

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF McCLEARY, GRAYS HARBOR, WASHINGTON, ADDING A NEW MCCLEARY MUNICIPAL CODE CHAPTER ENTITLED “TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY OWNED PROPERTY” TO THE McCLEARY MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND EFFECTIVE DATE

R E C I T A L S:

1. WHEREAS, the city has a compelling interest in protecting its employees from threatening, intimidating and/or harassing behavior directed at employees by members of the public;

2. WHEREAS, dangerous, unsafe, illegal, or unreasonably disruptive behavior in city buildings and/or directed at city employees disrupts access to services and staff for members of the public seeking city assistance and services; and

3. WHEREAS, the City Council believes that it is important to protect not only the citizens of McCleary, but also its employees from bullying, harassing, intimidation and disruptive behavior from members of the public;

4. WHEREAS, the City Council finds that it is important to the general welfare of the citizens and residents of the city to protect and preserve the public safety of citizens and employees while utilizing city owned properties, or performing work at city job sites. The city council further finds that providing safe access to city buildings for members of

the public, and providing a safe workplace for city employees serve the primary purpose of allowing safe and efficient access for members of the public to obtain city services and provides city employees with a workspace free from dangerous, unsafe, illegal, or unreasonably disruptive behavior from members of the public.

5. WHEREAS, the city has an interest in discouraging the abuse of city employees and disruption in city owned properties.

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS BY THE CITY COUNCIL OF THE CITY OF McCLEARY:

SECTION I: McCleary Municipal Code (“MMC”) Chapter 9.97 entitled " **TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY OWNED PROPERTY**" is added to read as follows:

- 9.97.010 Purpose, authority, and applicability.**
- 9.97.020 Definitions.**
- 9.97.030 Authority to issue trespass warnings – Service.**
- 9.97.040 Duration of exclusion.**
- 9.97.050 Content of trespass warning.**
- 9.97.060 Review procedure.**
- 9.97.070 Violation – Penalty.**

9.50.010 Purpose, authority, and applicability.

A. The purpose of this policy is to adopt a legally sound process for being able to exclude from city and other publicly owned property individuals whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users. 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, including placing limitations on trespass warnings and providing procedures for such individuals to promptly appeal the issuance of trespass warnings to protect their right to engage in legitimate activities protected by the state and federal constitutions.

B. This policy is enacted as an exercise of the city’s authority to protect and preserve the public health, safety and welfare.

C. This policy shall apply to all city and other publicly owned property in the city of McCleary (“city”), including property that public entities own in common with each other. This chapter 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.

D. This chapter 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.

E. The city administrator is authorized to adopt rules and procedures consistent with this chapter.

9.50.020 Definitions.

A. Behavior that is “dangerous” is behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.

B. Behavior that is “illegal” is behavior that is prohibited by the laws of the United States, Washington State, Grays Harbor County, or the city and that includes, but is not limited to, any of the following types of behavior:

1. Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person; or
2. Selling or using alcohol or drugs; or
3. Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property); or
4. Assaulting staff or other patrons; or
5. Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts).

C. Behavior that is “unreasonably disruptive to other users” is 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:

1. Use of unreasonably hostile or aggressive language or gestures; or
2. Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or
3. Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or
4. Unreasonably interfering with the free passage of staff or patrons in or on public property; or
5. 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 skating/skateboarding in a public parking area or plaza).

D. Any constitutionally protected action or speech is excluded from the prohibited behavior listed in this section.

E. “City or publicly owned property” means any part of a building, park, trail, or open space that is owned or controlled by the city or a public agency.

9.50.030 Authority to issue trespass warnings – Service.

A. 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.

B. 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.

C. The 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.

9.50.040 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 seven 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 more than seven days but not more than 90 days from the date of the current 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 more than 90 days but not more than one year from the date of the current 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.

9.50.050 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 be signed by the issuing police officer, and shall state the consequences for failure to comply. A trespass warning for a place or places shall not prohibit access to another place or places that are unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

9.50.060 Review procedure.

A. 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.

1. A written request for review of a trespass warning must be delivered to the city clerk no later than seven business days after it is issued;
2. The city administrator or specified designee will, within one business day of receipt of a request for review of any trespass warning that excludes the individual for seven or fewer days, review the decision;
3. The city administrator or specified designee will, within two business days of receipt of a request for review of any trespass warning that excludes the individual for more than seven days, review the decision;
4. The city clerk will notify the individual of the date, time, and place or telephone number at which the review will be conducted;
5. The review decision shall be communicated no later than two business days following the review;
6. As a follow-up to verbal communication, specify how a written decision will be served on the individual; and
7. At the end of every written decision, inform the individual that he/she 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.

B. For purposes of this section, “good cause” to rescind, shorten or modify a trespass warning shall be found where:

1. The individual demonstrates by a preponderance of the evidence that his or her conduct was intended to be expressive conduct protected by the First Amendment; or
2. The individual was not given warning that the conduct in question was subject to a

trespass warning; or

3. The trespass warning was based solely upon the statement of a third party, was not observed personally by the issuing officer or a city or other government employee, would not ordinarily be relied upon by police officers in the determination of probable cause, and the individual claims that he or she did not commit the action for which he or she was warned; or

4. In the judgment of the city administrator or his/her designee, the circumstances warrant a modification or rescission of the trespass warning. The city manager 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 conduct in question was unreasonably disruptive to others on the same public property at that time.

C. At the review hearing, the violation must be proved by a preponderance of the evidence to uphold the trespass warning. 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. The city administrator or designee may consider information that would not be admissible under the evidence rules in a court of law but that the city administrator or designee considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the individual need not be charged, tried, or convicted for the warning to be upheld.

D. 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.

E. 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 Grays Harbor County superior court within 15 days of receipt of the city's final decision.

F. The trespass warning shall remain in effect during the pendency of any administrative or judicial proceeding.

G. 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.

9.50.070 Violation – Penalty.

A. Any person who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter may be arrested for trespassing, except as otherwise provided in this section.

B. The chief of police or designee may upon request authorize an individual who has received a trespass warning in accordance with this chapter to enter city or other publicly owned property to exercise his or her First Amendment rights or 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.

C. 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.

SECTION II: Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases had been declared invalid or unconstitutional, and if for any reason this Ordinance should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

SECTION III: This Ordinance shall take effect upon the fifth day following date

of publication.

SECTION IV: Corrections by the Clerk-treasurer or Code Reviser. Upon approval of the Mayor and City Attorney, the Clerk-treasurer and the Code Reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors, references to other local, state, or federal laws, codes, rules, or regulations, or ordinance number and section/subsection numbering.

PASSED THIS _____ DAY OF _____, 2023, by the City Council of the City of McCleary, and signed in approval therewith this _____ day of _____, 2023.

CITY OF McCLEARY:

CHRIS MILLER, Mayor

ATTEST:

ANN-MARIE ZUNIGA, Clerk-Treasurer

APPROVED AS TO FORM:

CHRISTOPHER JOHN COKER, City Attorney

STATE OF WASHINGTON)
 : ss.
GRAYS HARBOR COUNTY)

I, ANN-MARIE ZUNIGA, being the duly appointed Clerk-Treasurer of the City of McCleary, do certify that I caused to have published in a newspaper of general circulation in the City of McCleary a true and correct summary of Ordinance Number _____ and that said publication was done in the manner required by law. I further certify that a true and correct copy of the summary of Ordinance Number _____, as it was published, is on file in the appropriate records of the City of McCleary.

ANN-MARIE ZUNIGA

SIGNED AND SWORN to before me this _____ day of _____, 2019, by ANN-MARIE ZUNIGA.

NOTARY PUBLIC IN AND FOR THE STATE OF
WASHINGTON, Residing at: _____
My appointment expires: _____