

TRESPASSING

POLICY:

It is the policy of the Omaha Police Department (OPD) to assist in the enforcement of laws related to trespassing. Officers will cite/arrest banned and/or trespassing individuals in city parks, business establishments, government facilities, city schools, and private property, in accordance with Omaha Municipal Codes [20-154](#) and [20-155](#), and Nebraska Revised Statutes (NRS) [§28-520](#) and [28-521](#).

PROCEDURE:

I. Laws Regarding Trespassing

- A. Pursuant to Omaha Municipal Code Section [§20-154](#), it is unlawful for any person to purposely or knowingly enter or be upon the property of another without being invited, licensed, or privileged to do so.
 - 1. A person who has been banned from or asked to leave a location may be arrested for trespassing if they return without permission and/or prior to the expiration of the banishment.
- B. Pursuant to Omaha Municipal Code [§20-155](#), it is unlawful for any person to fail or refuse to leave the property of another after being notified to leave by the owner, occupant, person in control, and/or by their agent.
- C. Pursuant to NRS [§28-520](#), a person commits first-degree criminal trespass if they enter or secretly remain in any building or occupied structure knowing they are not licensed or privileged to do so, and/or a person enters or remains in or on a public power infrastructure facility knowing they don't have the consent to be in or on the facility.
- D. Pursuant to NRS [§28-521\(1\)](#), a person commits second-degree criminal trespass if they enter or remain in any place to which notice against trespass is given by: actual communication to the person, posting in a manner prescribed by law or reasonably likely to come to their attention, and/or fencing or other enclosure designed to exclude intruders.
- E. Pursuant to NRS [§28-521\(2\)](#), a person commits second-degree criminal trespass if they intentionally cause an electronic device, such as an unmanned aircraft (including a drone), to enter into, upon, or above the property of another, including property owned by a person that is leased or rented to another, with the intent to observe another person without their consent in a place of solitude or seclusion.

II. City Parks – Ban Notices and Procedures

- A. Service of Ban Notices.
 - 1. When officers arrest a person for Lewd Conduct, Solicitation of Lewd Conduct, or Indecent Exposure in a City of Omaha owned or operated park, the arrested person shall be served with a ban notice that will be effective upon conviction (City of Omaha Municipal Ordinance [20-111](#)).
 - a. Officers will advise the arrestee that they will be banned for two (2) years from the date of conviction from any City of Omaha park.

- b. The arresting officer shall complete [OPD Form 152](#) (Notice of Trespass - Ban and Bar Letter). The fact that a ban notice was served shall be noted in the Incident Report.
- c. Ban notices will be signed by the arresting officer and the arrestee.
 - (1) A signature from the arrested party is not mandatory. If the arrestee refuses to sign, the officer will write "refused" in the appropriate line.
- d. When possible, a photo will be taken of the arrestee and forwarded with the original ban notice to the Special Operations/Vice Squad. The arrestee's name and RB number will be noted on the photo.

NOTE: OPD officers cannot ban and bar for any other offense not listed above. Officers may contact the City Parks Department if they believe a ban and bar notice is appropriate.

- 2. In all other circumstances, City of Omaha owned and operated parks may issue their own ban and bar notices. In these cases, the City Parks Department **is** responsible for routing the ban and bar notice to the OPD.
- B. The original completed ban and bar notice will be directed to the Special Operations/Vice Squad.
- 1. The secretary of the Special Operations/Vice Squad will maintain an updated list of individuals who have been banned from City of Omaha parks including:
 - a. Name.
 - b. Date of birth.
 - c. Arrest date.
 - d. Conviction date.
 - e. Expiration date.
 - f. Any additional relevant information that is available (i.e., social security number, photo etc.)
 - 2. The list is shared with multiple OPD units/supervisors electronically.
- C. Arrest of Banned Individuals.
- 1. When officers conduct data checks of persons in City Parks, they shall request a "check for park ban" via the Information Channel.
 - a. The Information Operator will advise the requesting officer whether the individual is banned or not.
 - (1) If the party is banned, the Information Operator will advise the requesting officer of the effective date of the ban (it must be within two (2) years to be valid).

2. If the person being checked is banned, the officer will arrest them for trespassing in that park pursuant to Omaha Municipal Code Section [20-154](#).
 - a. Officers shall include the effective date of the ban in the Incident Report.

III. Business Establishments – Ban Notices and Procedures

- A. Officers **may** assist local business establishments within the City of Omaha in the enforcement of banning certain individuals from such establishments.
 1. Members of the local business establishments may identify individuals who are repeat trespassers on their properties and ban them from the property.
 2. A ban and bar letter will be issued to the offending trespasser by a staff member or representative of the individual business establishment who will then escort the person from the property. If the person returns, they will be eligible for arrest for the offense of Trespass.
 - (1) The ban and bar letter will be prepared by the establishment and witnessed by an officer or a representative of the establishment on the scene at the time the ban and bar letter is issued.

NOTE: An example of a “ban and bar” letter that may be used by business establishments is available on the OPD website ([Ban and Bar Letter](#)).

- B. The staff member or a representative of the establishment, will fill out the ban and bar notice and serve it to the offending party.

NOTE: While a signature is preferable, the offending party is not required to sign the ban and bar notice for the service to be valid.

 1. Records of the service of these notices will be kept at the establishment that issued the letter.
- C. Any officer or representative of the establishment may act as a witness for the service of this notice. Officers who act as a witness shall:
 1. Keep the peace during the service of this notice.
 2. Provide the establishment staff member with their name, rank, and serial number as a witness of the service.
 3. Advise the staff member to maintain the original copy which the officer will sign and date.
- D. Officers shall instruct the business establishment to call the police if the offender returns after being issued a ban and bar notice.
- E. Officers who respond to such calls shall request a copy of the ban and bar letter.

NOTE: No arrests under the ban and bar letter will be made, unless the officer can verify that the ban and bar letter is still in effect. Failure to make such verification could render the arrest invalid.

- F. If the offending party returns to the property and is not seen by an officer, but is seen by a member of the business establishment staff, the responding officer shall complete an Incident Report to document the incident/event.
- G. When an arrest is made, a copy of the ban and bar letter shall be included with all other applicable reports.

NOTE: Officers shall include the name of the witness to the ban and bar service and the complaining witness to the subsequent violation in the Incident Report.

IV. Government Facilities

- A. Officers may make arrests under City of Omaha Municipal Codes [20-154](#) (Trespass) and/or [20-155](#) (Request to Leave) on government-owned property/facilities (i.e., libraries, sports facilities, Omaha Housing Authority property, and government operations, such as the Police Department or Omaha Fire Department) if the arrest does not violate the person's rights under the First Amendment of the Constitution.

- 1. These First Amendment concerns do not extend to government-owned property where admission is conditioned upon payment of a fee OR where inappropriate conduct is banned (e.g., disruptive behavior or unreasonable noise at a library).

- B. Officers will not make an arrest solely for violations of City of Omaha Municipal Codes [20-154](#) or [20-155](#) in court or legislative areas if the arrest will result in the denial of citizen access to government.

NOTE: A violation of City of Omaha Municipal Code [20-154](#) or [20-155](#) is not sufficient to remove a person from a court or legislative area. An individual must commit another crime (i.e., disorderly conduct, assault etc.) in order to be expelled from courts or legislative areas.

- C. Officers will notify a supervisor prior to arresting persons for such offenses on government-owned property.

EXCEPTION: Officers do not need to notify a supervisor prior to an arrest if the property is owned by the City of Omaha.

V. Schools

- A. All schools that wish to restrict access will post a notice on every entry into school buildings that the buildings are not public areas and that only students, staff, and others on official business are permitted in the buildings. The posted notice will include that those who violate the order are subject to arrest for Trespass under either City Ordinance or State Statute.

- B. Officers shall arrest all persons who enter restricted school buildings who are not on official business and who disregard posted notices for violation of relevant laws.

- 1. Officers do not need to witness a verbal order from school officials to the suspect in order to take action. This notice is sufficient to make an arrest.
 - 2. Officers shall arrest unauthorized persons for trespassing if the person is identified by school officials as being in or having been in the building.

- C. Officers who make an arrest shall complete an Incident Report.

- 1. The specific school will be the victim.

VI. Request to Leave

- A. The owner/agent or person in control of a residence/private property and/or commercial establishment may order a trespasser to leave the property (City of Omaha Municipal Code [20-155](#)).

NOTE: This ordinance does not apply where both parties have equal rights to occupy the property (e.g., wife and husband in a private residence).

- B. If a trespassing person has been ordered to leave the property and has failed to do so the property owner/agent may request police to have the trespasser removed.
- C. Officers who respond to such calls will adhere to the following procedures:
1. Obtain the identification of the person who has refused to leave.
 2. The officer will witness the person in control of the property once more order the trespasser to leave.
 3. If the trespassing person fails to leave after being ordered to do so in the presence of the officer, the trespasser shall be arrested and charged with a violation of City Ordinance [20-155](#) (Request to Leave).
 4. Complete an Incident Report.
 - a. The officer shall include detailed information about the person giving the notification or ordering the trespasser to leave, including their position with the company or their authority as the person in control of the property.

VII. Unmanned Aircrafts/Drones

- A. According to NRS [§28-521\(2\)](#), a person commits 2nd (Second) Degree Criminal Trespass if they, knowing they are not licensed or privileged to do so, intentionally cause an electronic device such as an unmanned aircraft (i.e. drone), to enter into, upon, or above the property of another, including such property owned by such person and leased or rented to another party, with the intent to observe another person without their consent in a place of solitude or exclusion.
1. Violators may be cited at the time of the incident/report if the offense occurred in the presence of the officer or if/when there is independent evidence of the suspect having committed the offense.

VIII. Outside Employment Situations

- A. Officers shall adhere to all procedures in the OPD "[Outside Employment](#)" policy when they enforce trespassing laws for an outside employer.

NOTE: Officers who provide parking lot security for an outside employer will keep in mind that they must adhere to the above "Request to Leave" procedures when they enforce City of Omaha Municipal Code [20-155](#) (Request to Leave).

REFERENCES:

I. Laws

- A. Nebraska Revised Statute [§28-520](#) and [28-521](#).
- B. Omaha Municipal Code Sections 20-111, 20-154, and 20-155.

II. Previous OPD Orders

- A. Previous General Orders: #98-89, 43-91, 24-93, 50-96, 10-99, 57-17, 9-22, 9-22 Supplement #1 and 26-23.
- B. Previous Information Orders: #370-90.