bones, shell mounds, or primitive culture facilities or items;

## Trespass Warning

You are hereby notified that you engaged in prohibited conduct ~~violated the Code of Conduct~~ under City of Gainesville Parks, Recreation and Cultural Affairs Department Operation Procedure 8.1 and due to your conduct, effective immediately, you are no longer authorized to enter or remain at the City of Gainesville Park

known as \_\_\_\_\_ (insert name of City park), more specifically:

ATTACH INSERT AERIAL PHOTO OR MAP INDICATING PARK BOUNDARY, IF POSSIBLE, AND/OR SPECIFIC ADDRESS AND BOUNDARY DESCRIPTION OF CITY PARK FOR WHICH THE TRESPASS WARNING IS ISSUED. ENSURE THAT THE SCOPE OF THE TRESPASS WARNING DOES NOT INCLUDE PUBLIC SIDEWALKS ADJACENT TO THE PARK BOUNDARIES.

You have been given this Trespass Warning for committing the following offense(s) at the City park described above:

\_\_\_\_ Ordinance

\_\_\_\_ Misdemeanor crime (statute)

\_\_\_\_ Felony crime (statute)

Description of offense (include the particular offense, such as assault, battery, criminal mischief, theft, disorderly conduct; specific statutory or ordinance citation for the offense; and the supporting facts and circumstances):

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You are prohibited from entering the City park described until: \_\_\_\_\_  
(insert date on which warning expires – see Trespass Procedure).

**APPEAL:** You may file a written request for a hearing within ten (10) calendar days of the issuance date of this Trespass Warning, or of acquittal or dropping of criminal charges with documentation provided, with the City Manager or designee at the Office of the City Manager, City Hall, 200 East University Avenue, Gainesville, Florida. Your written request for a hearing must state the basis for the appeal. Failure to request a hearing within the ten (10) calendar-day period shall constitute a waiver of any rights to a hearing. At the due process hearing, you will have the opportunity to be represented by counsel, to present any testimony and/or other evidence you believe negates or mitigates this Trespass Warning, to cross-examine witnesses, and to bring a court reporter at the appellant's own expense. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings. Upon a review of the evidence presented at the hearing, the City Manager or designee may decide to affirm, rescind, or modify this Trespass Warning through the issuance of a written decision, which shall be issued within five (5) calendar days of the hearing. In regard to the duration of the Trespass Warning, the City Manager or designee shall consider (1) the gravity of the violation; (2) the potential or actual harm or danger to persons or property; and (3) any mitigating circumstances. The decision of the City Manager or designee shall be the final administrative action by the City. The Trespass Warning shall remain in effect during the appeal and review process, including any judicial review, except as modified on appeal/review.

**FIRST AMENDMENT EXCEPTION:** If you wish to return to the enter a City park described above in order exercise your First Amendment rights during the effective time period of this Trespass Warning, you must apply to the City Manager or designee for a temporary waiver to allow you to exercise your First Amendment rights. Such waivers shall be issued within three (3) business and will not be unreasonably withheld by the City Manager or designee.

**ARREST:** If you return to the City park described above at any time during the effective dates of this Trespass Warning, without having and carrying on your person a waiver issued by the City Manager or designee, you may be subject to immediate arrest for trespass under Florida Statute Sections 810.08 or 810.09.

**INFORMATION OF OFFICER ISSUING TRESPASS WARNING:**

Officer Name: \_\_\_\_\_ Officer Badge Number: \_\_\_\_\_

GPD Case Number: \_\_\_\_\_

Date / Time of Issuance of Trespass Warning: \_\_\_\_\_

Officer Signature: \_\_\_\_\_

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**INFORMATION OF PERSON ISSUED TRESPASS WARNING:**

Printed Name: \_\_\_\_\_ Race / Sex: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Driver License / ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature Acknowledging Receipt of Trespass Warning: \_\_\_\_\_