

Ordinance No. 4037

An Ordinance Adopting a new Chapter 9.50 in the Anacortes Municipal Code Regarding Conduct and Trespassing on City Property

Whereas the City Council may, pursuant to Section 35A.11.020 of the Revised Code of Washington exercise its police powers to adopt ordinances to regulate activity on City property consistent with State, Federal, and constitutional limitations;

Whereas the City Council desires to set a uniform standard for acceptable conduct across all City facilities and other City property;

Whereas the City Council recognizes the importance of providing for due process in review of trespass warnings, and protecting the First Amendment rights of the public;

Now, therefore, the City Council of the City of Anacortes does ordain as follows:

- Section 1. New chapter AMC 9.50 is adopted to read as shown in Attachment A.
- Section 2. Consistent with RCW 35A.12.130, this ordinance takes effect five days after passage and publication.
- Section 3. The facilities division of Public Works is directed to erect signage at city parks and facilities describing the Conduct Prohibited by AMC 9.50.040.
- Section 4. The police chief is directed to provide a report to the City Council of enforcement actions taken pursuant to this ordinance through December 31, 2023, on or before February 1, 2024.

PASSED and APPROVED this 5th day of December, 2022.

CITY OF ANACORTES:



Matt Miller, Mayor

Attest:



Steve Hoglund, City Clerk-Treasurer

Approved as to Form:

Darcy Swetnam
Darcy Swetnam, City Attorney

Attachment A

Chapter 9.50 Conduct and Trespassing on City Property

9.34.010 Purpose and Policy

- A. The purpose of this Chapter is to:
 - 1. adopt a legally sound process for being able to exclude from City property persons whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users;
 - 2. define the process for issuance of trespass warnings and their content; and
 - 3. provide procedures for a recipient of a trespass warning to promptly appeal the warning to protect their right to engage in legitimate activities protected by the state and federal constitutions.
- B. This Chapter is enacted as an exercise of the city’s authority to protect and preserve the public health, safety, and welfare under Article XI, Section 11 of the Washington State Constitution.
- C. This Chapter is intended to be enforced to emphasize voluntary compliance with laws and City rules and so that inadvertent minor violations of this section can be corrected without resort to a trespass warning.

9.34.020 Applicability

- A. This Chapter applies to behavior on all real property in the City of Anacortes owned or leased by the City of Anacortes, including real property that the City owns or operates in common with another jurisdiction, including but not limited to:
 - 1. municipal buildings, including City Hall, the public library, the museum, the Depot, the Anacortes Senior Activity Center;
 - 2. parks, trails, and other open spaces;
- B. This Chapter does not apply to public streets and sidewalks.

9.50.030 Definitions

“Police chief” means the chief of the City of Anacortes Police Department or other person designated by the chief to perform the duties described in this chapter.

“Trespass warning” means a document informing the recipient that they are prohibited from entering a specified place for a specified period of time, consistent with the requirements of this chapter..

9.50.040 Prohibited Conduct

- A. The following behavior is prohibited by this Chapter in the places to which this Chapter applies:

1. **Dangerous behavior.** Any behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.
2. **Illegal behavior.** Any behavior that is prohibited by the laws of the United States, Washington State, Skagit County, or the City including, but is not limited to, any of the following types of behavior:
 - a. Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person;
 - b. Selling or using alcohol or drugs;
 - c. Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property);
 - d. Assaulting staff or other patrons;
 - e. Urination or defecation other than in facilities intended for that function;
 - f. Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts);
 - g. Vandalism or placing graffiti;
 - h. Starting a fire in an undesignated area.
3. **Unreasonably disruptive behavior.** Any behavior that, in consideration of the nature, scope, use and purpose of the publicly owned property in question, unreasonably interferes with others' use and enjoyment of publicly owned property, including but not limited to:
 - a. Use of unreasonably hostile or aggressive language or gestures; or
 - b. Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or
 - c. Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or
 - d. Unreasonably interfering with the free passage of staff or patrons in or on public property; or
 - e. Behavior that is unreasonably inconsistent with the normal use for which the publicly owned property was designed and intended to be used (e.g., engaging in loud conversation in a library setting).

B. Exception. Any constitutionally protected action or speech is excluded from the prohibited conduct described in this section.

9.50.050 Authority to issue trespass warnings – Service.

A. Officers of the city police department are authorized to issue a trespass warning to any person who the officer has probable cause to believe has violated AMC 9.50.040.

- B. The warning may be based upon observation by a police officer or a city employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.
- C. The person need not be charged, tried, or convicted of any crime or infraction for the trespass warning to be issued or be effective.
- D. Trespass warnings may be served upon the person subject to the warning using one of the following methods:
 - 1. first class mail to the person at the person's last known address;
 - 2. personally; or
 - 3. if the person cannot be located by one of the first two methods after a diligent search, by publication in a newspaper of general circulation.
- E. Service is effective:
 - 1. on the date the notice is personally received;
 - 2. in the case of service by mail, three days after the notice is mailed; or
 - 3. in the case of service by publication, 15 days after publication.
- F. The trespass warning becomes effective, and the duration starts to run, upon the effective date of service.

9.50.060 Content of trespass warning.

- A. The trespass warning must be in writing and contain:
 - 1. the date of issuance;
 - 2. a description the behavior that is the basis for the trespass warning;
 - 3. the place(s) of exclusion consistent with subsection (B) of this section;
 - 4. the length of exclusion consistent with AMC 9.50.070;
 - 5. the signature of the issuing police officer;
 - 6. a description of the consequences for failure to comply consistent with AMC 9.50.100.
- B. A trespass warning for a place or places may not prohibit access to another place or places that are unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

9.50.070 Duration of exclusion.

- A. The duration of exclusion for a trespass warning issued under this Chapter will be for one year from the date of issuance.

9.50.080 Review procedure.

- A. For good cause, the police chief may rescind, shorten, or modify a trespass warning consistent with this section.
 - 1. A written request for review of a trespass warning must be delivered to the city clerk no later than seven business days after it is issued.
 - 2. The police chief must hold a review hearing on the decision within one week of receipt of a request for review of a trespass warning.
 - 3. The city clerk must notify the person subject to the warning of the date, time, and place, telephone number or electronic means at or by which the review will be conducted.
 - 4. The review decision must be communicated no later than five business days following the review.
 - 5. The review decision must inform the person subject to the warning of the right to seek judicial review of the decision and that the time frame for seeking judicial review runs from the date of service of the written decision.

- B. For purposes of this section, “good cause” to rescind, shorten, or modify a trespass warning must be found where any of the following are true:
 - 1. The person subject to the warning demonstrates by a preponderance of the evidence that his or her conduct was intended to be expressive conduct protected by the First Amendment;
 - 2. The person subject to the warning was not given warning that the conduct in question was subject to a trespass warning;
 - 3. The trespass warning was based solely upon the statement of a third party, was not observed personally by the issuing officer or a city employee, would not ordinarily be relied upon by police officers in the determination of probable cause, and the person subject to the warning claims that he or she did not commit the action for which he or she was warned; or
 - 4. Reasonable minds could differ on the question of whether the conduct in question was unreasonably disruptive to others on the same property at the same time.

- C. At the review hearing, the violation must be proved by a preponderance of the evidence to uphold the trespass warning. The police chief may consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the person committed the violation as described. The police chief may consider information that would not be admissible under the evidence rules in a court of law but that the police chief considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the person need not be charged, tried, or convicted for the warning to be upheld.

- D. The decision of the police chief constitutes the city's final decision. A person seeking judicial review of the city's final decision must file an application for a writ of review in Skagit County superior court within 15 days of receipt of the city's final decision.
- E. The trespass warning remains in effect during the pendency of any administrative or judicial proceeding.
- F. No determination of facts made by the police chief may have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and may not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

9.50.090 Permitted Entry Notwithstanding Warning

- A. The police chief may, upon request, authorize a person who has received a trespass warning in accordance with this Chapter to enter City property to exercise his or her First Amendment rights or to conduct government business, if there is no other reasonable alternative location to exercise such rights or conduct such business. Authorization must be in writing and specify the duration of the authorization and any conditions thereof, which may include a requirement that the person be escorted by a police officer.
- B. The police chief must issue a decision on a request for entry onto public property by the recipient of a trespass warning during a period of exclusion no later than 48 hours after receipt of the request.

9.50.100 Violation – Penalty.

- A. Any person who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this Chapter may be arrested for criminal trespass as defined in Chapter 9A.52 RCW, except as otherwise provided in this section.
- B. This Chapter does not supplant the City's ability to enforce any other section of the Anacortes Municipal Code regulating behavior on public property or the City's ability to pursue other civil or criminal remedies and penalties.
- C. A city employee who becomes aware of a violation of a trespass warning issued in accordance with this Chapter is expected to notify the Police Department.


Certificate Of Completion

Envelope Id: 93EC2FBA91AA41B49BEA54AABD99FDEE	Status: Completed
Subject: SIGNATURE REQUIRED: Approved Ordinance 4037	
Source Envelope:	
Document Pages: 7	Signatures: 3
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	City Clerk
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	PO Box 547
	904 6th St
	Anacortes, WA 98221
	cityclerk@cityofanacortes.org
	IP Address: 23.90.91.2

Record Tracking

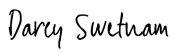
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12/7/2022 4:04:16 PM	cityclerk@cityofanacortes.org	

Signer Events

Signature	Timestamp
Steve Hoglund steveh@cityofanacortes.org City Clerk/Treasurer City of Anacortes Security Level: Email, Account Authentication (None)	 Sent: 12/7/2022 4:06:24 PM Viewed: 12/8/2022 8:32:16 AM Signed: 12/8/2022 8:32:25 AM
Signature Adoption: Drawn on Device Using IP Address: 23.90.91.2	


Electronic Record and Signature Disclosure:

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ID: 9b1630a8-aa5f-4ac5-93eb-5700d104d979

Darcy Swetnam darcys@cityofanacortes.org City Attorney Security Level: Email, Account Authentication (None)	 Signature Adoption: Pre-selected Style Using IP Address: 23.90.91.2	Sent: 12/8/2022 8:32:27 AM Viewed: 12/12/2022 8:20:42 AM Signed: 12/12/2022 8:20:57 AM
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Electronic Record and Signature Disclosure:

Accepted: 12/12/2022 8:20:42 AM
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Matt Miller mattm@cityofanacortes.org Mayor City of Anacortes Security Level: Email, Account Authentication (None)	 Signature Adoption: Uploaded Signature Image Using IP Address: 23.90.91.2	Sent: 12/12/2022 8:20:58 AM Viewed: 12/12/2022 8:28:06 AM Signed: 12/12/2022 8:28:10 AM
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events**Signature****Timestamp****Editor Delivery Events****Status****Timestamp****Agent Delivery Events****Status****Timestamp****Intermediary Delivery Events****Status****Timestamp****Certified Delivery Events****Status****Timestamp**

Carbon Copy Events	Status	Timestamp
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
