



Agenda Item #     R - 2    

**Village of Royal Palm Beach  
Village Council  
Agenda Item Summary**

**Agenda Item:**

**PUBLIC HEARING FOR FIRST READING AND APPROVAL OF ORDINANCE NO. 1007, AMENDING CHAPTER 17. OFFENSES AND MISCELLANEOUS PROVISIONS. TO ADD A NEW SECTION 17-16. VILLAGE PARKS AND NATURAL AREAS TRESPASS ORDINANCE. PROVIDING FOR A SHORT TITLE; PROVIDING FOR DEFINITIONS INCLUDING CRITERIA ON WHEN A TRESPASS NOTICE MAY BE ISSUED; PROVIDING FOR AUTHORIZATION TO ISSUE TRESPASS NOTICES; AND PROVIDING FOR APPEAL OF TRESPASS NOTICES. BY VILLAGE MANAGER RAY LIGGINS.**

**Issue:**

Current Village Code allows for citations to be issued when certain violations are committed within parks and natural areas owned and/or operated by the Village, but does not provide a mechanism to temporarily enjoin violators from returning to such property. Persons who have violated certain Village ordinances, rules or regulations, certain State laws, or notices contained on a posted sign while within parks or natural areas owned and/or operated by the Village, create a threat to the safety and welfare of visitors and citizens of the Village. Temporarily enjoining such individuals from access to such property will promote public safety and welfare and protect such property.

Ordinance No. 1007 is modeled after Palm Beach County Ordinance No. 2016-021, which covers the parks and natural areas owned and/or operated by Palm Beach County.

Ordinance No. 1007 outlines the Village Code Sections that may result in a trespass notice, if violated, as well as the State Statutes that may result in a trespass notice, if violated.

A trespass notice may be issued by a Palm Beach County Sheriff’s Deputy or law enforcement officer acting within his/her jurisdiction. Any person issued a Trespass Notice shall be prohibited from returning to the Village park or natural area specified in the Trespass Notice as follows:

- a. For the first Trespass Notice, for a period of one (1) year.

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Village Manager	Approval	10-15-2020	Action

- b. For the second Trespass Notice, for a period of five (5) years.
- c. For the third or subsequent Trespass Notice, for a period of ten (10) years.

If such person is found on Village Property in violation of the Trespass Notice, he/she may be arrested for trespassing.

Any person issued a Trespass Notice shall have the right to first appeal such Notice to the Village's Code Enforcement Special Magistrate, and then to the Circuit Court of Palm Beach County.

**Recommended Action:**

Upon Council review, staff recommends a motion to approve Ordinance No. 1007 on first reading.

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Initiator:	Village Manager	Agenda Date	Village Council
Village Manager	Approval	10-15-2020	Action

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**ORDINANCE NO. 1007**

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, AMENDING CHAPTER 17. OFFENSES AND MISCELLANEOUS PROVISIONS. AT ARTICLE I. IN GENERAL. TO ADD A NEW SECTION 17-16. VILLAGE PARKS AND NATURAL AREAS TRESPASS ORDINANCE; PROVIDING FOR A SHORT TITLE; PROVIDING FOR DEFINITIONS INCLUDING CRITERIA ON WHEN A TRESPASS NOTICE MAY BE ISSUED; PROVIDING FOR AUTHORIZATION TO ISSUE TRESPASS NOTICES; PROVIDING FOR APPEAL OF TRESPASS NOTICES; FURTHER PROVIDING THAT SECTIONS 17-17 THROUGH 17-20 SHALL BE RESERVED FOR FUTURE VILLAGE PURPOSES; FURTHER PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 17. OFFENSES AND MISCELLANEOUS PROVISIONS. SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Village of Royal Palm Beach owns and/or operates various parks and natural areas throughout the Village; and

WHEREAS, current Village Code allows for citations to be issued in certain circumstances when violations are committed within parks and natural areas owned and/or operated by the Village, but does not provide a mechanism to temporarily enjoin violators from returning to such property; and

WHEREAS, the Village Council for the Village of Royal Palm Beach finds that the presence of individuals who have violated certain Village ordinances, rules or regulations, certain State laws, or notices contained on a posted sign while within parks or natural areas owned and/or operated by the Village, creates a threat to the safety and welfare of visitors and citizens of the Village and that temporarily enjoining such individuals from access to such property will promote public safety and welfare and protect such property; and

WHEREAS, the Village Council wishes to establish a mechanism to issue trespass notices to individuals who violate Village ordinances, rules or regulations, State laws, or notices contained in a posted sign while on parks and natural areas owned and/or operated by the Village; and

WHEREAS, the Village Council wishes to establish procedures to be followed when trespass notices are issued, including a process to appeal the issuance of a trespass notice; and

WHEREAS, adopting a trespass ordinance is in the best interest of the citizens and visitors to the Village who visit parks and natural areas owned and/or operated by the Village.

WHEREAS, the Village of Royal Palm Beach has held all required public hearings and has provided public notice in accordance with applicable State statutes and Village ordinances in adopting these new regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COUNCIL OF THE VILLAGE OF ROYAL PALM BEACH, FLORIDA, THAT:

**Section 1:** Chapter 17. OFFENSES AND MISCELLANEOUS PROVISIONS. of the Code of Ordinances of the Village of Royal Palm Beach is hereby amended at Article I. In General. to add a new Sec. 17-16. Village parks and natural areas trespass ordinance. in order for the Village of Royal Palm Beach to provide for definitions including criteria on when a trespass notice may be issued; providing for authorization to issue trespass notices; providing for appeal of trespass notices; providing that Secs. 17-17 through 17-20 shall be reserved for future Village purposes; and further providing that Secs. 17-16 through 17-20. shall hereafter read as follows:

**Sec. 17-16. – Village parks and natural areas trespass ordinance.**

(a) *Title; applicability.*

- (1) This Ordinance shall be known as the Village Parks and Natural Areas Trespass Ordinance.
- (2) All provisions of this Ordinance shall be applicable to Village Property within the jurisdictional boundaries of the Village of Royal Palm Beach, Florida.

(b) *Definitions.*

- (1) *Applicable Local Law* shall include Chapter 3 (Advertising), Chapter 4 (Alcoholic Beverages), Chapter 5 (Animals), Chapter 11 (Fire Prevention and Protection), Chapter 12 (Garbage, Trash and Litter), Chapter 14 (Junked, Wrecked, Abandoned Property), Chapter 16 (Business Tax and Registration; Other Business Regulations), Chapter 17 (Offenses and Miscellaneous Provisions), Chapter 20 (Signs), Chapter 21 (Solicitors), Chapter 21.5 (Stormwater Management and Drainage), Chapter 23 (Traffic and Vehicles), and Chapter 26 (Zoning) of the Village Code of Ordinances; and/or violating a notice contained on a posted sign on Village Property.
- (2) *Applicable State Law* shall include Chapter 316 (State Uniform Traffic Control), Chapter 782 (Homicide), Chapter 784 (Assault; Battery; Culpable Negligence), Chapter 787 (Kidnapping; Custody Offenses; Human Trafficking; and Related Offenses), Chapter 790 (Weapons and Firearms), Chapter 794 (Sexual Battery),

Chapter 796 (Prostitution), Chapter 800 (Lewdness; Indecent Exposure), Chapter 806, (Arson and Criminal Mischief), Chapter 810 (Burglary and Trespass), Chapter 812 (Theft, Robbery, and Related Crimes), Chapter 823 (Public Nuisances), Chapter 825, (Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults), Chapter 827 (Abuse of Children), Chapter 828 (Animals: Cruelty, Sales, Animal Enterprise Protection), Chapter 843 (Obstructing Justice), Chapter 847 (Obscenity), Chapter 856 (Drunkenness; Open House Parties; Loitering; Prowling Desertion), Chapter 859 (Poisons; Adulterated Drugs), Section 877.03 (Breach of the Peace; Disorderly Conduct), and Chapter 893 (Drug Abuse Prevention and Control).

- (3) *Village* shall mean Village of Royal Palm Beach.
  - (4) *Village Property* shall mean any facility, building or outdoor area that is part of a park or natural area owned and/or operated by the Village of Royal Palm Beach.
- (c) *Trespass notice; authorization to issue; appeal.*
- (1) Any Palm Beach County Sheriff's Deputy or law enforcement officer acting within his/her jurisdiction is authorized to issue a Trespass Notice to any individual who violates any Applicable Local Law or Applicable State Law while on Village Property.
  - (2) Any person issued a Trespass Notice shall be prohibited from returning to the Village Property specified in the Trespass Notice as follows:
    - a. For the first Trespass Notice, for a period of one (1) year.
    - b. For the second Trespass Notice, for a period of five (5) years.
    - c. For the third or subsequent Trespass Notice, for a period of ten (10) years.
  - (3) A copy of the Trespass Notice shall be provided by mail or hand delivery to the Trespass Notice recipient with a copy provided to the employee or official having control over the Village Property. The Trespass Notice shall include the name and address of the Trespass Notice recipient, the date, the provision of law the Trespass Notice recipient has violated, a brief description of the offending conduct, the location of the offence, the name of the person issuing the Trespass Notice and a description of the Village Property to which the Trespass Notice recipient shall not return during the Trespass Notice period described in Section (c)(2) of this Ordinance. The written Trespass Notice shall advise of the right to appeal and the location and telephone number for filing the appeal. The Trespass Notice shall

include a warning that any person found on Village Property in violation of a Trespass Notice may be arrested for trespassing.

(4) *Appeal of Trespass Notice.* The Trespass Notice recipient shall have the right to appeal as follows:

- a. An appeal of a Trespass Notice must be filed, in writing, at the address listed on the Trespass Notice within ten (10) days of the issuance of the Trespass Notice. The appeal shall include the Trespass Notice recipient's (appellant) name, address, telephone number, electronic mail address and facsimile number, if any; a copy of the Trespass Notice; and a statement of the basis for the appeal. Failure to file a written appeal within ten (10) days of issuance of the Trespass Notice shall be deemed a waiver of the right to appeal.
- b. A filing fee in the amount of \$20.00 shall accompany the appeal of the Trespass Notice.
- c. Appeals shall be heard by a special magistrate with jurisdiction and authority to hear and decide alleged violations of the codes and ordinances enacted by the Village Council of the Village of Royal Palm Beach. Any special magistrate appointed to hear and decide Trespass Notice appeals shall serve, in an ex officio capacity, at the pleasure of the appointing authority for such period as is determined by the appointing authority.
- d. Within forty (40) days following the filing of the appeal, a hearing shall be held in front of a special magistrate. Notice of the hearing shall be provided to the appellant by U.S. mail, electronic mail, facsimile, certified mail or hand delivery. If the issuance of a Trespass Notice was predicated on a violation of Applicable State Law and the criminal case is pending before the County or Circuit Court, the appeal hearing shall be stayed until the resolution of that case.
- e. The hearing shall be open to the public and shall be recorded.
- f. At the hearing, the burden of proof shall be on the Village to demonstrate by clear and convincing evidence that a violation of an Applicable Local Law or Applicable State Law on Village Property has occurred. However, proof that the appellant has entered a plea of guilty, regardless of adjudication, to the underlying offense shall be admissible at the hearing as

an admission against interest.

- g. If the appellant fails to attend the appeal hearing, the appeal shall be dismissed with prejudice.
- h. All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply but fundamental due process shall be observed and shall govern the proceedings. Upon determination of the special magistrate, irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a trial in the courts of the State of Florida.
- i. The special magistrate may inquire of or question any witness present at the hearing. The appellant or his/her attorney and an employee or attorney representing the Village shall be permitted to inquire of or question any witness present at the hearing. The special magistrate may consider testimony presented by any witness at the hearing.
- j. At the conclusion of the hearing, the special magistrate shall orally render his or her decision (order) upholding or overruling the Trespass Notice based on evidence entered into the record. If the special magistrate upholds the Trespass Notice, appellant shall be enjoined from returning to the Village Property specified in the Trespass Notice for a period provided in Section (c)(2) above. The decision shall then be transmitted to the appellant in the form of a written order including findings of fact and conclusions of law consistent with the record. The order shall be transmitted by mail to the appellant within ten (10) days after the hearing and a copy shall be sent to the law enforcement agency whose officer issued the Trespass Notice.
- k. Any aggrieved party may appeal an order of the special magistrate to the Circuit Court of Palm Beach County. Such appeal shall not be a hearing de novo but shall be limited to appellate review of the record created before the special magistrate. Any appeal filed pursuant to this Ordinance shall be considered timely if filed within thirty (30) days of the execution of the order to be appealed. The Village may assess a reasonable charge for the preparation of the record to be paid by the appellant in accordance with F.

S. § 119.07.

1. The Trespass Notice shall remain in effect during any appeal process, unless a stay pending review is entered by a special magistrate.
  - m. A special magistrate shall have the power to:
    1. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be served by a sheriff or other authorized persons consistent with Rule 1.410(d), Florida Rules of Civil Procedure, upon request of the special magistrate.
    2. Subpoena records and other documentary material.
    3. Take testimony under oath.
    4. Issue orders having the full force and effect of law.
  - (5) The Village Manager or his/her designee may authorize an individual who has received a Trespass Notice to enter a specific Village Property included within a Trespass Notice to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied. Any individual issued such authorization shall have a copy of the authorization in his/her possession upon entry and throughout the duration of his/her presence upon the specific Village Property. In addition, a copy of such authorization shall be sent by the Village Manager or his/her designee to the law enforcement agency that issued the Trespass Notice prior to the scheduled entry onto the specific Village Property.
  - (6) Any person found on Village Property in violation of this Ordinance may be arrested for trespassing.
  - (7) This Ordinance shall not be construed to limit the authority of any law enforcement officer or code enforcement officer to take any other enforcement action authorized by law.
- (d) *Enforcement; penalties.*

This Ordinance is enforceable by all means provided by law. Additionally, the Village may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm Beach County. Any violation of any portion of this Ordinance shall be punishable as provided by law.



**Sec. ~~17-16~~ 17-17—17-20. - Reserved.**

**Section 2:** Each and every other Section and Sub-section of Chapter 17. OFFENSES AND MISCELLANOUS PROVISIONS. shall remain in full force and effect as previously enacted.

**Section 3:** All Ordinances or parts of Ordinances in conflict be and the same are hereby repealed.

**Section 4:** Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.

**Section 5:** Specific authority is hereby granted to codify this Ordinance.

**Section 6:** This Ordinance shall take effect immediately upon passage.

FIRST READING this 15th day of October, 2020.

SECOND AND FINAL READING this 19th day of November, 2020.

VILLAGE OF ROYAL PALM BEACH

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MAYOR FRED PINTO

ATTEST:

(Seal)

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DIANE DISANTO, VILLAGE CLERK