

RESOLUTION NO. 23-017

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF MARLIN, TEXAS, APPROVING AND ADOPTING POLICIES AND PROCEDURES APPLICABLE TO THE ISSUANCE AND ENFORCEMENT OF TRESPASS WARNINGS ON CITY PROPERTY; DELEGATING AUTHORITY TO THE CITY MANAGER TO ADMINISTER AND ENFORCE THE POLICIES AND PROCEDURES APPLICABLE TO THE ISSUANCE AND ENFORCEMENT OF TRESPASS WARNINGS ON CITY PROPERTY; PROVIDING A SEVERABILITY CLAUSE; SAVINGS CLAUSE; OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, Section 3.01 of Article III of the City Charter for the City of Marlin stated that the City Manager shall have such authority and responsibilities as may be designated and given by the City Council;

WHEREAS, under Article II, Sec. 2-21 of the Code or Ordinances of the City of Marlin, the City Manager is granted certain powers and the City Manager certain duties and responsibilities which the City Council finds, to the extent permitted by law, necessarily includes providing that the City Manager is authorized and has a duty to ensure that an environment exists where City employees are able to perform their work for the City without distraction, free from disruption and activities that interfere with City and public business and activities, and that the City Manager is authorized to take reasonable steps to ensure the protection of City assets and property;

WHEREAS, there have been incidents of disruptive behavior at City Hall as a result of which the City Council finds for public safety reasons that it is necessary and in the best interest of the public and City staff, for the City Council to adopt and approve a trespass policy to be administered under the supervision of the City Manager's authority to exclude unlawful and disruptive activities and persons from City property, buildings, facilities, while being within the federal laws. This policy does not prohibit a person from exercising his or her First Amendment rights at any public forum; and

WHEREAS, the City Council for the City of Marlin ("City Council") approves of this Resolution adopting and approving of the policy attached to this Resolution as **Exhibit "A"** and titled as the Trespass Warnings on City Property or Trespass Policy; and

WHEREAS, the City Council adopts this Resolution to expressly delegate authority to the City Manager to administer and enforce policy attached to this Resolution as **Exhibit "A"**,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS, THAT:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

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THE CITY OF MARLIN TRESPASS WARNINGS ON CITY PROPERTY POLICY

I. PURPOSE

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

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

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

II. DEFINITIONS

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

2.2 **City Property** means City-owned buildings and surrounding City-owned property; any City-leased buildings and surrounding leased property and any area over which the City has control; City park lands and other City-owned or operated recreational areas and facilities; City-owned parking garages, facilities and parking lots; and all other City-owned lands, unless the City Manager exempts a building or area from this policy in writing.

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

III. POLICY

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

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

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

3.4 Attendance of City Council Meetings.

- a. A Trespass Warning to a person that his or her presence or entry into City Hall is prohibited does not automatically prohibit that person from attending City Council meetings, or any other meetings of any public body in the City Hall Council Chambers.
- b. This Policy does not authorize any City employee to prohibit a person subject to a Trespass Warning from attending a City Council meeting unless the Trespass Warning that was issued to that person specifically and expressly states that the person may not enter upon City Hall to attend a City Council meeting. In such event the City Manager or his designee shall use and apply reasonable alternatives or means for the person to exercise the person's First Amendment rights.

IV. DELEGATION OF AUTHORITY

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

- a. Peace Officers employed by the Marlin Police department;
- b. All Department Directors and Assistant Department Directors, but limited to buildings and lands within the control or area of responsibility of their respective departments; and
- c. Any other City departmental management personnel responsible for managing, maintaining or staffing City Property, but limited to buildings and lands within the control or area of their responsibility.

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

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within the City.

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

V. TRESPASS WARNING PROCEDURES

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

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

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

- a. Park and other curfew violations;
- b. Park rules violations;
- c. Failure to pay required fees for Facility use;
- d. Facility use violations;
- e. Noise ordinance violations;
- f. Interfering with another person's reasonable use and enjoyment of approved activities on City Property; and
- g. Any other City ordinance violation including, but not limited to, camping, solicitation, and glass containers ordinance violations.

5.3 Grounds for Issuing a Trespass Warning No Verbal Warning. An Authorized

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Employee may authorize a peace officer to issue a criminal trespass warning and may issue a Trespass Warning to a person without a verbal warning if the person has engaged in conduct that is unreasonably disruptive or harmful to City Property, to conducting City business, or to another's reasonable use and enjoyment of approved activities on City Property, and that may:

- a. Be a state or federal criminal offense or ordinance violation or is an attempt, solicitation or conspiracy to commit a state or federal criminal offense or ordinance violation, including urinating or defecating in public; or
- b. Have resulted in injury to any person or damage to any property or threatens to cause an immediate breach of the peace.

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

- a. **Reasons for Exclusions.** A statement of the reason the person is being notified or warned not to enter an area or to immediately depart from an area and explaining the conduct for the Trespass Warning.
- b. **Area of Exclusion.** The Trespass Warning should describe the area or building, including the building name and address that the person shall not enter, so that a reasonable person may understand the specific area to which the person may not return.
- c. **Duration of Exclusion.** A Trespass Warning should be for a specific time period based on the seriousness of the conduct. The specific time period a person may not return will be established by the Authorized Employee based on relevant factors including:
 - 1. Conduct involving intentional damage to City Property;
 - 2. Conduct involving intentional injury or offensive contact with any person;
 - 3. Conduct that is disruptive or harmful to City business or another's reasonable use and enjoyment of approved activities on City Property;
 - 4. Whether the person has previously engaged in similar conduct on City Property.
- d. **Reentry Warning.** The Trespass Warning shall include notice that reentry may result in an arrest while such warning is in effect.
- e. **Notice of Administrative Review Process.** A Trespass Warning will contain information that informs the person of the administrative review procedure.
- f. **Police Department Records.** A copy of the Trespass Warning shall be sent to the

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Marlin Police Department Records.

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

- a. Up to 365 days from the date the warning was issued.
- b. Up to two (2) years if the person has received a Trespass Warning in the previous two years.

VI. ADMINISTRATIVE REVIEW OF A TRESPASS WARNING

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

6.1 Review Procedures. The City Manager shall perform an informal review. Findings should generally be issued by written memo upon receipt of a timely request. The City Manager conducting the informal review should decide the issues based on the known evidence. The City Manager should make a written determination on the issues not later than five (5) days after receiving the review request. The City Manager may alter the response time if there is good cause. The written determination shall be promptly provided to the requestor at the provided address or made available in the City Secretary's Office. The determination shall be to affirm, reverse or modify the Trespass Warning, and shall state the reasons for the determination. The decision of the City Manager on a request for an administrative review of all or any part of the Trespass Warning is final, subject to City Council review as provided in section 6.4. The City Manager should consider all relevant information provided and should include the following:

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

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

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

6.4 City Council Review.

- a. Within three (3) business days of being provided with a copy of the written decision of the City Manager on a request for an administrative review of all or any part of the Trespass Warning, the requestor may appeal the City Manager's decision to the City Council. The City Council may affirm, reverse, or modify the Trespass Warning. The City Council's decision shall be final.
- b. A failure to submit a written request to appeal the City Manager's decision to the City Secretary within three (3) business days of being provided with a copy of the written decision of the City Manager shall serve as a waiver of the requestor's right to appeal the City Manager's decision to the City Council.
- c. If the requester does not submit a written request to appeal the City Manager's decision to the City Secretary, the City Manager's written decision on a request for an administrative review of all or any part of the Trespass Warning shall become final after the expiration of three (3) business days.

Section 2. Delegation of Authority. The City Council expressly delegates authority to the City Manager, and the City Manager's designees, to administer and enforce policy attached to this Resolution as **Exhibit "A"**.

Section 3. Approval and Adoption of The City of Marlin Trespass Policy. The City Council adopts and approve of The City of Marlin Trespass Policy attached to this Resolution as **Exhibit "A."**

Section 4. Amendments to The City of Marlin Trespass Policy. Amendments to The City of Marlin Trespass Policy attached to this Resolution as **Exhibit "A"** must be approved by resolution of the City Council.

Section 5. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any City ordinances which have accrued at the time of the effective date of this Resolution; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Resolution but may be prosecuted until final disposition by the courts.

Section 6. Severability. If any provision of this Resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are declared to be severable.

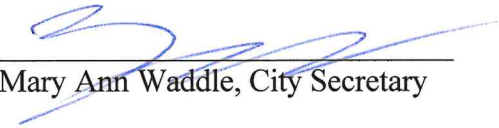
Section 7. Effective Date. This Resolution shall take effect immediately upon its adoption by the City Council in accordance with City Charter and publication as required by the Tex. *Loc. Gov't. Code*.

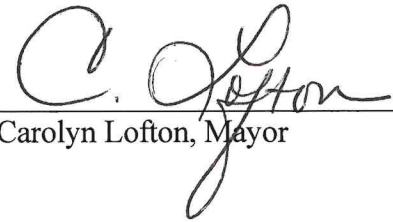
Section 8. Open Meetings. That it is hereby officially found and determined that the meeting at which this Resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, *Tex. Gov't. Code*.

PASSED AND APPROVED on the 9th day of May, 2023.

ATTEST:

THE CITY OF MARLIN, TEXAS


Mary Ann Waddle, City Secretary


Carolyn Lofton, Mayor