

ORDINANCE NO. 2024 - 12

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, CREATING ARTICLE II OF CHAPTER 2 OF THE VILLAGE CODE REGARDING SECURITY OF AND TRESPASSES FROM VILLAGE PROPERTIES AND FACILITIES; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

Findings Related to Trespassing on Village Property

WHEREAS, the Village owns or controls various lands and structures to allow the Village to perform the functions of a municipality, including providing cultural, entertainment and recreational spaces, transportation and utilities infrastructure, and the general administration of government functions; and

WHEREAS, these lands and structures will, by virtue of their designated purposes, afford varying levels of access to members of the public, and varying rights as to how the public may use or conduct themselves on or in such lands and structures; and

WHEREAS, Florida Statutes § 810.08 (trespass in structure) provides that whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the crime of trespass in a structure; and

WHEREAS, Florida Statutes § 810.09 (trespass on property other than structure) provides that a person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure as to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation, commits the crime of trespass on property; and

WHEREAS, the Village recognizes that, as a general rule, citizens have a constitutionally protected liberty interest to be in parks or on other municipal lands of their choosing that are open to the public generally, *City of Chicago v. Morales*, 527 U.S. 41, 119 S.Ct. 1849, 1858, 144 L.Ed.2d 67 (1999), but a person may forfeit this liberty right by trespass or other violation of law, *Church v. City of Huntsville*, 30 F.3d 1332, 1345 (11th Cir. 1994); and

WHEREAS, “the First Amendment does not guarantee access to property just because it is owned by the government”, *Bloedorn v. Grube*, 631 F.3d 1218, 1230 (11th Cir. 2011); and

WHEREAS, “[t]he Government, like any private landowner, may preserve the property under its control for the use to which it is lawfully dedicated”, *Sentinel Commc'ns Co. v. Watts*, 936 F.2d 1189, 1201 (11th Cir. 1991); and

Findings as to Video Recording in Village Offices

WHEREAS, “[t]he First Amendment protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest” but, like all First Amendment protections, this right is “subject to reasonable time, manner and place restrictions”, *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000); and

WHEREAS, likewise, a government “workplace, like any place of employment, exists to accomplish the business of the employer”, and “it follows that the Government has the right to exercise control over access to the [government] workplace in order to avoid interruptions to the performance of the duties of its employees”, *Cornelius v. NAACP Legal Defense & Educ. Fund, Inc.*, 473 U.S. 788, 809, 105 S.Ct. 3439, 87 L.Ed.2d 567 (1985).

WHEREAS, the Village Council finds that the purpose of Village Hall is to conduct legitimate public business of the Village, and that persons who seek to create sound or video recordings of Village employees or contractors performing their duties at Village Hall without the consent of such employees or contractors are disrupting Village business; and

WHEREAS, the Village Council is further aware of a growing phenomenon wherein persons will enter the workplaces of public employees or contractors while video recording and will provoke confrontations which are then posted online, and which have resulted in negative treatment and even threats toward those employees or contractors; and

WHEREAS, the case of *Sheets v. City of Punta Gorda*, 415 F.Supp.3d 1115 (M.D. Fla. 2019) confirms that a municipality has the right to prohibit video and sound recording of municipal employees in workplace settings within municipal business offices without the employees’ consent; and

WHEREAS, the restriction on unconsented recording of Village employees or contractors set forth in this Ordinance is viewpoint neutral because it does not target any viewpoint, ideology, or opinion, but instead regulates the conduct of all Village Hall visitors equally without regard to viewpoint, and applies the same to everyone, no matter why they show up at Village Hall with a recording device; and

WHEREAS, the Village Council also acknowledges that the court in *Pinellas County School Bd. v. SunCam, Inc.*, 829 So.2d 989 (Fla. 2d DCA 2002) has held that based upon the “spirit, intent, and purpose” of the Florida Sunshine Law, a municipality may not prohibit a citizen from videotaping the meetings of a local government governing board through the use of nondisruptive video recording devices; and

WHEREAS, the Village Council finds that the provisions in this Ordinance are in the best interests of the Village and its residents and business community.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

Section 1. Article II of Chapter 2 (Administration) of the Village Code is hereby created as follows:

ARTICLE II. – SECURITY OF AND TRESPASS FROM VILLAGE PROPERTIES

DIVISION 1. – DESIGNATION OF LANDS AND STRUCTURES

Sec. 2-25. – Purpose of village property and offices.

- (a) How buildings, offices, and lands owned or controlled by the village are used, and which persons may gain access to such buildings, offices and lands, is based upon the intended uses and functions of each. For example, certain areas are intended primarily for the use of village employees in the conduct of their business. Other areas may, while primarily intended for the use of village employees in the conduct of their business, from time to time be utilized for the convening of public meetings. Other areas may have limited space which may be open to the public while engaging in legitimate business with village officers or employees. The mere fact that the village owns or controls a building or land does not mean that any person may gain access thereto whenever, and under whatever circumstances, such person may wish.
- (b) The village council chambers and conference rooms in the village hall and any current or future village office annexes are hereby declared to be nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice. All village employee work areas within village hall or office annexes which are designated by appropriate signage as work areas shall be considered as nonpublic forums. Members of the public are prohibited from entering village employee work areas without being escorted by a village officer or employee. All other areas of the village hall and village office annexes are hereby designated as limited public forums and only persons who are present to engage in legitimate public business with village officers or employees shall be authorized. It shall be a violation of this section to be within a nonpublic forum or a limited public forum without authorization.
- (c) Any person who engages in conduct that causes disruptions to the work of the village government shall be deemed to no longer be present within the village-owned or controlled property on legitimate public business. Unauthorized persons found by the village to be within a nonpublic forum or a limited public forum and who refuse to leave the premises upon request, shall be considered a trespasser. A responding law enforcement officer may, at the request of the village, issue a trespass warning notice for this conduct.

Sec. 2-26. – Village manager to allocate and designate property and office spaces.

Subject to the village’s charter and code, and the direction of the village council, the village manager is authorized to allocate space in buildings and on lands owned or controlled by the village to village officials, staff, and contractors to allow such persons to engage in their various official duties.

Sec. 2-27. – Leases and licenses of village properties by third parties.

From time to time, the village may determine that it is in the village’s best interest to grant a lease or license to a private person or entity to make some use of such village property. Examples may include the operation of a concession, or conducting a sports tournament, trade show, or charitable special event. In such cases, where the lease or license grants the right to the lessee or licensee to control the property, including the right to limit access thereto, then such property shall be deemed a non-public forum, and the right of any person to gain access to or to engage in conduct on such property shall be determined by the lessee or licensee.

Sec. 2-28. – Easement and license agreements.

- (a) Unless otherwise provided by law, the village manager is authorized to approve and execute easement or license agreements to allow the village to gain access to property not owned or controlled by the village to allow the village to construct, install, repair, replace or maintain infrastructure, landscaping, or other public improvement projects.
- (b) Unless otherwise provided by law, the village manager is authorized to approve and execute easement or license agreements to allow other government agencies or third parties to gain access to property owned or controlled by the village to allow such third parties to construct, install, repair, replace or maintain infrastructure, landscaping, or other improvements which the manager or council determines to be in the village’s best interests.
- (c) If the village manager or village attorney determine that any such easement or license agreement contains terms or conditions which would create an abnormal legal or financial risk to the village, or would require a budget amendment, such agreements shall be brought to the council for review.

DIVISION 2. – SECURITY AND CONTROL OF PROPERTY

Sec. 2-30. – Authority of village manager.

The village manager is authorized to designate the level of access each village official, employee, contractor or member of the public may have to village owned or controlled buildings and lands, and to take all such measures as the manager determines are necessary to ensure access restrictions are effectively implemented. These measures may include, but are not limited to, the installation of signage indicating given buildings, offices, lands or other spaces are ‘authorized personnel only’ or similar wording, the installation of walls, doors, or other physical barriers, and the installation of cameras and electronic locking and door-access systems.

Sec. 2-31. – Recording in village facilities.

- (a) Except within the council chambers, conference rooms, and other locations in which a public meeting is being conducted pursuant to a public notice, it shall be unlawful to record video and/or sound within village-owned or controlled offices without the expressed prior consent of all persons whose voice or image is to be recorded. This prohibition shall not apply to any law enforcement activities, nor to the operation of any equipment installed by the village pursuant to § 2-26(b).
- (b) In addition to being a violation of this section, if anyone who is observed to be recording video and/or sound within village-owned or controlled offices without the express prior consent of all persons whose voice or image is being recorded, and such person refuses to cease such activity after being advised that such activity is prohibited, such refusal shall be considered to be a disruption to the work of village government and such person shall be deemed to no longer be present within the village-owned or controlled property on legitimate public business. Should such unauthorized person refuse to leave the premises upon request, he or she shall be considered a trespasser. A responding law enforcement officer may, at the request of the village, issue a trespass warning notice for this conduct.
- (c) Persons recording video and/or sound within council chambers during a a public meeting being conducted pursuant to a public notice may not do so in a manner which is disruptive to the conduct of the meeting. The presiding officer of the meeting shall address the disruption in accordance with the council procedures adopted pursuant to charter § 4(8)(a).

DIVISION 3. – TRESPASS FROM VILLAGE PROPERTY

Sec. 2-40. – Authority and basis to trespass.

- (a) The village manager, village clerk, a department head, and any such other village employee or official designated by the village manager (the “issuer”) is authorized to issue a trespass warning notice (“notice”) to an individual on village owned or controlled property (“property”) if:
 - (1) the issuer has first asked the individual to peacefully leave the property, and
 - (2) the issuer determines the facts support a finding that one or more of the following conditions has been met:
 - (A) The individual is on or in village property where posted signs and/or the village code prohibit(s) the individual from being on or in the property at that time. This shall include remaining in a place otherwise open to the public (such as a library or park) after the time the property closes.
 - (B) The individual is in violation of § 2-31 related to recording in village offices.
 - (C) The individual, while otherwise lawfully present on or in village property, is found to have engaged in or is engaging in conduct which would constitute a violation of

a village code or safety, building or program rules, council rule of conduct, or state or federal law, where such conduct:

- (i) is, or is reasonably anticipated to become, disruptive to the program(s) or service(s) being provided on the property (such as intoxication, harassment (sexual or otherwise) of staff or patrons, sleeping or laying in locations not designated for same, expressions of anger, creating excessive or disruptive noise), massing of persons so as to not allow passage of persons or vehicles;
- (ii) has damaged or is reasonably anticipated to damage the real or personal property of the village, another lawful occupant of the property, or of their staff, patrons, vendors or contractors (such as theft, graffiti, exposing computers to harmful software, vandalism); or
- (iii) has endangered or is reasonably believed to endanger the life, health, security, welfare or peaceful use and enjoyment of the property, of staff, patrons, volunteers, vendors or contractors working at or using the property (such as assault, battery, bathing or washing clothes in restrooms, child abandonment, urination or defecation without using restroom facilities, removal of obstruction of official signs, consuming food or beverages in unauthorized areas, tampering with electrical, plumbing, alarm or mechanical systems).

(D) The individual, while otherwise lawfully present on or in village property, has engaged in verbal or non-verbal conduct which would cause a reasonably objective person to believe that she or he or another is or is likely to become in danger from the individual (such as if an employee being disciplined expresses an intent to return with a gun, or a patron or citizen making or posting comments suggesting she or he is contemplating violent actions against a person or persons regularly working or present on or in said property). Citizens retain their right to express displeasure with their government and governmental staff. Therefore, mere harsh criticism of a village official, policy or employee, including threats that the individual will “see that you get fired”, which are not reasonably understood to include a threat of physical violence shall not be a cause for trespass.

(b) A village employee or official shall not exercise any authority to trespass a member of her or his own family member, a business associate (as that term is defined in Florida Statute § 112.312), or an individual with whom the staff member has a friendship, or romantic relationship.

Sec. 2-41. – Procedures to trespass.

(a) In making decisions under this procedure, staff should consider the safety and comfort of all persons in or on village properties, including patrons, contractors, volunteers, vendors and staff; as well as the integrity of operations of the facility and/or program being conducted on or within such properties, and the preservation of village assets.

- (b) If an individual refuses to peacefully leave the property after being asked to leave, the notice will be completed and issued. A copy of the notice should be made and retained prior to giving the original to the individual. Staff may at this point issue the notice to the individual, or contact the sheriff's office to witness the issuance of the notice and assist, if needed, in removal of the individual. Where a law enforcement officer is not able to timely respond to the request, staff should attempt to have at least one other village employee witness the issuance of the notice. However, staff should not attempt to physically remove a trespassed individual or otherwise engage in a physical confrontation, but rather should wait for the arrival of law enforcement to assist with removal or, if needed, arrest of the individual.
- (c) The sheriff's office may be contacted either by dialing 911 or the non-emergency number for the sheriff's office, as circumstances dictate.
- (d) Whenever a notice is issued for any reason, the issuer shall promptly thereafter report the incident to the village manager, alerting the manager to the facts supporting the decision to issue the notice and identifying any witnesses who may have witnessed the conduct.
- (e) The period of trespass placed in the notice shall be a period reasonably calculated to remedy the threat or violation, and shall be reasonably consistent across time. A person shall not be trespassed for a period longer than one year without consulting first with the village manager and village attorney.
- (f) Copies of each trespass notice should be forwarded to the village clerk for filing and retention. Additionally, if law enforcement was not involved, the notice shall be transmitted by the clerk to the individual designated by the sheriff's office to receive such notices.
- (g) If a trespassed individual contacts the village manager indicating that he or she must conduct official business with a village department and can only do so in person, the manager is authorized to allow an exception under such conditions, including the presence of a law enforcement officer, as the manager determines is necessary to ensure the interaction is safe and not disruptive.
- (h) If the trespassed individual returns to the property after having received a notice, staff shall contact the sheriff's office to obtain assistance in enforcement of the notice either by dialing 911 (if an emergency) or the sheriff's non-emergency number.
- (i) No village official below the level of village manager may rescind a notice prior to the expiration of its term. Should an individual who has received a notice and who has either failed to appeal or lost an appeal, subsequently desires to be allowed to regain the right to visit the relevant property, the village manager is authorized to lift the notice if, in the sole judgment of the manager, the individual will behave in an appropriate manner and not again violate the conduct standards and laws applicable to village properties.

Sec. 2-42. – Appeal procedure.

- (a) An Individual wishing to contest the legal or factual basis of the notice will be informed in the notice that he/she must do so in writing within seven days of the date the notice is issued. The village manager or designee will consider, in a prompt and timely manner (usually within 15 days of the date the appeal is received) any timely-filed appeal by a trespassed individual that the individual was not properly trespassed under this procedure.
- (b) The manager or designee may affirm the notice, modify it as to scope or time, or rescind it. The manager or designee will provide a written notice of a decision to the appealing individual in a prompt and timely manner (usually within 15 days of the date the manager or designee meets with the appellant and receives all of the appellant's information).

Sec. 2- 44. – Implementation.

The village manager is authorized to administratively develop and promulgate such procedures and forms as to implement this division 2 which procedures and forms are not inconsistent with this division 2.

Section 2. For purposes of codification of any existing section of the Estero Village Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Village Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Estero Village Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4)(a), prior to the date the public notice of the public hearing for this Ordinance was published, the Village prepared and posted on

its website a business impact estimate which included: a) a summary of the Ordinance, a statement of the public purpose to be served by the Ordinance, b) an estimate of the direct economic impact of the Ordinance on private, for-profit businesses in the Village, c) an estimate of direct compliance costs that businesses may reasonably incur due to the Ordinance, d) identification of any new charge or fee on businesses created by the Ordinance or for which businesses will be financially responsible, e) an estimate of the Village’s regulatory costs and of revenues from any new charges or fees imposed on businesses to cover such costs, and f) a good faith estimate of the number of businesses likely to be impacted by the Ordinance.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

ADOPTED ON SECOND AND FINAL READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

VILLAGE OF ESTERO, FLORIDA

Attest:

By: _____
Jon McLain, Mayor

By: _____
Carol Sacco, Village Clerk