

ORDINANCE NO. 2019-03

**AN ORDINANCE ADDING CODE SECTION 130.11
PROHIBITING TRESPASSING**

WHEREAS, the City of Olivia has authority to enact ordinances to provide for the government and good order of the city, the suppression of vice and immorality, the prevention of crime, the protection of public and private property, the benefit of residence, trade, and commerce, and the promotion of health, safety, order, convenience, and the general welfare by such ordinances not inconsistent with the Constitution and laws of the United States or of this state as it shall deem expedient; and

WHEREAS, certain recent Court decisions interpreting Minn. Stat. section 609.605 have severely limited the ability of rightful possessors and occupants of property from excluding unauthorized and unwanted individuals from entering onto the property.

NOW, THEREFORE, the City Council of the City of Olivia, Renville County, State of Minnesota, hereby ordains as follows:

1. Section 130.11 shall be added to the City of Olivia Code of Ordinances as follows:

§ 130.11. Trespassing

(A) Purpose. The purpose of this chapter is to allow an owner of real property to which the public has some implicit right of access to exclude a person from that property if the person has committed a crime on the property or has violated the properly posted or otherwise disturbed the peace or provided rules of conduct for the property.

(B) Definitions. For the purposes of this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(1) Covered Premises. Any improved real property, or portion thereof, within the City of Olivia, to which the public has an implicit right of access, including, but not limited to, places of worship, shopping malls, retail sales facilities, hotels, motel, nursing homes, restaurants, multiple dwellings, hospitals, medical and dental offices, clubs, lodges, office buildings, banks and financial institutions, transit stations, athletic and recreational facilities, personal service establishments, theaters, and day care facilities.

(2) Tenant. Any authorized occupant of a covered premises, or the agent thereof, but excluding an occupant of a domestic use, such as a renter or lessee of a dwelling or apartment, resident in a nursing home, or a hotel or motel guest.

(3) **Property Manager.** Any owner of a covered premises, or the agent of the owner or any tenant who is authorized by the owner to exercise control over the covered premises, including its public common areas.

(4) **Public Common Areas.** All areas of the covered premises, other than private common areas, maintained for the common use of its tenants or of the general public incidental to normal and legitimate activities upon the covered premises, including, but not limited to: the curtilage; parking lots and ramps; private roadways, sidewalks, and walkways; recreational facilities; reception areas; rotundas; waiting areas; hallways; restroom facilities; elevators; escalators; and staircases.

(5) **Private Common Areas.** Other common areas within the covered premises normally within the exclusive control of a tenant, but subject to reasonable regulation by the property manager, including, but not limited to, sales floors, store restroom facilities accessible to customers or clients, checkout lanes, and customer service areas.

(6) **Private Areas.** Areas within the covered premises not normally accessible to members of the public without explicit permission of the person in direct control of the area, including, but not limited to, individual apartment units, employee rest areas and facilities, banquet halls, meeting rooms, and private offices.

(C) **Trespass Notice.** A written notice that contains minimally the following information:

(1) Verbatim copies of Sections (F) and (G) of this Chapter.

(2) The name, and if known, the date of birth, and address of the person to whom the notice is issued and the name of the person's custodial parent or guardian if the person is a juvenile.

(3) A description of the specific conduct that forms the basis for the issuance of the notice.

(4) A description of the specific covered premises or portion thereof to which the notice applies.

(5) The period during which the notice is in effect, including the date of its expiration.

(6) The name, title, address, and telephone number of a person with authority to modify, amend, or rescind the notice.

(D) **Issuance of Trespass Notice.** A property manager or tenant may issue a trespass notice to a person only if there is probable cause to believe the person has, no more than thirty (30) days before the issuance of that notice:

(1) Committed an act prohibited by State statute or City ordinance while on the covered premises; or

(2) Caused a disturbance or violated any rule of conduct for the covered premises that has been conspicuously posted at all public entrances to the covered premises or that the property manager or tenant has provided to the person in writing.

(E) **Coverage of Trespass Notice.**

- (1) A property manager may issue a trespass notice as to the entire property under manager's control, or limit the notice to specific public common areas, private common areas, and/or private areas within the property manager's control. Such a trespass notice must state that the tenant or tenants of the covered premises are precluded from inviting onto the covered premises any person to whom a trespass notice has been issued under this Chapter.
- (2) If issued by a tenant, the trespass notice is effective only as to those private common areas and private areas over which the tenant has control.
- (3) A notice broader in coverage than authorized by this Section shall not be invalid.

(F) Prohibited Conduct.

(1) No person shall trespass in or upon any covered premises of another and, without claim of right, refuse to depart therefrom on demand of the property manager, or a tenant authorized to exercise control over the covered premises or portion involved.

(2) No person served with a trespass notice in conformity with this Chapter shall enter in or upon the premises described therein during its effective period without the written permission of the notice issuer, agent, or assign.

(3) No person shall enter any public facility, utility, or grounds thereto, or any covered premises or portion thereof in violation of conspicuously posted signs prohibiting of restricting access thereto, including, but not limited to, the following: " Trespassing", "Authorized Personnel Only", "Private", "Employees Only", "Emergency Exit Only".

(G) Violations. Any person violating any of the provisions of this Chapter is guilty of a misdemeanor.

(H) Service. All trespass notices issued pursuant to this Chapter must be properly served upon the person named therein as follows:

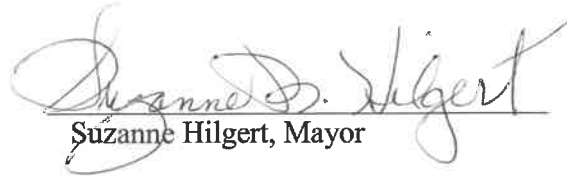
- (1) Personal service documented by either a receipt signed by the person to whom it was issued or an affidavit of the issuer; or
- (2) By certified U.S. Mail, Return Receipt Requested; or
- (3) If the person is arrested or detained by a police officer, the officer may personally serve the notice on behalf of the property manager or tenant and document service in the officer's official police report detailing the incident.

(I) Enforcement Period. No trespass notice shall be effective for more than one year from the date of service.

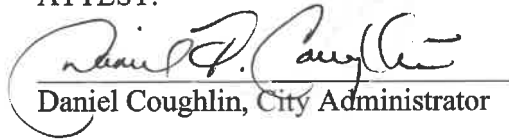
(J) Severability. If any section or portion of any section of this Chapter is deemed invalid or unconstitutional by a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of other sections or portions of sections of this Chapter.

PASSED AND ADOPTED THIS 1st DAY OF April, 2019.

OLIVIA CITY COUNCIL


Suzanne Hilgert, Mayor

ATTEST:


Daniel Coughlin, City Administrator