

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Administration	<b>CODE NUMBER:</b> AC-1-8
<b>TITLE:</b> Lee County Trespass Policy and Procedure	<b>ADOPTED:</b> 4/18/17
	<b>AMENDED:</b>
	<b>ORIGINATING DEPARTMENT:</b> County Manager

**PURPOSE/SCOPE:**

To adopt and implement a formal policy and procedure governing the issuance of trespass warnings on County-owned property.

**POLICY/PROCEDURE:**

**Lee County Trespass Policy**

The following policy outlines the Lee County Trespass Policy including the issuance, maintenance and appeals process for the issuance of trespass warnings on County property.

**A. Applicability:** This policy will be applicable to all public property as defined herein, in the unincorporated areas of Lee County and in the municipalities, except to the extent that a municipality has enacted an ordinance governing trespass warnings for public property. Lee County will follow each law enforcement agency's jurisdictional requirements for trespass authorization, whether it is specific language within an authorization letter from the Department Director or designee or by posted signs.

**B. Purpose:** It is the policy of Lee County to maintain an environment which is open and accessible to the public. However, when an individual's actions are deemed to be harmful and/or disruptive to a reasonable person involved in government operations and/or its individual members; where the individual's actions are harmful, disruptive, and/or contrary to Lee County's policies, rules or regulations; or where the individual's actions are contrary to law, a trespass warning may be given to that individual to maintain an environment free of those disruptive, harmful, and/or unlawful influences. Denying a person access to and use of County facilities, conveyances, property and equipment is a matter which Lee County does not take without due consideration. The objective of this policy is to establish controls and methods to be followed in issuing a trespass warning to a person on Lee County property. This policy also outlines an appeal process whereby a person may apply to have a trespass warning withdrawn in order to be able to again have access to County provided programs, facilities and services.

**C. Effective Date:** April 18, 2017

**D. Definitions:** The following definitions apply to the interpretation and enforcement of this policy:

1. *Authorized Personnel* shall mean those persons with the authority granted by this Article, acting in their official capacity, to petition a Law Enforcement Officer to issue a Trespass Warning, as follows:

- a. Any employee with management or oversight responsibility over the public property in question at the time the Trespass Warning is issued;
- b. Security personnel for any public property at the time the Trespass Warning is issued; or
- c. Any Law Enforcement Officer when persons in subsection (a) or (b) are not present.

2. *Conveyance* shall have the same meaning as defined in F.S. Ch. 810, as may be amended from time to time.

3. *Fenced Land* shall have the same meaning as defined in F.S. Ch. 810, as may be amended from time to time.

4. *Law Enforcement Officer* shall mean a deputy sheriff with the Lee County Sheriff's Office or any other sworn law enforcement officer certified pursuant to F.S. Ch. 943.

5. *Posted Land* shall have the same meaning as defined in F.S. Ch. 810, as may be amended from time to time.

6. *Public Property* shall mean property owned, leased, operated or managed by Lee County Board of County Commissioners or one of its agencies, divisions or entities, including, but not limited to, structures, conveyances, parks, beach parks, public natural areas, public recreation areas, trails, playgrounds, streets, sidewalks, rights-of-way, libraries, docks, pavilions, parking lots, vacant lots, fenced land, posted land, easements, and other property generally used by the public.

7. *Respondent* shall mean the person who was issued the Trespass Warning.

8. *Structure* shall have the same meaning as defined in F.S. Ch. 810, as may be amended from time to time.

9. *Trespass* shall have the same meaning as defined in F.S. Ch. 810, as may be amended from time to time.

10. *Trespass Warning* shall mean a written document that bars the Respondent from entering or remaining on specified public property.

**E. Procedure:** The issuance of a Trespass warning to a person should be the last

resort when attempting to resolve inappropriate behavior or conduct. County departments should attempt to resolve issues through a progressive, documented, interactive approach before the issuance of a Trespass Warning. Lee County departments may summon law enforcement to issue trespass warnings to individuals whose behavior interferes with, and/or violates rules, laws and/or the safety and well being of employees or other citizens on County property, at County facilities, or while using County conveyances or services. In most cases Authorized Personnel should make the request for law enforcement to trespass a person. County departments may also have a standing order with a law enforcement agency that allows an officer to trespass a person based on a pre-arranged set of criteria if a County representative is not available.

1. *Trespass Warning Decision by Authorized Personnel.* Only Authorized Personnel may make a determination to issue a Trespass Warning for public property.

2. *Procedures for Issuing Trespass Warnings.* The following procedures govern the issuance of Trespass Warnings:

- a. Authorized Personnel may have cause to remove any Respondent who a reasonable person would determine:
  - i. Uses language which by its very utterance inflicts injury or tends to incite an immediate breach of the peace;
  - ii. Acts in any manner which: violates any rule, policy, or directive contained in a County Ordinance, County Administrative Code, and/or Lee County Department Operations Manual, or on any sign posted within the public property; or disrupts normal county business or interferes with the ability of others to use the property for its intended purpose. Examples of the types of behavior that may cause a person to be trespassed from Lee County property include, but are not limited to:
    - (1) Engaging in any conduct that would disrupt or interfere with normal County operations including abusive or threatening language, unreasonably loud (music, speech) or boisterous physical behavior, or yelling;
    - (2) Fighting or threatening physical harm or unwelcome touching;
    - (3) Damage or vandalism to Lee County Property;
    - (4) Inappropriate sexual conversation or conduct, comments or jokes of a sexual nature, or inappropriate touching or grabbing; however, a mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct" in violation of this policy;

- (5) Actual or simulated sexual intercourse;
  - (6) Carrying or using weapons must be in compliance with Florida law;
  - (7) Assault or battery on a Lee County employee or other individual;
  - (8) Theft;
  - (9) Consuming, possessing, selling or distributing alcoholic beverages, controlled substances, or illegal drugs; or
  - (10) Attempting to enter any "Staff" area or entering a facility or property after hours.
- iii. Acts in any manner that violate one or more of the following laws, rules, and regulations:
- (1) Florida Statute;
  - (2) Florida Administrative Code;
  - (3) County ordinance; or
  - (4) Municipal ordinance.
- iv. The initial determination by Authorized Personnel that a Trespass Warning is needed may take into consideration the facts and circumstances of the individual situation, including, but not limited to, the following:
- (1) The severity of the alleged violation;
  - (2) The Respondent's refusal to comply with any verbal requests or warnings to desist or cease the violation;
  - (3) Any previous violations committed by the Respondent; or
  - (4) The harm or potential harm to the public or public property threatened by the Respondent's actions.
- v. The decision to have a law enforcement officer issue a Trespass Warning shall originate from Authorized Personnel.
- vi. The Trespass Warning must identify the scope of its prohibition(s) by address, parcel identification number, or other description so that a reasonable person would understand its meaning, e.g., Boca Grande Beach Access, Fort Myers Regional Library, North Fort Myers Community Park, LeeTran Bus Route, etc. Trespass Warnings may be issued for a single

location or for multiple locations depending on the severity or circumstances of the situation.

- vii. The Law Enforcement Officer may either provide onsite staff with a copy of the Trespass Warning or forward a copy of the Trespass Warning within the next ten business days after issuance to:
  - (1) The department designee; or
  - (2) The following e-mail address: [trespass@leegov.com](mailto:trespass@leegov.com)
- viii. After-hours trespass warnings may be issued by law enforcement after contacting Authorized Personnel to authorize the issuance.
- ix. Law enforcement to provide Notice of Appeal information to respondent at time of issuance.

3. *Time Period of Trespass Warning.* When a trespass warning is issued to a person, it will be issued for no less than twelve (12) months. Repeated acts of being trespassed from a County facility may result in a permanent trespass being issued for that location. A permanent trespass may be issued for the following violations.

- a. Any person who engages in an act of violence or threatens any act of violence.
- b. Any person who commits a public nuisance such as actual or simulated intercourse, of sexual organs, masturbation; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed within county restrooms, facilities, or properties or the solicitation of sexual conduct.

4. *Arrest.* Any Respondent who returns or remains on public property in violation of any Trespass Warning may be arrested for trespassing.

5. *Authority of Law Enforcement Preserved.* This section shall not be construed to limit the authority of Law Enforcement Officers to arrest or cite individuals for violating any federal law, Florida law, or local government ordinance.

6. *Appeal.* Lee County Government recognizes that persons who are trespassed for the reasons outlined above may wish to appeal the trespass and have their access to County services, facilities, and conveyances restored. Persons who have been trespassed from Lee County property may take the following steps in order to have a trespass warning rescinded:

- a. A Trespass Warning may be rescinded at the discretion of the Department Director or designee.
- b. An appeal of the decision of the Department Director or Designee not to rescind the Trespass Warning may be filed, in writing, within ten days of the issuance of the warning, and shall include the Respondent's name, address and phone number, if any. The appeal shall be filed with the Department Director or designee. No fee shall be charged for filing the appeal.
  - i. An appeal may be submitted by a representative, parent or guardian should the respondent be a minor or disabled.
  - ii. In accordance with the Americans with Disabilities Act, Lee County will not discriminate against qualified individuals with disabilities in its services, programs, or activities. To request an auxiliary aid or service for effective communication or a reasonable modification to participate, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or [jla Guardia@leegov.com](mailto:jla Guardia@leegov.com). Accommodation will be provided at no cost to the requestor. Requests should be made at least five business days in advance.
- c. Appeals will be heard by the Trespass Hearing Committee consisting of a Department Director, one supervisory and one non-supervisory employee:
  - i. The Committee Chair, supervisory and non-supervisory employee shall not be from the department from which the respondent is trespassed.
  - ii. The Respondent may waive the hearing before the Trespass Hearing Committee and may elect to proceed directly to the third and final stage before the Assistant County Manager, as set forth below in subparagraphs l and m.
- d. Within seven days following the filing of the appeal, the Trespass Hearing Committee will schedule a hearing. Notice of the hearing shall be provided to the Respondent's address listed on notice of appeal through regular U.S. Mail, via certified letter.
- e. The Trespass Hearing Committee will hold a hearing as soon as possible. In no event will the hearing be held more than 30 days from the filing of the appeal.
- f. Respondent is entitled to copies of any document that the County intends to rely upon during the hearing upon request as provided by F.S. Ch. 119.

- g. The Respondent has the right to attend the hearing, the right to testify, and to call witnesses and present evidence relevant to the trespass warning issued.
- h. The Trespass Hearing Committee may consider the testimony, reports or other documentary evidence, and any other relevant evidence presented at the hearing. Formal rules of evidence will not apply, but fundamental due process governs the proceedings. The order of presentation at the hearing is as follows:
  - i. Opening statements, if desired by the government or Respondent;
  - ii. The Authorized Personnel will present their case demonstrating the validity of the Trespass Warning including but not limited to any documentation, video surveillance, law enforcement records, department reports, etc;
  - iii. Respondent may bring a representative and/or relevant witnesses to the hearing;
  - iv. The Authorized Personnel shall present any rebuttal testimony; and
  - v. Closing arguments, if desired by the Authorized Personnel or Respondent.
- i. The Respondent shall bear the burden of proof by a preponderance of the evidence that the Trespass Warning was improperly issued pursuant to the criteria of this section.
- j. Should the Respondent fail to appear at the hearing, the determination of the Committee will be final.
- k. Within three business days of the hearing, the Trespass Hearing Committee will issue a written recommendation on the appeal and send to the Assistant County Manager assigned to the Trespassing Department for final decision.
- l. Thereafter, within seven business days after receipt of the Trespass Hearing Committee's written recommendation, the Assistant County Manager will render a decision in writing, and the County will mail the decision to the Respondent.
- m. The decision of the Assistant County Manager is final and the Respondent shall be deemed to have exhausted all administrative remedies once this decision is rendered.

- n. The Trespass Warning shall remain in effect during the appeal and review process.

7. *First Amendment Rights Acknowledged.* The Department Director or designee shall have continuing jurisdiction to consider and authorize a Respondent to enter the public property that is the subject of the Trespass Warning to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary government business.

8. Except in circumstances where the Respondent has waived the right to a hearing before the Trespass Hearing Committee, the Committee may schedule and hear testimony of a Respondent who has received a lifetime trespass and wants to return to a Lee County Facility after one year. The Trespass Hearing Committee shall review the circumstances of the trespass, the length of time in which the trespass has been in effect, and consider Respondent's testimony based upon factual evidence, which may include but is not limited to letters of recommendation regarding Respondent's behavior.

- a. After one year, the Respondent must submit a letter to the Department Director or designee requesting a Special Trespass Hearing.
- b. The Special Trespass Hearing will be scheduled in the same manner as a Trespass Hearing.

9. Once all administrative appeals under this Policy are completed, the Respondent may exercise any further legal rights as permitted under Florida or federal law.