



PATROL			506.00	
		TRESPASS		
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PURPOSE

The purpose of this standard operating procedure is to establish guidelines for the proactive enforcement of Trespass violations.

SCOPE

This procedure shall apply to all Punta Gorda Police Department personnel.

DISCUSSION

The Punta Gorda Police Department will enforce Florida Statutes and City Ordinances relating to trespassing.

DEFINITIONS

- Authorized Person:** Any owner, their agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, their agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to

public safety or welfare. Note: Written authorization must be given to those, including community associations, acting as an agent for the property owner.

2. **Trespass:** Whoever, without being authorized, licensed or invited, willfully enters or remains in any structure or conveyance or is warned by the owner or lessee of the premises to depart, commits the offense of trespass.
3. **Transient Occupant:** A person, whose residency in a dwelling intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and whose occupancy was intended as transient in nature.

PROCEDURE

I. **TRESPASS WARNING:** The verbal or written warning to not trespass, or to depart and not return, should be given to the subject (trespasser) by the premise/conveyance owner, lessee or authorized person. If authorized by the owner, lessee, or authorized person, an officer may serve notice. An officer is not required to be present for a valid warning to be given. A person to whom a warning is given should not be detained for the purpose of having an officer present to hear the warning. However, physical arrests will only be made in cases where the violation was witnessed by an officer and for which Probable Cause exists.

II. TRESPASS WARNING FORM

A. The Trespass Warning form shall be used to record a Trespass Warning. The documented Trespass Warning form shall contain:

1. The trespasser's name, address, date of birth, race and sex;
2. The name, address/location of the property in question;
3. The date and time the warning was given.

B. Form Distribution:

1. If the officer does not complete the trespass warning electronically, the original copy of the form shall be returned to the Police Department by the end of the officer's tour of duty and shall be submitted to the Records Section by the normal report channels. Records Section personnel shall enter the trespass information into the Records Management System to include scanning the form.
2. The second (yellow) copy of the form shall be given to the property owner or their agent.
3. The third (pink) copy shall be given to the subject that has been trespassed.

III. TRESPASS AND AFFIDAVIT

- A. Florida State Statutes (FS 810) provide for the protection of private property from unauthorized intrusion by a person. It is further dictated that the property owner may authorize an individual, agent, or community association to act as their agent during the property owner's absence.

In an effort to assist property owners who wish to designate authorized agents, the Punta Gorda Police Department shall provide a Trespass Affidavit form to interested property owners.

- B. The property owner must complete the Trespass Affidavit form, have it notarized, and provide the original copy of the notarized affidavit to their representative.
- C. Trespass Affidavits are valid for one (1) year from the date of signature.
- D. A CAD entry shall be made under the premise tab and the affidavit shall be saved under the pdrive.

IV. TRESPASS INCIDENTS

- A. Complainant-Initiated Trespass Incidents:

1. Contact the complainant and conduct a thorough investigation.
2. Determine if the complainant has the authority to give a trespass warning (e.g. property owner, lessee, affidavit holder, etc.).
3. If the complainant indicates a previous written Trespass Warning was given, contact the Communications Section and request a query for prior trespass warnings given to the subject for the property in question.
4. Meet with the subject and investigate their reason/purpose for being on the property.
5. Determine if a trespass exists. Consider the following factors when making the determination:
 - a. Whether access to the property is restricted by posting, fencing, or cultivation;
 - b. Whether the owner or agent has provided notice via actual communication with the subject;
 - c. If the property is a construction site, whether the site is legally posted and identified as a construction site as detailed in Section V(D) of this procedure; or

- d. Whether a previous written Trespass Warning was given to the subject. If a written warning was previously issued and is still valid, the officer may arrest the subject for Trespass after warning.
6. If the subject is still present at the scene, the complainant should convey to the subject their wish to have the subject leave the property. If subject is no longer at the scene, the complainant is not required to convey to the subject their wish to have the subject not return to the property. The officer may do so when issuing the Trespass Warning.
7. If appropriate, complete a written Trespass Warning which informs the subject that they are not welcome on the complainant's property or structure and will be arrested for Trespass after warning if they return for a period of one (1) year.
8. If the subject refuses to leave, the officer may take the subject into custody for Trespass after warning.
9. If the subject is taken into custody, the officer shall have the complainant prepare a voluntary witness statement.
10. The officer shall complete an incident report.
11. When an arrest is made, the arresting officer shall include the following information in the narrative of the arrest Probable Cause Affidavit:
 - a. The date the written Trespass Warning was issued;
 - b. The name of the issuing officer;
 - c. The incident number on the written Trespass Warning; and
 - d. The name of the complainant/owner/agent of the property.

B. Officer-Initiated Trespass Incidents:

1. When an officer locates a suspect they believe is trespassing, the officer shall determine if a written Trespass Warning has been given to the suspect for the property in question by:
 - a. Contacting the property owner, lessee, or agent to obtain a copy of the written Trespass Warning form; or
 - b. Contacting the Communications Section and requesting a query for prior Trespass Warnings given to the suspect for the property in question.
2. An officer finding that a valid written Trespass Warning exists for the suspect and property in question may arrest the suspect for Trespass after warning.

3. Before an officer makes an arrest for Trespass after warning, they shall allow the subject to explain their reason or purpose for being there. If the suspect indicates they received authorization from the owner/lessee/agent to enter the property, the officer should contact the owner/lessee/agent to make this determination before making an arrest. If the officer is unable to contact the owner/lessee/agent and some reasonable doubt exists as to whether or not the subject is actually trespassing, an arrest should not be made. The officer shall complete an Incident Report and release the subject. The officer shall follow up on the matter as soon as possible.
4. If the owner/agent/lessee is contacted and indicates authorization to enter the property was not extended to the suspect, the officer shall inquire as to whether the owner/agent/lessee will pursue prosecution of the suspect for trespassing. If the owner/agent/lessee expresses willingness to pursue prosecution, the officer shall arrest the suspect. If the owner/agent/lessee indicates they will not pursue prosecution, the suspect may be released.
5. To successfully prosecute a case, it will be necessary for the owner/lessee/agent who gave the Trespass Warning, the officer completing the written Trespass Warning form, and the arresting officer to testify. The officer completing the written Trespass Warning must be able to produce the form during the criminal proceedings.
6. When an arrest is made, the arresting officer shall include the following information in the narrative of the arrest Probable Cause Affidavit:
 - a. The date the written Trespass Warning was issued;
 - b. The name of the issuing officer;
 - c. The incident number on the written Trespass Warning; and
 - d. The name of the complainant/owner/agent of the property.

V. TRESPASS STATUTES

- A. Trespass in a Structure or Conveyance ([FS 810.08](#)): Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, 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 offense of trespass in a structure or conveyance.
- B. Trespass on Property other than a Structure or Conveyance ([FS 810.09](#)) - A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in [s. 810.011](#); or
2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass, commits the offense of trespass on property other than a structure or conveyance.
 - a. As used in this section, the term “unenclosed curtilage” means the unenclosed land or grounds, and any out-buildings that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

C. Trespass upon the grounds or facilities of a School ([FS 810.097](#)) - Any person who:

1. Does not have legitimate business on the campus or any other authorization, license, or invitation to enter or remain upon school property; or
2. Is a student currently under suspension or expulsion; and who enters or remains upon the campus or any other facility owned by any such school commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the second degree, punishable as provided in [s. 775.082](#) or [s. 775.083](#).

D. School Safety Zones ([FS 810.0975](#)):

1. “School safety zone” means in, on, or within 500 feet of any real property owned by or leased to any public or private elementary, middle, or high school or school board and used for elementary, middle, or high school education.
2. Any person who does not have legitimate business in the school safety zone or any other authorization, license, or invitation to enter or remain in the school safety zone who shall willfully fail to remove himself or herself from the school safety zone after the principal or designee, having a reasonable belief that he or she will commit a crime or is engaged in harassment or intimidation of students entering or leaving school property, requests him or her to leave the school safety zone commits a misdemeanor of the second degree.
3. Nothing in this policy shall be construed to abridge or infringe upon the right of any person to peaceably assemble and protest.
4. This policy and state law do not apply to residents or persons engaged in the operation of a licensed commercial business within the school safety zone.

E. Trespass within a Hotel or Restaurant ([FS 810.08/509.141](#)) - An operator of any public lodging or public food service establishment may remove or have removed from the

establishment, anyone on the premises who is illegally in the possession of or dealing in a controlled substance(s) [as defined in FS Chapter 893] or if the subject is intoxicated, using profane or lewd language, or conducts themselves in a manner which disturbs the peace and comfort of the other guests.

VI. OTHER TRESPASS SITUATIONS

- A. City Parks: Officers shall follow the guidelines detailed in Punta Police Department Standard Operating Procedure 1116.00 – City Parks.
- B. City Owned, Controlled and Leased Property: Per [City Code Ordinance 15-48](#), the City Manager and designees may have cause to remove any person they determine:
1. Acts in any manner which violates or is reasonably suspected to violate any federal, state or local law, ordinance, rule or regulation; or
 2. Acts in any manner which violates any City rules or policy, including but not limited to the Facility Rules; or any directive on any sign or notice at the public property.
 3. The City Manager and designees are authorized to:
 - a. Warn persons of this prohibited activity and request such activity to cease.
 - b. Warn persons who have entered into or remain in areas where they are not authorized to be, and to request such persons to depart.
 4. Law Enforcement, at its option, at the request of the City may issue a trespass warning notice for these violations of conduct.
- C. Community Areas On Private Property – Complaints of trespassing in community areas of private property (e.g. condominium or apartment parking lots, pools, etc.) present unique challenges to law enforcement:
1. Property managers may trespass individuals who are not guests of tenants or property owners; however, their ability to trespass the guests of a tenant or property owner may be curtailed by the property rental agreement or community association covenants, conditions and restrictions (CCR's).
 2. Upon the request of a property manager to trespass an individual from a community area, the officer shall determine if the individual is a guest of a tenant or property owner.
 3. If the individual is not a guest, the officer shall follow the guidelines in Section IV of this procedure.

4. If the individual is a guest, the officer shall request a copy of the property rental agreement or community CCR's to determine if the manager has the authority to trespass the individual. If the property manager has the authority to trespass the individual, the officer shall follow the guidelines of Section IV of this policy.
- D. [FS 810.09](#)(2)(d) provides that trespass to a construction site is a third degree felony if the property is:
1. Greater than one acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." (see [FS 810.011](#)(5) for signage requirements on properties larger than one acre); or
 2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than two inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." The sign shall be placed at the location on the property where the permits for construction are located.
- E. Domestic Violence Centers – [FS 810.09](#)(2)(g)(2) provides that a person commits a third degree felony if the property trespassed upon is a domestic violence center certified under FS 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."
- F. Vacant Lots - [FS 810.09](#)(3) provides that a law enforcement officer whose department has received written authorization from a property owner, their agent, or community association authorized as an agent for the owner, can communicate an order to leave a property in the case of a threat to public safety or welfare. In order for the PGPD to enforce this statute, the following requirements must be met:
1. The property owner shall complete a Trespass Affidavit form naming the City Punta Gorda Police Department as their representative and submit it to the Records Section. The Records Section will scan the Trespass Affidavit form and supporting documentation to the Records Management System.
 - a. The Trespass Affidavit form shall include the legal description of the property to include lot, block, section, and subdivision.
 - b. The Trespass Affidavit form shall be accompanied by photographic identification and proof of ownership (e.g. copy of Charlotte County tax bill or real property record from the Charlotte County Property Appraiser).

- c. If the property is owned by a business that is part of a chain or large corporation, this authorization should be given by at least a district manager or their equivalent.
 - d. The Trespass Affidavit form shall remain in effect from one year of the date of submission. Should the property owner wish to continue in the program, a new Trespass Affidavit form must be completed. Expired forms shall be purged and destroyed according to the Florida Department of State, Bureau of Archive and Record Management.
2. The property shall be posted in accordance with [FS 810.011](#): Signs are placed not more than 500 feet apart along, and at each corner of, the boundaries of the land, upon which signs there appears prominently, in letters of not less than 2 inches in height, the words "no trespassing" and in addition thereto the name of the owner, lessee, or occupant of said land. Said signs shall be placed along the boundary line of posted land in a manner and in such position as to be clearly noticeable from outside the boundary line.
 3. Due to the difficulties inherent in properly identifying a vacant lot, the method of posting shall include, at a minimum, the lot, block, section, and subdivision.
 4. Posting notices shall also include as follows: *All Punta Gorda Police Department Officers are authorized representatives to advise any person to leave these premises. Failure to vacate the premises after being so instructed may result in arrest for trespassing after warning.*
- G. Transient Occupant: [F.S. 82.035](#) provides a remedy for unlawful detention by a transient occupant of residential property. "Transient Occupant" means a person whose residency in real property intended for residential use has occurred for a brief length of time, is not pursuant to a lease, and who occupancy was intended as transient in nature.

A transient occupant unlawfully detains a residential property if the transient occupant remains in occupancy of the residential property after the party entitled to possession of the property has directed the transient occupant to leave.

1. The officer shall obtain a sworn statement from the party entitled to possession. The officer shall allow the transient occupant to produce documentary or other evidence rebutting any of the following factors:
 - a. The person does not have an ownership interest, financial interest, or leasehold interest in the property entitling him or her to occupancy of the property.
 - b. The person does not have any property utility subscriptions.

- c. The person does not use the property address as an address of record with any governmental agency, including, but not limited to, the Department of Highway Safety and Motor Vehicles or the supervisor of elections.
- d. The person does not receive mail at the property.
- e. The person pays minimal or no rent for their stay at the property.
- f. The person does not have a designated space of their own, such as a room, at the property.
- g. The person has minimal, if any, personal belongings at the property.
- h. The person has an apparent permanent residence elsewhere.

APPROVED



PAMELA R. SMITH, CHIEF OF POLICE

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