ORDINANCE NO. 2945

AN ORDINANCE OF THE CITY OF BRADENTON, FLORIDA CREATING A NEW SECTION 54-14 OF THE CITY CODE OF ORDINANCES ESTABLISHING; A PROCESS FOR THE ISSUANCE OF TRESPASS WARNINGS ON PUBLIC PROPERTY; PROVIDING NOTICE REQUIREMENTS FOR TRESPASS WARNINGS; ESTABLISHING AN APPEAL PROCESS FOR TRESPASS WARNINGS; PROVIDING FOR A SPECIAL MAGISTRATE TO HEAR APPEALS FROM ISSUED TRESPASS WARNINGS; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Bradenton owns or operates or leases various properties throughout the City including, but not limited to, park and recreational areas; and

WHEREAS, the City Council has been informed that at times individuals will be present on City properties and violate City ordinances or State laws and said individuals, upon being ordered to leave or arrested will leave only to return later; and

WHEREAS, the City Council desires to provide for a method to allow for the issuance of trespass warnings for individuals committing violations of City ordinances or State statutes; and

WHEREAS, the City Council desires to place certain limitations on such warnings and to provide a process for individuals to appeal the issuance of trespass warnings; and

WHEREAS, the City Council finds that the presence of individuals who have violated State statutes or City ordinances, rules or regulations on public property or on private property for which the City has a public access easement creates a threat to the safety and welfare of the visitors and citizens of the City as well as the property and its improvements and therefore deem this ordinance to promote such public safety and public welfare and protection of property.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRADENTON, FLORIDA:

Section 1. The Code of Ordinances of the City of Bradenton, Chapter 54, Offenses; Article I, is amended by the creation of a new Section 54-14 entitled "Trespass Warnings on Public Property," which shall provide as follows:

"Sec. 54-14 – Trespass warnings on public property and other property generally open to the public.

(a) Officers of the Bradenton Police Department are authorized to issue a trespass warning to any individual who violates any City ordinance, rule or regulation, or State law which violation was committed while on or within any City facility, building, or outdoor area that is open to the general pubic, including municipal parks and including public sidewalks adjacent to municipal parks where there is also a public sidewalk on the opposite side of the street (but excluding other public rights of way). The trespass warning shall be limited to the specific property where the violation occurred.

(b) Trespass warnings shall be in writing and issued for a period not to exceed one year.

(c) A copy of the trespass warning shall be provided by mail or hand delivery to the individual given the warning. The written trespass warning shall advise of the right to appeal and the location at which to file the form to initiate the appeal.

(d) A written trespass warning shall also be issued when officers of the Bradenton Police Department are acting on behalf of another governmental agency or private property owner and issuing a trespass warning to an individual located on public property not owned by the City or on private property subject to a public access easement. For purposes of this section 54-14, the term *public access easement* shall mean an easement in favor of the City of Bradenton granting general public access to private property or limited public access to patrons and invitees of a particular business establishment or establishments.

(e) Any person found on or within any City facility, building, or outdoor area, including municipal parks, in violation of a trespass warning issued in accordance with this section may be arrested for trespassing, except as otherwise provided in this section.

(f) Any person found on or within any public property belonging to another governmental agency other than the City or found on or within any private property subject to a public access easement, in violation of a trespass warning issued in accordance with this section may be arrested for trespassing.

(g) The City Clerk, or his/her designee, may upon request, authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.

(h) This section shall not be construed to limit the authority of any City employee or official to issue a trespass warning to any person for any lawful reason for

any City property, including rights of way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the City employee or official.

(i) This section shall not be construed to limit the authority of officers of the Bradenton Police Department to arrest or cite individuals for violating any section of the Bradenton Code of Ordinances or the Florida Statutes.

(j) *Appeal of trespass warning.* A person to whom a trespass warning is issued under this section shall have the right to appeal the issuance of the trespass warning as follows:

(1) An appeal of the trespass warning must be filed, in writing, within twenty (20) days of the issuance of the warning, and shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.

(2) Appeals shall be heard by a Special Magistrate with whom the City contracts to provide this service.

(3) Within seven (7) business days following the filing of the appeal, the Special Magistrate shall schedule a hearing. Notice of the hearing shall be provided to the appellant in one of three ways:

a. By providing the appellant a copy of the notice of hearing in person at the time he or she files the appeal. When it is not reasonably practical or possible to provide notice in this manner, the appellant shall be informed that notice of the hearing will be provided in accordance with either paragraph (b) or (c) below.

b. By leaving or posting the notice at the front desk of the Bradenton Police Department or on the bulletin board at City Hall; or

c. By telephone if a telephone number has been provided and mailing when an address has been provided.

(4) The Special Magistrate shall hold the hearing as soon as possible. In no event shall the hearing be held later than forty (40) days from the filing of the appeal except that the person appealing may request an additional forty (40) days during the appeal period.

(5) Copies of documents in the City's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.

(6) The appellant shall have the right to testify and to call witnesses and present evidence and the right to engage an attorney to represent him or her. The appellant shall have the right to bring a court reporter, at his or her own expense.

(7) The Special Magistrate shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

(8) The City shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.

(9) If the appellant fails to attend a scheduled hearing, the Special Magistrate shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.

(10) Within seven (7) business days of the hearing, the Special Magistrate shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided.

(11) The decision of the Special Magistrate shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law.

(12) The trespass warning shall remain in effect during the appeal and review process, including any judicial review."

Section 2. Should any section, sentence, clause, part or provision of this ordinance be held or declared invalid or unenforceable by a court of competent jurisdiction, the same shall not affect the validity of this ordinance as a whole, or any part thereof, other than the part held or declared to be invalid.

Section 3. Ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This ordinance shall take effect immediately upon second reading.

PASSED IN REGULAR SESSION, this 23rd day of January, 2013

ATTEST:

City Clerk

President, City Council

APPROVED AS TO FORM:

William R. Lisch, City Attorney

First Reading: 1-9-13
Advertised: 1-12-13
Second Reading: 1-23-13

APPROVED by me this 24 day of January, 2013.

Wayne H. Poston, Mayor

BRADENTON HERALD

WWW.BRADENTON.COM
P.O. Box 921
Bradenton, FL 34206-0921
102 Manatee Avenue West
Bradenton, FL 34205-8894
941-745-7065

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STATE OF FLORIDA
COUNTY OF MANATEE

Before the undersigned authority personally appeared Francine Paikoff, who, on oath, says that she is a Legal Advertising Representative of The Bradenton Herald, a daily newspaper published at Bradenton in Manatee County, Florida; that the attached copy NOTICE OF PUBLIC MEETING HEARING OR WORKSHOP was published in said paper on **01/12/2013.** Affidavit further says that the said publication is a newspaper published at Bradenton, in said Manatee County, Florida, and that the said newspaper has heretofore been continuously published in said Manatee County, Florida, each day and has been entered as second-class mail matter at the post office in Bradenton, in said Manatee 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 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.

(Signature of Affiant)

Sworn to and subscribed before me this
12 Day of Jan, 2013

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Anne M Beuchat
My Commission EE061438
Expires 02/03/2015

SEAL & Notary Public
Personally Known_____ OR Produced Identification_____
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