

**THIS IS A DRAFT OF ORDINANCE 107 TO BE PROPOSED AT THE AUGUST 30, 2021,  
WAITE PARK CITY COUNCIL MEETING**

**ORDINANCES IX & X NUISANCES AND OFFENSES**

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**ORDINANCE 107    TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY  
OWNED PROPERTY**

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**Section 107.1. Purpose, Authority, and Applicability.**

**Subd. 1. Purpose.** The purpose of this ordinance is to establish standards for excluding individuals from City and other publicly owned property who engage in behavior that is dangerous, unsafe, illegal, or unreasonably disruptive to other users of those properties. It is further the purpose of this policy to provide for a specific method to allow for the issuance of trespass warnings to such individuals while balancing their right to engage in legitimate activities protected by state and federal law.

**Subd. 2. Authority.** This policy is enacted as an exercise of the City’s authority to protect and preserve the public health, safety and welfare. The City Administrator is authorized to adopt rules and procedures consistent with this ordinance.

**Subd. 3. Applicability.** This policy shall apply to all City and other publicly owned property in the City of Waite Park (“City”), including property that public entities own in common with each other. This ordinance shall not apply to public streets and sidewalks. Enforcement action shall only be taken for conduct violating rules adopted for the location in which the conduct occurs, except that officers of the City police department may take enforcement action based on violations of other City codes, state statutes, and government rules or regulations. This ordinance shall be enforced to emphasize voluntary compliance with laws and City (or other governmental entity) property rules and so that inadvertent minor violations of this section can be corrected without resort to a trespass warning.

**Section 107.2. Definitions.**

**Subd. 1. “Dangerous Behavior”** means the creation of an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.

**Subd. 2. “Illegal Behavior”** means conduct that is prohibited by the laws of the United States, State of Minnesota, Stearns County, or the City and that includes, but is not limited to, any of the following types of behavior:

- A. Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury to the person threatened or to any other person; or

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- B. Selling or using alcohol or drugs; or
- C. Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property); or
- D. Assaulting staff or other patrons; or
- E. Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts).

**Subd. 3.** “Unreasonably Disruptive to Other Users” means behavior that is not constitutionally protected and that, in consideration of the nature, scope, use and purpose of the publicly owned property in question, unreasonably interferes with others’ use and enjoyment of publicly owned property. Examples of behavior that may unreasonably interfere with others’ use and enjoyment of publicly owned property include, but are not limited to, any of the following:

- A. Use of unreasonably hostile or aggressive language or gestures; or
- B. Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or
- C. Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or
- D. Unreasonably interfering with the performance of duties and work by staff of public buildings and/or facilities; or
- E. Unreasonably interfering with the free passage, use, and/or enjoyment of patrons on public property; or
- F. Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used (e.g., bathing, shaving, or washing clothes in a public bathroom or public pool facility; disrupting the quiet use of a public library.).

**Subd. 4.** “City or Publicly Owned Property” means any part of a building, concert venue, park, trail, or open space that is owned or controlled by the City or a public agency.

**Section 107.3. Authority to Issue Trespass Warnings – Service.**

**Subd. 1. Grounds for Issuance.** Officers of the City police department are authorized to issue a trespass warning to any individual who the officer has probable cause to believe has violated any City ordinance, state statute, or government rule or regulation, relating to or prohibiting conduct that is dangerous, illegal, or unreasonably disruptive to other users of public property, as defined in this policy, while such individual is on or within any City or other publicly owned facility, building, or outdoor area that is open to the general public. The

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individual need not be charged, tried, or convicted of any crime or infraction for the trespass warning to be issued or be effective. The warning may be based upon observation by a police

officer or a City or other government employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.

**Subd. 2. Methods of Delivery.** Trespass warnings may be delivered in person to the individual or by first class mail to the individual at the individual's last known address.

**Section 107.4. Duration of Exclusion.** The duration of exclusion shall be as follows. If the individual:

- A. Has not been excluded from City or other publicly owned property by a trespass warning issued within one year prior to the violation, then the warning may exclude the individual for a period not exceeding fourteen (14) days from the date of the warning.
- B. Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the individual for a period of up to ninety (90) days from the date of expiration of the previous warning.
- C. Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the individual for a period of up to one (1) year from the date of expiration of the previous warning.
- D. Has been excluded from City or other publicly owned property by a trespass warning, and a published rule or regulation applicable to such property establishes a different period of time for an individual to be excluded, the time period under such rule or regulation shall apply notwithstanding the provisions of this section.

**Section 107.5. Content of Trespass Warning.** The trespass warning shall be in writing, shall contain the date of issuance, shall describe the behavior that is the basis for the trespass warning, shall specify the length and place(s) of exclusion, shall identify the issuing police officer, and shall state the consequences for failure to comply. For purposes of this ordinance, a trespass warning applies to the entirety of any building or facility, and the grounds where such building or facility is located regardless of whether such building or facility houses multiple and unrelated services and/or amenities.

**Section 107.6. Review Procedure.**

**Subd. 1. Good Cause Review Process.** For good cause, the City Administrator, or his or her designee, or other government official who is responsible for the property in question may rescind, shorten or modify a trespass warning issued. The process for such review is as follows:

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- A. A written request for review of a trespass warning must be delivered to the City no later than five (5) business days after it is issued;
- B. The City Administrator or specified designee will review the request within three (3) business days of receipt;
- C. The City will notify the individual of the date, time, and place or telephone number at which the review will be conducted;
- D. The review decision shall be communicated no later than two (2) business days following the review;
- E. As a follow-up to verbal communication, a written decision will be provided to the individual, including an advisement that the individual has the right to seek judicial review of the decision and that the time frame for seeking judicial review runs from the date of service of the written decision.

**Subd. 2. Grounds for Rescinding, Shortening or Modifying Trespass Warnings.** For purposes of this section, “good cause” to rescind, shorten or modify a trespass warning shall be found where:

- A. The individual was not given adequate warning that the conduct in question was subject to a trespass warning; or
- B. The trespass warning was based solely upon the statement of a third party; or
- C. The trespass warning was not observed personally by the issuing officer or a City or other government employee, or lacks any basis ordinarily relied upon by police officers in the determination of probable cause; or
- D. The individual demonstrates that he or she did not commit the action for which he or she was trespassed; or
- E. In the judgment of the City Administrator or his/her designee, the circumstances warrant a modification or rescission of the trespass warning.

The City Administrator or his/her designee shall rescind the trespass warning if, considering all the circumstances, he or she finds that reasonable minds could differ on the question of whether the behavior in question was dangerous, illegal, and/or unreasonably disruptive to others.

The City Administrator or designee shall consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the individual committed the violation as described. If the warning was issued because of the alleged violation

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of any criminal law, the individual need not be charged, tried, or convicted for the warning to be upheld.

**Subd. 3. Effect of Decision.** If the City Administrator or designee rescinds an exclusion, for good cause or because the violation was not proved, the exclusion shall not be considered a prior trespass warning for purposes of this section.

The decision of the City Administrator or designee will be the City's final decision. An individual seeking judicial review of the City's final decision must file an application for a writ of review in Stearns County court within 15 days of receipt of the City's final decision. The trespass warning shall remain in effect during the pendency of any administrative or judicial proceeding.

No determination of facts made by the City Administrator or designee shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

**Section 107.7. Violation – Penalties.** Any person who is found on City or other publicly owned property in violation of a trespass warning issued in accordance with this ordinance may be fined, escorted off the property, and/or arrested for trespassing, except as otherwise provided in this section. Trespass is a misdemeanor offense punishable by law in Minnesota by up to 90 days in jail and/or a fine up to \$1000.00. See Minn. Stat. 609.605.

**Section 107.8. Essential Services – Limited Exception.** The Chief of Police or designee may upon request authorize an individual who has received a trespass warning in accordance with this ordinance to enter city or other publicly owned property to conduct government business, if there is no other reasonable alternative location to exercise such rights or conduct such business. Such authorization must be in writing and specify the duration of the authorization and any conditions thereof. The Chief of Police or designee shall issue a decision on a request for entry onto public property by the recipient of a trespass warning during a period of exclusion no later than 48 hours after receipt of the request.