

(Published in The Journal Record _____, 2022)

ORDINANCE NO. _____

ORDINANCE RELATING TO MISCELLANEOUS PROVISIONS AND OFFENSES, AMENDING ARTICLE III, OFFENSES AGAINST PROPERTY, OF CHAPTER 30 OF THE OKLAHOMA CITY MUNICIPAL CODE, 2020, BY AMENDING SECTION 30-31, DEFINITIONS; AMENDING, DELETING, AND ADDING DEFINITIONS WITH CONDITIONS THAT CONSTITUTE A TRESPASS; REMOVING SECTION 30-34, TRESPASS ON SCHOOL PROPERTY; ADDING CONDITIONS THAT CONSTITUTE A TRESPASS ON PRIVATE PROPERTY, SECTION 30-35.2, VERIFIABLE PROOF OF RIGHT TO ENTER OR REMAIN OR DO CERTAIN ACTS ON PRIVATE PROPERTY; ENFORCEMENT OF TRESPASS ON PRIVATE PROPERTY; PRIMA FACIE CASE; ENFORCEMENT; ADDING CONDITIONS THAT CONSTITUTE A TRESPASS ON PUBLIC PROPERTY, SECTION 30-35.3, VERIFIABLE PROOF OF RIGHT TO ENTER OR REMAIN OR DO CERTAIN ACTS ON PUBLIC PROPERTY; PRIMA FACIE CASE; ENFORCEMENT; AMENDING AND RENUMBERING SECTION 30-35.2, PENALTIES FOR TRESPASSING TO BE SECTION 30-35.4; AMENDING AND RENUMBERING SECTION 30-35.3 TO BE SECTION 30-35.5, DEFENSES TO TRESPASSING ON PUBLIC OR PRIVATE PROPERTY; ADDING SECTION 30-35.6; CONSTRUCTION AND ENFORCEMENT OF ARTICLE MUST COMPLY WITH FEDERAL AND STATE CONSTITUTIONS AND STATUTES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OKLAHOMA CITY:

SECTION 1. That Chapter 30 of the Oklahoma City Municipal Code, 2020, is hereby amended to read as follows:

CHAPTER 30.

MISCELLANEOUS PROVISIONS AND OFFENSES

ARTICLE III. OFFENSES AGAINST PROPERTY

§ 30-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Embezzlement* means the fraudulent appropriation of property of any person or entity, legally obtained for any use or purpose not intended by its owner, or the secretion of the property with the fraudulent intent to appropriate it for such use or purpose, under any of the following circumstances:
 - (a) Where the property was obtained by being entrusted to that person or legal entity for a specific purpose, use or disposition, and shall include, but not be limited to, any funds "held in trust" for any purpose; or

(b) Where the property is intended to be used for a public or benevolent purpose.

Embezzlement does not require a distinct act of taking, but only a fraudulent appropriation, conversion or use of property;

(2) *Larceny* means the taking of private or public property accomplished by fraud or stealth, with the intent to deprive another thereof;

(3) *Private property* means any property other than public property;

(4) *Public disturbance* means any of the following conduct on public or private property:

(a) Creating a hazardous condition or unnecessary risk to the public;

(b) Causing public alarm without justification;

(c) Defacing, injuring or otherwise temporarily damaging or altering any public or private property without lawful permission;

(d) Intentionally obstructing, impeding or in any way inhibiting access to an entrance to a public building or pedestrian on a right-of-way or parking lot;

(e) Intentionally obstructing, impeding or in any other way inhibiting vehicles or pedestrian traffic upon any street, highway, sidewalk or parking lot;

(f) Fighting or violent or threatening behavior or engaging in, promoting, instigating, encouraging, aiding or abetting fighting, or any similar violent, threatening behavior;

(g) Disrupting any lawful assembly or meeting of persons without lawful authority;

(h) Making any loud or unusual noises, or using any abusive or violent language directed at any person, or threatening to fight or quarrel or challenging anyone else to fight, or shooting off or brandishing any firearms;

(i) Any act by which the peace, comfort, health, welfare or decency of the public is disturbed by reason of the people therein committing or resorting to the sale, distribution, possession or use of any controlled dangerous substance, the sale, distribution, possession or use of which is declared unlawful by State statute;

(j) Any act by which the peace, comfort, health, welfare or decency of the public is disturbed by reason of the people therein committing or resorting to the violation of any ordinance or State statutes regulating the sale, distribution, possession or use of alcoholic beverages including beer containing more than one-half of one percent alcohol by volume;

(k) Any act by which the peace, comfort, health, welfare or decency of the public is disturbed by reason of the people therein committing or resorting to the performance of any sexual act declared unlawful by ordinance or State statute, including, but not limited to, soliciting for purposes of prostitution; or

(l) Any act by which the peace, comfort, health, welfare or decency of the public is disturbed by reason of the people therein committing or resorting to the violation of any ordinance or State statute prohibiting gambling.

(5) *Public place* shall have the same meaning as set forth in Article XIX of this chapter.

(6) *Public property* means ~~that~~ property that which is dedicated to the public use and over which the Federal, State, or ~~City-municipal~~ government, or any county or public school district political subdivision thereof, exercises control and dominion, which definition includes without limitation including school property any outdoor area to which the public has access, including, but not limited to, public rights-of-way, parks, streets, sidewalks, hike and bike trails, transit facilities, bridges, underpasses, and parking lots;

(6) — *School property* means ~~any property or institution devoted primarily to the education of children from preschool through the 12th grade; and~~

(7) *Trespass* shall mean any of the following:

- (a) Each and every actual entry upon ~~the public or private property without the express or the implied consent of the owner or other person responsible for the property or when there are "no trespassing" signs duly posted upon said property; or~~
 - (1) without a verifiable legal right to enter and remain on the property; or
 - (2) when there are "no trespassing" signs duly posted upon said property.
- (b) Remaining upon private property after having been told to leave the premises by the owner, or other person ~~responsible for~~ in lawful possession of the property, or the police, ~~in the event of a public disturbance in a parking lot; or~~
- (c) Remaining, entering, or otherwise being ~~on~~ present upon any private or public property at any time other than during posted hours of operation without the verifiable permission of a person authorized to give such permission.
- ~~(d) Notwithstanding Subsections (a), (b) and (c) of this subsection, where the owner or other responsible person in lawfully possession of any private property is present and available, the owner or other person responsible for the property shall be required to sign a complaint and make a citizen's arrest for trespassing.~~
- (d) Using privately operated business premises which are open to the general public for any purpose which is contrary to the functions or services provided thereon without the verifiable permission of the owner, operator, or agent thereof.
- (e) Entering or remaining upon any privately operated business premises which are open to the general public without the verifiable permission of the owner, operator, or agent thereof.
- (f) Entering or remaining on any private or public property, without the verifiable permission of the owner or other person responsible for the property, when such act has the effect of injuring any property or property rights or of interfering obstructing or injuring any lawful business or occupation carried on by the owner of the property, the owner's agent, or the person in lawful possession.
- (g) Starting or maintaining a fire on private property in violation of any law.
- (h) Placing, leaving, or depositing, or causing to be left, placed or deposited, in, upon or across any pavement, sidewalk, or public way any article, object, or structure, or thing that will obstruct or otherwise encumber the same, unless expressly provided by ordinance or expressly authorized by revocable permit approved by the City Engineer.

(i) Closing a public right-of-way or restricting traffic by use of barricades or fences or other structures unless authorized by a permit issued by the City Engineer, except in cases of emergency or by direction of the Police.

(j) Encampment in a public place or on private property in violation of Section 30-478 of Article XIX of this chapter.

(8) Aggravated Trespass shall mean any of the following:

(a) Any trespass, during which the person trespassing commits an assault or battery, as defined in § 30-16, on another person, or while trespassing does any act that causes another person to be in reasonable fear for his or her safety.

(b) Opening, cutting, breaching, tearing down, or otherwise damaging any fence, bar, rail, chain, cable, lock or similar barrier on any private or public property without the verifiable permission of the owner or other person in lawful possession of the property.

(c) Tearing down, removing, defacing, mutilating, or otherwise damaging any sign, signboard, or other notice on any private or public property without the verifiable permission of the owner or other person in lawful possession of the property.

§ 30-32. Trespass on private property.

No person shall trespass on private property.

§ 30-33. Unlawful possession of or trespass on City property.

No person shall unlawfully take possession of any property, real or personal, belonging to the City, or which the City shall be entitled to possess or commit any willful trespass thereon, or unlawfully withhold possession from the City. The unlawful withholding or possession of any property mentioned shall be deemed a separate and new offense for every day the possession is withheld after the demand.

§ 30-34. ~~Reserved. Trespass on school property.~~

~~No person shall trespass on school property.~~

§ 30-35. Trespass on public property.

No person shall trespass on public property.

§ 30-35.1. Entering on certain posted public property.

(a) No person, other than persons exempted in Subsection (b) of this section, shall enter or remain on any public property, on which signs have been posted prohibiting the possession of any weapons on said public property, who has possession of any illegal weapons, other than firearms.

(b) The provisions of this section shall not apply to commissioned peace officers or duly CLEET licensed armed security personnel who are under contract with the posting entity, which owns, controls, leases or operates the posted premises.

(c) Any person guilty of violating this section shall be guilty of a Class "b" offense.

~~§ 30-35.2. Penalties for trespassing.~~

~~(a) Any person guilty of trespassing upon private, public, school, or other duly posted property shall upon conviction for the first offense, be guilty of a Class "a" offense.~~

~~(b) Any person guilty of a second and/or subsequent offense of trespassing upon private, public, school or other duly posted property after a prior conviction of trespassing on the same property shall upon conviction of the second and/or subsequent offense be guilty of a Class "b" offense.~~

~~(c) Any person guilty of trespassing on private, public or school property at any time other than during posted hours of operation, and who fails to leave immediately after having been told by a police officer in person or by means of a public address system to leave the premises, shall be guilty of a Class "b" offense.~~

30-35.2. Verifiable proof of right to enter or remain or do certain acts on private property; enforcement of trespass on private property; prima facie case; enforcement.

(a) Verifiable proof must exist that a person who enters or remains on private property, and who claims a right to be present on the property, and/or to do certain acts on such property, has such right. Verifiable proof consists of:

a. Deed;

b. Title;

c. Lease;

d. Mortgage document;

e. Rental agreement;

f. License;

g. Easement;

h. Any other verifiable factual or legal right to be present and/or to do certain acts on the private property.

(b) Without the verifiable proof required by Subsection (a) of this section, a prima facie case of trespass on private property is established.

(c) Where the owner or other responsible person in lawful possession of any private property is present and available, the owner or other person responsible for the property shall be required to sign a complaint and make a citizen's arrest for trespassing. If such

person is not present and available, any police officer observing the trespass may issue a warning, issue a citation, or make an arrest.

§ 30-35.3. Defenses to trespassing.

~~It is a defense to prosecution for "trespassing" on private property that a person at the time of the violation:~~

- ~~(1) Has permission from the owner or person in lawful possession or control of the property, to be on the property contrary to posted notice of "no trespassing" and the business hours;~~
- ~~(2) Had lawful authority as a matter of law to be present, including but not limited to utility easement repair, judicial order or license; or~~
- ~~(3) An emergency or necessity reasonably requires that person's presence on the property in order to prevent a different and greater or more significant and immediate harm to that person or someone else.~~

30-35.3. Verifiable proof of right to enter or remain or do certain acts on public property; prima facie case; enforcement.

(a) Verifiable proof must exist that a person who enters or remains on public property, and who claims a right to be present on the property, and/or to do certain acts on such property, has such right. Verifiable proof consists of:

- a. Permission of the City Council or City Manager or his designee, of an authorized officer of the specific public school district, of an authorized officer of the county, of an authorized officer of the State, or of an authorized officer of the Federal government, as applicable based on which public entity owns, manages, or controls the property, to be present on the property; or
- b. Documentation verifying the right to use and/or do certain acts on the public property; or
- c. Any other verifiable factual or legal right to be present and/or to do certain acts on the public property.

(b) Without the verifiable proof required by Subsection (a) of this section, a prima facie case of trespass on public property is established.

(c) Any police officer observing the trespass may issue a warning, issue a citation, or make an arrest

§ 30-35.24. Penalties for trespassing.

(a) Any person trespassing may be warned, cited, or arrested and taken to jail. Any person guilty of trespassing upon private, or public, school, or other duly posted property shall upon conviction for the first offense, be guilty of a Class "a" offense.

(b) Any person guilty of a second and/or subsequent offense of trespassing upon private, or public, school or other duly posted property after a prior conviction of trespassing on the same

~~property~~ shall upon conviction of the second ~~and~~/or subsequent offense be guilty of a Class "b" offense.

(c) Any person guilty of trespassing on private, or public ~~or school~~ property at any time other than during posted hours of operation, and who fails to leave immediately after having been told by a police officer in person or by means of a public address system to leave the premises, shall be guilty of a Class "b" offense.

(d) Any person guilty of aggravated trespassing shall be guilty of a Class "b" offense.

§ 30-35.5. Defenses to trespassing on public or private property.

(1) It is an affirmative defense to a prosecution for violation of this article that a person at the time of the violation:

(a) Had the verifiable permission of the City Council or City Manager or his designee, of an authorized officer of the specific public school district, of an authorized officer of the county, of an authorized officer of the State, or of an authorized officer of the Federal government, as applicable based on which public entity owns, manages, or controls the property, to be present and/or do certain acts on the property; or

(b) Had the verifiable permission of the record property owner or the person in charge of the public or private property to be present and/or do certain acts on the property; or

(c) Had an emergency or necessity reasonably requiring that person's presence in the public place or on the private property to prevent a different and greater or more significant and immediate harm to that person or someone else; or

(d) Had other factual or legal proof of a right to be present and/or do certain acts on the property.

(2) It is no defense to trespassing that a person mistakenly, but in good faith, believed that they had permission, lawful authority, or a right to be on the property of another and/or do certain acts on said property.

§ 30-35.6. Construction and enforcement of article must comply with Federal and State constitutions and statutes.

No provision of this article may be construed or enforced in a manner that violates the legal rights of any person under the Constitution or statutes of the United States or the Constitution or statutes of the State of Oklahoma.

INTRODUCED AND CONSIDERED in open meeting of the Council of the City of Oklahoma City the ____ day of _____, 2022.

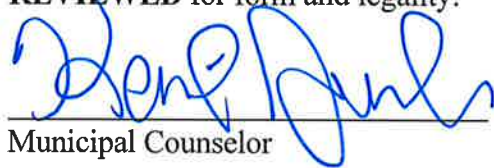
PASSED by the Council and **SIGNED** by the Mayor of the City of Oklahoma City this _____
day of _____, 2022.

ATTEST: (Seal)

CITY CLERK

MAYOR

REVIEWED for form and legality.



Municipal Counselor