

4B

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: October 21, 2014

☐ Consent ☐ Regular
☐ Ordinance ☒ Public Hearing

Department: Palm Tran

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve to adopt: an Ordinance of the Board of County Commissioners (BCC) of Palm Beach County, Florida, to be known as the Palm Beach County Palm Tran Trespass Ordinance; providing for a short title; providing for definitions; providing for authorization to issue Palm Tran trespass notices as to Palm Tran personnel and property; providing for appeal of such trespass notices; providing for inclusion in the Code of Laws and Ordinances; providing for repeal of laws in conflict; providing for severability; providing for enforcement; providing for penalty; providing for captions; and providing for an effective date.

Summary: On September 9, 2014, the BCC approved a preliminary reading and advertisement of a public hearing of this Ordinance. County codes and ordinances allow for citations to be issued in certain circumstances when violations are committed on property owned by Palm Tran and/or operated by Palm Beach County (County), but those County codes and ordinances do not provide a mechanism to temporarily enjoin violators from returning to such property. The presence of individuals who have violated certain County ordinances, rules or regulations, certain State laws or notices contained on a posted sign while on property owned and/or operated by the County through Palm Tran creates a threat to the safety and welfare of employees, visitors and citizens of the County. Temporarily enjoining such individuals from access to such property will promote public safety and welfare and protect such property. This establishes a mechanism to issue Palm Tran trespass notices to individuals who violate County ordinances, rules or regulations, State laws or notices contained in a posted sign while on property owned and/or operated by the County through Palm Tran and procedures to be followed when Palm Tran trespass notices are issued, including a process to appeal the issuance of a Palm Tran trespass notice.

Countywide (DR/PK)

Background and Justification: The Board of County Commissioners of Palm Beach County, Florida, through Palm Tran, Inc., owns and/or operates various facilities, buildings, and other property used to provide public transportation fixed route service throughout Palm Beach County ("County"). The County created Palm Tran, Inc., as an agency and instrumentality of the County to operate County's public transit system (also known as "Palm Tran") and to provide day to day managerial and administrative services. The adoption of the Palm Tran trespass ordinance is in the best interest of the employees, citizens and visitors to the County who visit facilities, buildings, or other property used by the County, through Palm Tran, to provide transportation services for the County.

Attachments:

1. Palm Tran Trespass Ordinance

Recommended by:


Assistant Director

10/16/14
Date

Approved by:


Assistant County Administrator

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures	\$0	\$0	\$0	\$0	\$0
Operating Costs	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
(County)					
In-Kind Match (County)	0	0	0	0	0
NET FISCAL IMPACT	* \$0	\$0	\$0	\$0	\$0
# Additional FTE	0	0	0	0	0
Positions (Cumulative)					
Is Item Included in Current Budget:	Yes	NA	No		

Budget Account No:

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Departmental Fiscal Review:

John Murphy, Finance Manager

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development & Control Comments:

* No Fiscal Impact

OFMB 10/8 10/21/14

Dr. J. Jacobson 10-15-14
Contract Development & Control

A. Legal Sufficiency:

Paul F. [Signature] 10/20/14
Assistant County Attorney

A. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

ORDINANCE NO. 2014-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY PALM TRAN TRESPASS ORDINANCE; PROVIDING FOR A SHORT TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR AUTHORIZATION TO ISSUE PALM TRAN TRESPASS NOTICES AS TO PALM TRAN PERSONNEL AND PROPERTY; PROVIDING FOR APPEAL OF SUCH TRESPASS NOTICES; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida (“County”) created Palm Tran, Inc., as an agency and instrumentality of the County, to operate County’s public transit system (also known as “Palm Tran”) and to provide day to day managerial and administrative services; and

WHEREAS, the County owns various facilities, buildings, conveyances and other property used to provide Palm Tran public transportation fixed route service throughout Palm Beach County; and

WHEREAS, current State laws and County codes and ordinances prohibit certain actions and activities that interfere with Palm Tran’s operations and/or threaten the safety of others, but do not provide a mechanism to temporarily enjoin violators from returning to or entering upon property owned by County and/or used to provide Palm Tran public transportation service; and

WHEREAS, the Board of County Commissioners finds that the presence of individuals who have violated certain County ordinances, rules or regulations, certain State laws, or notices, on property owned by the County and/or used to provide Palm Tran public transportation service, poses a continuing threat to the safety and welfare of Palm Tran’s bus operators, employees and passengers, and the County’s citizens and visitors; and

WHEREAS, temporarily enjoining such individuals from access to property owned by the County and/or used to provide Palm Tran public transportation services will promote and protect the public health, safety and welfare; and

WHEREAS, the Board of County Commissioners wishes to establish a mechanism to issue Palm Tran trespass notices to individuals who violate County ordinances, rules or

1 regulations, State laws or notices, while on property owned by the County and/or used for Palm
2 Tran purposes, and pose a continuing threat to the safety of others and Palm Tran's operations;
3 and

4 **WHEREAS**, the Board of County Commissioners wishes to establish procedures to be
5 followed when Palm Tran trespass notices are issued, including a process to appeal the issuance
6 of a Palm Tran trespass notice; and

7 **WHEREAS**, adopting a Palm Tran trespass ordinance is in the best interest of the
8 County's fixed route public transportation system, Palm Tran's employees and passengers, and
9 the visitors and citizens who visit facilities, buildings, or other property owned by the County
10 and/or used to provide Palm Tran public transportation service.

11 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
12 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

13 **Section 1. TITLE; APPLICABILITY:**

14 (a) This Ordinance shall be known as the Palm Beach County Palm Tran Trespass Ordinance.

15 (b) All provisions of this Ordinance shall be applicable to Palm Tran County Property, as
16 defined below, within the unincorporated and incorporated areas of Palm Beach County.

17 **Section 2. DEFINITIONS:**

18 (a) Palm Tran County Property shall mean any vehicle, facility, building, shelter, bench,
19 easement or other real or personal property owned or used by the Palm Beach County Board of
20 County Commissioners or Palm Tran, Inc. to provide Palm Tran fixed route public
21 transportation service in the County.

22 (b) Applicable State Law consists of the following: Chapter 782 (Homicide), Chapter 784
23 (Assault; Battery; Culpable Negligence), Chapter 787 (Kidnapping, False Imprisonment;
24 Luring or Enticing a Child; Custody Offenses, Chapter 790 (Weapons and Firearms), Chapter
25 794 (Sexual Battery), Chapter 796 (Prostitution), Chapter 800 (Lewdness; Indecent Exposure),
26 Chapter 806, (Arson and Criminal Mischief), Chapter 810 (Burglary and Trespass), Chapter
27 812 (Theft, Robbery, and Related Crimes), Chapter 823 (Public Nuisance) Chapter 825,
28 (Abuse, Neglect, and Exploitation of Elderly Persons and Disabled Adults, Chapter 827 (Abuse
29 of Children), Chapter 828 (Animals: Cruelty, Sales, Animal Enterprise Protection), Chapter
30 847 (Obscenity), Chapter 856 (Drunkenness; Open House Parties; Loitering; Prowling
31 Desertion), Chapter 859 (Poisons; Adulterated Drugs), and Chapter 893 (Drug Abuse
32 Prevention and Control).

1 (c) Palm Tran Trespass Regulations consist of the following:

2 (1) assaulting or battering a bus operator or any other Palm Tran employee or other
3 individual;

4 (2) possessing a weapon (defined as: firearms, knives or other cutting or stabbing
5 instruments, electric weapons or devices, any type of flammable liquid, explosive, acid,
6 or other article or material likely to cause harm to others), except that nothing herein
7 shall prevent a person from carrying a cigarette, cigar, or pipe lighter on any Palm Tran
8 vehicle, or prohibit weapons in the possession of a law enforcement officer or a
9 concealed firearm possessed by a person having a concealed weapons permit issued by
10 the State of Florida;

11 (3) causing a disturbance on a Palm Tran vehicle, distracting a Palm Tran vehicle
12 operator, or interfering with the safe operation of a Palm Tran vehicle;

13 (4) vandalizing Palm Tran County Property;

14 (5) failing to pay the appropriate fare; and

15 (6) loitering or entering upon Palm Tran County Property not authorized for access by
16 the public.

17 **Section 3. TRESPASS NOTICE; AUTHORIZATION TO ISSUE:**

18 (a) Palm Beach County Sheriff's Deputies, law enforcement officers acting within their
19 jurisdictions, and those Palm Tran supervisory personnel or officials designated by the Palm
20 Tran Executive Director are authorized to issue a Palm Tran Trespass Notice to any individual
21 who, while on Palm Tran County Property, violates Applicable State Law or Palm Tran
22 Trespass Regulations, as defined in Section 2 of this Ordinance, as determined by the person
23 issuing the Palm Tran Trespass Notice.

24 (b) Any person issued a Palm Tran Trespass Notice for violating Section 2(b), Section (2)(c)(1)
25 or Section 2(c)(2) of this Ordinance shall be prohibited from returning to or entering upon the
26 Palm Tran County Property specified in that Palm Tran Trespass Notice as follows:

27 (1) For the first Palm Tran Trespass Notice, for a period of up to ninety (90) days.

28 (2) For the second Palm Tran Trespass Notice issued within a period of one (1) year
29 from the first Palm Tran Trespass Notice, for a period of up to one hundred eighty (180)
30 days.

1 (3) For the third or subsequent Palm Tran Trespass Notice issued within a period of
2 three (3) years from the last Palm Tran Trespass Notice, for a period of up to two (2)
3 years.

4 (c) Any person issued a Palm Tran Trespass Notice for violating any other provision of Section
5 2(c) of this Ordinance shall be prohibited from returning to or entering upon the Palm Tran
6 County Property specified in the Palm Tran Trespass Notice as follows:

7 (1) For the first Palm Tran Trespass Notice, for a period of up to thirty (30) days.

8 (2) For the second Palm Tran Trespass Notice issued within a period of one hundred
9 and eighty (180) days from the first Palm Tran Trespass Notice, for a period of up to
10 ninety (90) days.

11 (3) For the third or subsequent Palm Tran Trespass Notice issued within a period of one
12 (1) year from the last Palm Tran Trespass Notice, for a period of up to one (1) year.

13 (d) A copy of the Palm Tran Trespass Notice shall be provided by mail or hand delivery to the
14 Palm Tran Trespass Notice recipient and to the Palm Tran Executive Director. The Palm Tran
15 Trespass Notice shall include the name and address of the Palm Tran Trespass Notice recipient
16 if available, or alternatively, a photograph of the recipient, the date, the provision of Applicable
17 State Law or Palm Tran Trespass Regulation that the Palm Tran Trespass Notice recipient has
18 violated, a brief description of the offending conduct, the location of the offence, the name of
19 the person issuing the Palm Tran Trespass Notice and a description of the Palm Tran County
20 Property to which the Palm Tran Trespass Notice recipient shall not return during the Palm
21 Tran Trespass Notice period described in subsections (b) or (c) above. The Palm Tran Trespass
22 Notice shall advise of the right to appeal and the address and telephone number for filing the
23 appeal. The Palm Tran Trespass Notice shall include a warning of the consequences for failure
24 to comply.

25 (e) Notwithstanding any provision of this Ordinance, the Palm Tran Executive Director may
26 rescind a Palm Tran Trespass Notice or shorten its duration, as appropriate, if the Palm Tran
27 Executive Director determines that the Palm Tran Trespass Notice was issued to the wrong
28 person or otherwise improperly issued, that there are additional facts that should have been
29 taken into account when the Palm Tran Trespass Notice was issued, or that there are mitigating
30 circumstances or newly discovered facts that warrant its rescission or a reduction in its
31 duration. The time a Palm Tran Trespass Notice recipient has to file an appeal as provided in
32 Section 4 of the Ordinance shall be calculated from the date the Palm Tran Trespass Notice was

1 issued and not from the date the duration of the Palm Tran Trespass Notice was reduced by the
2 Palm Tran Executive Director. The Palm Tran Executive Director shall advise the recipient of
3 a Palm Tran Trespass Notice of his or her determination, and that such determination does not
4 modify or extend the time provided to file an appeal under Section 4 of this Ordinance.

5 **Section 4. APPEAL:**

6 (a) The Palm Tran Trespass Notice recipient shall have the right to appeal as follows:

7 (1) An appeal of a Palm Tran Trespass Notice must be filed, in writing, at the address
8 listed on the Palm Tran Trespass Notice within ten (10) days of the issuance of the Palm
9 Tran Trespass Notice. The appeal shall include the Palm Tran Trespass Notice
10 recipient's (appellant's) name and address; telephone number, electronic mail address
11 and facsimile number, if any; a copy of the Palm Tran Trespass Notice; and a statement
12 of the basis for the appeal. Failure to file a written appeal within ten (10) days of
13 issuance of the Palm Tran Trespass Notice shall be deemed a waiver of the right to
14 appeal.

15 (2) A filing fee in the amount of Twenty Dollars (\$20) shall accompany the appeal of a
16 Palm Tran Trespass Notice.

17 (3) The Palm Tran Executive Director may appoint one or more special masters to hear
18 and decide appeals from Palm Tran Trespass Notices, from a pool selected by the Board
19 of County Commissioners to hear and consider matters as required by any provision of
20 the Palm Beach County Code or any Palm Beach County ordinance, including but not
21 limited to the provisions of Article 2.G of the Palm Beach County Unified Land
22 Development Code. Any special master appointed to hear and decide Palm Tran
23 Trespass Notice appeals shall satisfy the minimum qualifications established in Article
24 2.G.2 of the Palm Beach County Unified Land Development Code and shall serve, in an
25 ex officio capacity, at the pleasure of the appointing authority for such period as is
26 determined by the appointing authority. Whoever shall accept an appointment as a
27 special master to hear and decide appeals from Palm Tran Trespass Notices shall, for a
28 period of one (1) year from the date of termination of the holder's ex officio office, not
29 act as an attorney or agent in any proceeding or matter before any decision making body
30 of Palm Beach County that is related to or the subject of a Palm Tran Trespass Notice
31 which the special master considered.

1 (4) Within thirty (30) days following the filing of the appeal, a hearing shall be held in
2 front of a special master. Notice of the hearing shall be sent to the address provided by
3 the appellant through the U.S. mail, electronic mail, facsimile, certified mail or hand
4 delivery.

5 (5) The hearing shall be open to the public and shall be recorded.

6 (6) At the hearing, the burden of proof shall be on the County to demonstrate by clear
7 and convincing evidence that a violation of Applicable State Law or Palm Tran
8 Trespass Regulation on Palm Tran County Property has occurred.

9 (7) If the appellant fails to attend a scheduled hearing, the special master shall review
10 the evidence presented and determine if the Palm Tran Trespass Notice was properly
11 issued pursuant to the criteria of this Ordinance.

12 (8) All testimony shall be under oath and shall be recorded. The formal rules of
13 evidence shall not apply but fundamental due process shall be observed and shall
14 govern the proceedings. Upon determination of the special master, irrelevant,
15 immaterial or unduly repetitious evidence may be excluded, but all other evidence of a
16 type commonly relied upon by reasonably prudent persons in the conduct of their affairs
17 shall be admissible, whether or not such evidence would be admissible in a trial in the
18 courts of the State of Florida.

19 (9) The special master may inquire of or question any witness present at the hearing.
20 The appellant or his/her attorney and the employee or attorney representing Palm Tran
21 shall be permitted to inquire of or question any witness present at the hearing. The
22 special master may consider testimony presented by any witness at the hearing.

23 (10) At the conclusion of the hearing, the special master shall orally render his or her
24 decision (order) upholding or overruling the Palm Tran Trespass Notice based on
25 evidence entered into the record. Within five (5) days of the hearing, the special master
26 shall transmit his or her decision to the Palm Tran Executive Director in the form of a
27 written order including findings of fact and conclusions of law consistent with the
28 record. The order shall be transmitted by the Palm Tran Executive Director to the
29 appellant by mail or hand delivery, within five (5) days of receipt of the order from the
30 special master.

31 (11) Any aggrieved party may appeal an order of the special master to the Circuit Court
32 of Palm Beach County. Such appeal shall not be a hearing de novo but shall be limited

1 to appellate review of the record created before the special master. Any appeal filed
2 pursuant to this Ordinance shall be considered timely if filed within thirty (30) days of
3 the execution of the order to be appealed. Palm Tran may assess a reasonable charge for
4 the preparation of the record to be paid by the appellant in accordance with Section
5 119.07, Florida Statutes.

6 (12) The Palm Tran Trespass Notice shall remain in effect during the appeal and review
7 process, including any judicial review.

8 (b) The Palm Tran Executive Director, or designee, may authorize an individual who has
9 received a Palm Tran Trespass Notice to enter specific Palm Tran County Property to exercise
10 that individual's First Amendment rights if there is no other reasonable alternative location to
11 exercise such rights or to conduct necessary Palm Tran business. Such authorization must be in
12 writing, shall specify the duration of the authorization and any conditions thereof, and shall not
13 be unreasonably denied.

14 (c) Any person found on Palm Tran County Property in violation of a Palm Tran Trespass
15 Notice may be arrested for trespassing, except when authorized to be on Palm Tran County
16 Property as provided in Section 4.(b) of this Ordinance.

17 (d) This Ordinance shall not be construed to limit the authority of any law enforcement officer
18 to take any other enforcement action authorized by law.

19 **Section 5. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

20 The provisions of this Ordinance shall become and be made a part of the Palm Beach
21 County Code. The sections of this Ordinance may be renumbered or relettered to accomplish
22 such, and the word ordinance may be changed to section, article, or other appropriate word.

23 **Section 6. REPEAL OF LAWS IN CONFLICT:**

24 All local laws and ordinances in conflict with any provisions of this Ordinance are
25 hereby repealed to the extent of such conflict.

26 **Section 7. SEVERABILITY:**

27 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any
28 reason held by a court of competent jurisdiction to be unconstitutional, inoperative, or void,
29 such holding shall not affect the remainder of this Ordinance.

1 **Section 8. ENFORCEMENT:**

2 This Ordinance is enforceable by all means provided by law. Additionally, the County
3 or Palm Tran may choose to enforce this Ordinance by seeking injunctive relief in the Circuit
4 Court of Palm Beach County.

5 **Section 9. PENALTY:**

6 Any violation of any portion of this Ordinance shall be punishable as provided by law.

7 **Section 10. CAPTIONS:**

8 The captions, section headings, and section designations used in this Ordinance are for
9 convenience only and shall have no effect on the interpretation of the provisions of this
10 Ordinance.

11 **Section 11. EFFECTIVE DATE:**

12 The provisions of this Ordinance shall become effective upon filing with the
13 Department of State.

14

15 APPROVED and ADOPTED by the Board of County Commissioners of Palm Beach
16 County, Florida, on this the ____ day of _____, 20____.

17 **SHARON R. BOCK, CLERK**

**PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS**

18

19

20 By: _____
21 Deputy Clerk

By: _____
Priscilla A. Taylor, Mayor

22

23 **APPROVED AS TO FORM AND
24 LEGAL SUFFICIENCY**

25

26 By: Paul F. J.
27 County Attorney

28

29 **EFFECTIVE DATE:** Filed with the Department of State on the ____ day of
30 _____, 20____.

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The Palm Beach Post
REAL NEWS STARTS HERE

Palm Beach Daily News

NOTICE OF PUBLIC HEARINGS

PLEASE TAKE NOTICE THAT AT 9:30 A.M. ON OCTOBER 21, 2014, in the Palm Beach County Governmental Center, Jane Thompson Memorial Chambers, 6th Floor, 301 North Olive Avenue, West Palm Beach FL., the Board of County Commissioners of Palm Beach County, FL., intends to hold a public hearing for the purpose of considering the following proposed Palm Beach County Ordinance(s):

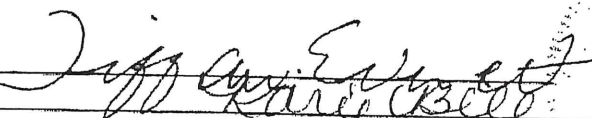
AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE PALM BEACH COUNTY PALM TRAN TRESPASS ORDINANCE; PROVIDING FOR A SHORT TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR AUTHORIZATION TO ISSUE PALM TRAN TRESPASS NOTICES AS TO PALM TRAN PERSONNEL AND PROPERTY; PROVIDING FOR APPEAL OF SUCH TRESPASS NOTICES; PROVIDING FOR INCLUSION IN THE CODE OF LAWS AND ORDINANCES; PROVIDING FOR REPEAL OF LAWS IN CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR ENFORCEMENT; PROVIDING FOR PENALTY; PROVIDING FOR CAPTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

A copy of above referenced proposed ordinance is available for inspection in the Minutes Department, 2nd floor, room 203.2, Governmental Center. All interested parties may appear at the meeting and be heard with respect to the proposed ordinance(s).

If a person decides to appeal any decision made by this commission with respect to any matter considered at this meeting or hearing they will need to have a record of the proceeding, and for that, for such purpose, they may need to insure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is based.

SHARON R. BOCK
Clerk & Comptroller
Board of County Commissioners
PUB: The Palm Beach Post
9-26/ 2014 #300585

Signed



Sworn to and subscribed before 09/26/2014.

Who is personally known to me.

PBC BOCC BOARD OF COUNTY COMMISSIONERS PROOF OF PUBLICATION
STATE OF FLORIDA COUNTY OF PALM BEACH
Before the undersigned authority personally appeared Tiffani Everett, who on oath says that she is Call Center Legal Advertising Representative of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a Notice was published in said newspaper on First date of Publication 09/26/2014 and last date of Publication 09/26/2014 Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties.
OCTOBER 24, 2014 MEETING Ad ID: 597161 Ad
Cost: 202.96

KARIE BELL
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 4-12-15