

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

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Meeting Date: April 19, 2016 () Consent () Regular
() Ordinance (X) Public Hearing
Department
Submitted By: Environmental Resources Management
Submitted For: Environmental Resources Management
Parks and Recreation Department
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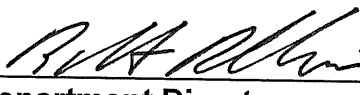
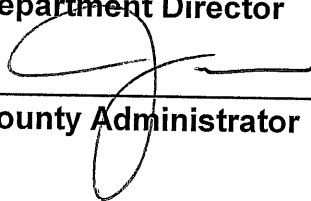
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE DESIGNATED AS THE PALM BEACH COUNTY 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; 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: The proposed Ordinance, to be known as the Palm Beach County Parks and Natural Areas Trespass Ordinance, had an initial reading on April 5, 2016. The Ordinance will provide a procedure to temporarily enjoin persons found violating certain County ordinances, rules or regulations; certain State laws; or notices contained on a posted sign from returning to county parks or natural areas identified in a Trespass Notice. If an individual is found violating any Applicable Local Law or any Applicable State Law as defined in Section 2 of the Ordinance, a Trespass Notice may be issued by any law enforcement officer acting within his/her jurisdiction. An alleged violator may appeal a Trespass Notice within 10 days of issuance by filing a request for appeal and paying a \$20 fee and will be afforded a hearing before a Palm Beach County special magistrate. If the Trespass Notice is not appealed or the County prevails in an appeal, the violator will be enjoined from returning to specified County owned and/or managed parks and/or natural areas for 1 year for a first violation, 5 years for a second violation and 10 years for a subsequent violation. Countywide (SF)

Background and Policy Issues: Current County codes and ordinances allow for court actions or citations to be issued in certain circumstances, when violations are committed within parks and/or natural areas owned and/or operated by the County, but they don't provide a way to keep the violators from returning to the parks or natural areas to continue to harass the public or violate the rights of other visitors to the parks or natural areas. This Ordinance will provide the needed process to ensure the safety of the public while visiting these public properties. By temporarily enjoining certain violators from entering specified parks or natural area, this Ordinance will promote public safety and welfare and protect such property from further degradation or destruction. **(Continued on Page 3.)**

Attachment:
1. Ordinance

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Recommended by:  3/28/16
Department Director **Date**
Approved by:  4/5/16
Deputy County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	_____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____
Is Item Included in Current Budget?	Yes _____		No _____		
Budget Account No.:	Fund _____	Department _____	Unit _____	Object _____	

Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact

There is no fiscal impact from this item.

C. Department Fiscal Review: *S. Henry*

III. REVIEW COMMENTS

A. OFMB Fiscal and /or Contract Administrator Comments:

C. R. M. L. *Dr. S. Jacobson* 4/14/16
 OFMB ^{SP} ^{OB} ^{3/29} ^{3/29} ^{4/13/16} Contract Administrator

B. Legal Sufficiency:

Shawn Toy
 Assistant County Attorney

C. Other Department Review:

Eric Coe
 Department Director

Background and Policy Issues (continued):

Both the Department of Environmental Resources Management and the Parks and Recreation Department have currently been using letters to authorize law enforcement personnel to give trespass notices to persons found violating County ordinances and rules, notices on posted signs, or State statutes while in the County parks or natural areas. Recent court cases and legal opinions from the State Attorney's Office have stated that persons cannot be enjoined from access to public lands without an appeal process that affords the alleged violator the ability to challenge the loss of his/her right to enter specific public lands. This Ordinance establishes the process for an appeal of a Trespass Notice, thereby providing due process to individuals found perpetrating certain offenses outlined in the Ordinance.

ORDINANCE NO. 2016-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE DESIGNATED AS THE PALM BEACH COUNTY 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; 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 owns and/or operates various parks and natural areas throughout Palm Beach County (“County”); and

WHEREAS, current County codes and ordinances allow for citations to be issued in certain circumstances when violations are committed within parks and natural areas owned and/or operated by the County but do not provide a mechanism to temporarily enjoin violators from returning to such property; 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 contained on a posted sign while within parks or natural areas owned and/or operated by the County creates a threat to the safety and welfare of visitors and citizens of the County and that temporarily enjoining such individuals from access to such property will promote public safety and welfare and protect such property; and

WHEREAS, the Board of County Commissioners wishes to establish a mechanism to issue trespass notices to individuals who violate County 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 County; and

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

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

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

5
6 **Section 1. TITLE; APPLICABILITY.**

7 (a) This Ordinance shall be known as the Palm Beach County Parks and Natural Areas
8 Trespass Ordinance.

9 (b) All provisions of this Ordinance shall be applicable to County Property within the
10 unincorporated and incorporated areas of Palm Beach County.

11
12 **Section 2. DEFINITIONS.**

13 (a) *Applicable Local Law* shall include the following:

14 (1) Intentionally damaging or destroying County Property, real or personal,
15 including but not limited to any building; bridge; table; bench; fireplace; railing;
16 paving; water line or other public utility or parts of appurtenances thereof; posted sign,
17 notice or placard whether temporary or permanent; monument; stake, post or other
18 boundary marker; or other structure, equipment, facility or appurtenance whatsoever;
19 or

20 (2) Removing a live plant, plant part or plant material from County Property; or

21 (3) Molesting, harming, frightening, killing, trapping, hunting, chasing, shooting,
22 throwing objects at, harassing, feeding, or otherwise inhibiting the natural movements
23 and habits of any invertebrate, mammal, amphibian, reptile, fish or bird within a County
24 Property. This paragraph shall not preclude fishing in a designated fishing area or
25 removal of any nuisance wildlife or animal as authorized by the County; or

26 (4) Removing or attempting to remove any wild animal, or the eggs or nests of any
27 amphibian, reptile, fish, bird or invertebrate from County Property. This paragraph
28 shall not preclude fishing in a designated fishing area or removal of any nuisance
29 wildlife or animal as authorized by the County; or

30 (5) Using, discharging or possessing fireworks (other than a firework display
31 permitted by the County), explosives, or substances that could be combined into an
32 explosive mixture within County Property; or

1 (6) Building or attempting to build any fire within County Property except in such
2 areas where fireplaces or grills are provided or as specifically authorized by a regulation
3 or permit issued by the County or dropping, throwing or otherwise depositing lighted
4 matches, burning cigarettes or cigars or other flammable material within County
5 Property; or

6 (7) Having been found to have violated any provision of the Palm Beach County
7 Parks and Recreation Ordinance or Palm Beach County Natural Areas Ordinance three
8 or more times or the same provision of the Palm Beach County Parks and Recreation
9 Ordinance or Palm Beach County Natural Areas Ordinance two or more times; or

10 (8) Violating a notice contained on a posted sign on County Property.

11 (b) *Applicable State Law* shall include Chapter 316 (State Uniform Traffic Control), Chapter
12 782 (Homicide), Chapter 784 (Assault; Battery; Culpable Negligence), Chapter 787
13 (Kidnapping; False Imprisonment; Luring or Enticing a Child; Custody Offenses), Chapter 790
14 (Weapons and Firearms), Chapter 794 (Sexual Battery), Chapter 796 (Prostitution), Chapter
15 800 (Lewdness; Indecent Exposure), Chapter 806, (Arson and Criminal Mischief), Chapter 810
16 (Burglary and Trespass), Chapter 812 (Theft, Robbery, and Related Crimes), Chapter 823
17 (Public Nuisances) Chapter 825, (Abuse, Neglect, and Exploitation of Elderly Persons and
18 Disabled Adults), Chapter 827 (Abuse of Children), Chapter 828 (Animals: Cruelty, Sales,
19 Animal Enterprise Protection), Chapter 843 (Obstructing Justice), Chapter 847 (Obscenity),
20 Chapter 856 (Drunkenness; Open House Parties; Loitering; Prowling Desertion), Chapter 859
21 (Poisons; Adulterated Drugs), and Section 877.03 (Breach of the Peace; Disorderly Conduct),
22 Chapter 893 (Drug Abuse Prevention and Control).

23 (c) *County* shall mean Palm Beach County.

24 (d) *County Property* shall mean any facility, building or outdoor area that is part of a park or
25 natural area owned and/or operated by Palm Beach County.

26
27 **Section 3. TRESPASS NOTICE; AUTHORIZATION TO ISSUE; APPEAL.**

28
29 (a) Any Palm Beach County Sheriff's Deputy or law enforcement officer acting within his/her
30 jurisdiction is authorized to issue a Trespass Notice to any individual who violates any
31 Applicable Local Law or Applicable State Law while on County Property.

32 (b) Any person issued a Trespass Notice shall be prohibited from returning to the County
33 Property specified in the Trespass Notice as follows:

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

1 (2) For the second Trespass Notice, for a period of five (5) years.

2 (3) For the third or subsequent Trespass Notice, for a period of ten (10) years.

3 (c) A copy of the Trespass Notice shall be provided by mail or hand delivery to the Trespass
4 Notice recipient with a copy provided to the employee or official having control over the
5 County Property. The Trespass Notice shall include the name and address of the Trespass
6 Notice recipient, the date, the provision of law the Trespass Notice recipient has violated, a
7 brief description of the offending conduct, the location of the offence, the name of the person
8 issuing the Trespass Notice and a description of the County Property to which the Trespass
9 Notice recipient shall not return during the Trespass Notice period described in Section 3(b) of
10 this Ordinance. The written Trespass Notice shall advise of the right to appeal and the location
11 and telephone number for filing the appeal. The Trespass Notice shall include a warning that
12 any person found on County Property in violation of a Trespass Notice may be arrested for
13 trespassing.

14 (d) Appeal of Trespass Notice. The Trespass Notice recipient shall have the right to appeal as
15 follows:

16 (1) An appeal of a Trespass Notice must be filed, in writing, at the address listed on the
17 Trespass Notice within ten (10) days of the issuance of the Trespass Notice. The appeal
18 shall include the Trespass Notice recipient's (appellant) name, address, telephone
19 number, electronic mail address and facsimile number, if any; a copy of the Trespass
20 Notice; and a statement of the basis for the appeal. Failure to file a written appeal
21 within ten (10) days of issuance of the Trespass Notice shall be deemed a waiver of the
22 right to appeal.

23 (2) A filing fee in the amount of \$20.00 shall accompany the appeal of the Trespass
24 Notice.

25 (3) Appeals shall be heard by a special master with jurisdiction and authority to hear
26 and decide alleged violations of the codes and ordinances enacted by the Board of
27 County Commissioners. Any special master appointed to hear and decide Trespass
28 Notice appeals shall satisfy the minimum qualifications established in Article 2.G.2 of
29 the Palm Beach County Unified Land Development Code and shall serve, in an ex
30 officio capacity, at the pleasure of the appointing authority for such period as is
31 determined by the appointing authority.

1 (4) Within forty (40) 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 provided to the appellant by
3 U.S. mail, electronic mail, facsimile, certified mail or hand delivery. If the issuance of
4 a Trespass Notice was predicated on a violation of Applicable State Law and the
5 criminal case is pending before the County or Circuit Court, the appeal hearing shall be
6 stayed until the resolution of that case.

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

8 (6) At the hearing, the burden of proof shall be on the County to demonstrate by clear
9 and convincing evidence that a violation of an Applicable Local Law or Applicable
10 State Law on County Property has occurred. However, proof that the appellant has
11 entered a plea of guilty, regardless of adjudication, to the underlying offense shall be
12 admissible at the hearing as an admission against interest.

13 (7) If the appellant fails to attend the appeal hearing, the appeal shall be dismissed with
14 prejudice.

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

22 (9) The special master may inquire of or question any witness present at the hearing.
23 The appellant or his/her attorney and an employee or attorney representing the County
24 shall be permitted to inquire of or question any witness present at the hearing. The
25 special master may consider testimony presented by any witness at the hearing.

26 (10) At the conclusion of the hearing, the special master shall orally render his or her
27 decision (order) upholding or overruling the Trespass Notice based on evidence entered
28 into the record. If the special master upholds the Trespass Notice, appellant shall be
29 enjoined from returning to the County Property specified in the Trespass Notice for a
30 period provided in Section 3(b) above. The decision shall then be transmitted to the
31 appellant in the form of a written order including findings of fact and conclusions of
32 law consistent with the record. The order shall be transmitted by mail to the appellant

1 within ten (10) days after the hearing and a copy shall be sent to the law enforcement
2 agency whose officer issued the Trespass Notice.

3 (11) Any aggrieved party may appeal an order of the special master to the Circuit Court
4 of Palm Beach County. Such appeal shall not be a hearing de novo but shall be limited
5 to appellate review of the record created before the special master. Any appeal filed
6 pursuant to this Ordinance shall be considered timely if filed within thirty (30) days of
7 the execution of the order to be appealed. The County may assess a reasonable charge
8 for the preparation of the record to be paid by the appellant in accordance with F. S. §
9 119.07.

10 (12) The Trespass Notice shall remain in effect during any appeal process, unless a stay
11 pending review is entered by a special master.

12 (13) A special master shall have the power to:

13 a. Subpoena alleged violators and witnesses to its hearings. Subpoenas may be
14 served by a sheriff or other authorized persons consistent with Rule 1.410(d),
15 Florida Rules of Civil Procedure, upon request of the special master.

16 b. Subpoena records and other documentary material.

17 c. Take testimony under oath.

18 d. Issue orders having the full force and effect of law.

19 (e) The County Administrator or his/her designee may authorize an individual who has
20 received a Trespass Notice to enter a specific County Property included within a Trespass
21 Notice to exercise his or her First Amendment rights if there is no other reasonable alternative
22 location to exercise such rights. Such authorization must be in writing, shall specify the
23 duration of the authorization and any conditions thereof, and shall not be unreasonably denied.
24 Any individual issued such authorization shall have a copy of the authorization in his/her
25 possession upon entry and throughout the duration of his/her presence upon the specific County
26 Property. In addition, a copy of such authorization shall be sent by the County Administrator or
27 his/her designee to the law enforcement agency that issued the Trespass Notice prior to the
28 scheduled entry onto the specific County Property.

29 (f) Any person found on County Property in violation of this Ordinance may be arrested for
30 trespassing.

31 (g) This Ordinance shall not be construed to limit the authority of any law enforcement officer
32 or code enforcement officer to take any other enforcement action authorized by law.

1
2 **Section 4. INCLUSION IN THE CODE OF LAWS AND ORDINANCES:**

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

6
7 **Section 5. REPEAL OF LAWS IN CONFLICT:**

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

10
11 **Section 6. SEVERABILITY:**

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

15
16 **Section 7. ENFORCEMENT:**

17 This Ordinance is enforceable by all means provided by law. Additionally, the County
18 may choose to enforce this Ordinance by seeking injunctive relief in the Circuit Court of Palm
19 Beach County.

20
21 **Section 8. PENALTY:**

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

23
24 **Section 9. CAPTIONS:**

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

28
29 **Section 10. EFFECTIVE DATE:**

30 The provisions of this Ordinance shall become effective upon filing with the
31 Department of State.

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

SHARON R. BOCK, CLERK

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

By: _____
Deputy Clerk

By: _____
Mary Lou Berger, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

By: _____
County Attorney

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