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# City of Daytona Beach Special Magistrate

City Commission Chambers, 301 S Ridgewood Ave, Daytona Beach, FL 32115

**Robert J. Riggio, Special Magistrate**

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## October 21, 2021 Minutes

### Trespass Appeal Hearing

Attendees:

Robert J Riggio, Special Magistrate

Staff present:

Mr. Anthony Jackson, Assistant City Attorney

Scott W. Lee, Police Captain

Cortland Lampe, Police Liaison

Officer Nicolas Kalimnios

Officer Fertz Gaspard

Ms. June Barnes, Board Secretary

Mr. Joe Graves, Audio/Visual

Mr. Xavier Campbell, Audio/Visual

Approval of Minutes by:  \_\_\_\_\_ Special Magistrate

Mr. Riggio called the meeting to order at 10:15 a.m. after waiting for the Respondent to appear.

The Respondent was not present.

Mr. Riggio stated the burden is on the City to provide clear and convincing evidence that the action was appropriate.

City Attorney, Anthony Jackson agreed.

Mr. Riggio called the case for appeal of a trespass warning issued for One Boardwalk, which is City property, pursuant to City Ordinance 83-43.

Ms. Barnes swore in Officer Kalimnios and Officer Gaspard.

Mr. Jackson stated the appeal is a result of an ordinance passed by the city that anyone in violation of park rules would be issued a trespass warning. He stated that was done in this case. He stated Mr. Brian J. Gomez was issued a violation for violating park rules and panhandling on October 5<sup>th</sup>, 2021. He stated the criminal case is still pending in County Court.

Mr. Jackson stated the exhibits that he will be entering have previously been sent to the Magistrate for his consideration in making a decision. Mr. Jackson submitted the following documents into evidence:

Exhibit #1 - Trespass Warning Form dated 10/5/2021.

Exhibit #2 – Daytona Beach Police Department 707 Charging Affidavit issued by Officer Gaspard.

Mr. Jackson called Officer Kalimnios.

Officer Kalimnios stated the incident happened on October 5<sup>th</sup> at the Boardwalk in Daytona Beach. He stated he was dispatched to the location of an unknown male selling food without a City permit by the Joyland Arcade. He stated he spoke to the business owner and he pointed him out. He stated he also came in contact with the Hilton security that did also not want him in the area taking business from their restaurant. He stated he approached and informed Mr. Gomez that what he was doing was unlawful and that he did not have a City permit. He stated Mr. Gomez told him he had done this for years and other officers told him it was fine. Officer Kalimnios stated it is noticed on the City Park signs that no business should be conducted without a permit.

Mr. Jackson introduced the following exhibit.

Exhibit #3 – Photocopy of the Park Rules Sign located at One Boardwalk.

Officer Kalimnios stated Officer Gaspard came to back him up and they went back and spoke to Mr. Gomez and informed him he was breaking the City laws by not keeping his area clean. He stated Officer Gaspard recorded the interaction on his AXON camera. He stated they also informed him of the City's panhandling ordinance.

Mr. Riggio asked the officer what Ordinance Mr. Gomez was being charged with.

Officer Kalimnios stated violation of the park rules and the panhandling ordinance.

Mr. Riggio asked the officer what the basis of the panhandling charge was.

Officer Kalimnios stated Mr. Gomez had a very large grill set up attached to a refrigerator on a wagon with a menu in multi-colored letters and to go plates and all kinds of food that he told him he was going to give out to people for free. He stated he does not have a permit to conduct that kind of business. He stated after they informed him of the rules and Officer Gaspard left he stepped back to his car. He stated he then observed him handing a woman a plate of food and having a very, very brief conversation and she walked away and never came back. He stated Officer Gaspard came back and they placed Mr. Gomez under arrest.

Mr. Riggio asked the officer what made him consider this as panhandling instead of just handing out food to people. He stated he understands panhandling as giving something to someone at many times it value.

Officer Kalimnios stated Mr. Gomez did not have any prices for the things he was giving away.

Mr. Jackson asked if there was some communication that Mr. Gomez was getting any donations or monetary benefit?

Officer Kalimnios stated Officer Gaspard had a conversation with the woman that Mr. Gomez was with and she gave an in-depth description of exactly what he was doing. He stated he was filling out paperwork and talking to the transport drivers.

Mr. Jackson asked for the ability to recall Officer Kalimnios and called Officer Fertz Gaspard.

Mr. Riggio agreed and asked Officer Kalimnios to remain in the building.

Mr. Jackson called Officer Fertz Gaspard. He stated he understood the necessity to hear the case in full and that either the violation of the park rules or the panhandling ordinance are the basis for trespass under AD 643 Subsection 8.

Officer Gaspard stated he has been with the Daytona Beach Police Department for 6 years and was at the scene involving Mr. Gomez on October 5<sup>th</sup> and in the past. He stated Mr. Gomez came with an unknown female friend. He stated she was a black female and he ran her name but he cannot remember what it was and explained what was going on. He stated she uttered that he does hand out food and will accept donations. He stated in his experience, it is the large grill, menu, to-go plates and random people walking up that indicates panhandling.

Mr. Jackson asked the officer if this is something he sees occurring on the Boardwalk.

Officer Gaspard stated every day. He stated they say they are not taking money even after he has evaluated the situation and observed the actual hand-to-hand transactions of money. He stated there were two separate calls, one from the Hilton who observed him selling food from the cart. He stated before he left they instructed Mr. Gomez to read the rules that were posted on the park signs. He stated Mr. Gomez was advised multiple times to read the signs because if they came back and the same situation continues that he is subject to arrest. He stated Mr. Gomez argued with him a bit and they left.

He stated they ended up coming back on a separate call and they placed him in custody. He said there were several items scattered across the ground and he had umbrellas. He stated Mr. Gomez had a canopy hung up in the landscape and on a tree. He stated Mr. Gomez had coolers on the ground and a backpack and miscellaneous items scattered around the cooler which violates keeping the area clean. He stated it is similar to conducting business without a permit.

Mr. Riggio asked to clarify that Mr. Gomez was cited with two separate ordinances – one for panhandling and one for selling food items without a permit.

Mr. Jackson stated he was also cited for violation of park rules which was previously provided as Exhibit #3. He stated the administrative authority of trespass is based on City Ordinance 86-43 which was submitted as Exhibit #4. He stated the charges were based on the Officers concluding that the park rules were violated.

Exhibit #4 – City of Daytona Beach Ordinance 86-43.

Mr. Jackson stated the charges, for the sake of the criminal prosecution, are the violation of park rules, as well as the violation of a panhandling ordinance.

Mr. Riggio asked if this was implied as the boardwalk is an area identified as a city park with a city regulated area.

Mr. Jackson stated it has been regulated by signage.

Officer Gaspard stated there are approximately 4 signs to the north and 3 signs to the south of the location of Mr. Gomez. He stated that whichever direction you were to walk, you will pass multiple signs on the property, large signs that state all of the park rules and that the actions that form the basis of why Mr. Gomez was cited took place on city property subject to these ordinances.

Mr. Jackson stated they have presented all of their argument.

Mr. Riggio stated he has heard the testimony and reviewed the exhibits and in his mind there are three separate bases for the actions that were taken by the City. He stated one being the selling of items on city property without a license and the testimony is clear that this was going on. He stated the second being that there were violation of the park rules as relates to that items that he had present with him causing him not to be in conformity with those rules and he finds that the city has presented evidence sufficient to demonstrate that. And thirdly, there is the issue of panhandling, which is perhaps a little weaker than the other, but is coupled with corroborating testimony and the fact that the officers witnessed materials being handed out and apparent compensation being given through the testimony provided. He stated the city has proved with clear and convincing evidence for all three items, that there were violations of city ordinances that would warrant the issuance of the trespass warning.

**DISPOSITION:** By order on petitioner's appeal of trespass warning, pursuant to Chapter 86-43, this matter came before the Special Magistrate for the City of Daytona Beach at public hearing on October 21, 2021, regarding the Petitioner's request for appeal and having heard testimony of the parties and being otherwise fully advised in the premises, it is hereby ordered and adjudged the Petitioner's appeal of trespass warning issued to him on October 5, 2021 pursuant to Ordinance 86-43 is denied. The trespass warning issued on October 5, 2021 shall remain in full force and effect and done and ordered on this 21<sup>st</sup> day of October 2021.

The meeting was adjourned at 10:48 a.m.