

**TOWN OF MENDON**  
*Policy for Notice of Trespass on Town Property*

**DRAFT 6/8/23**

1. **Purpose.** The purpose of this policy is to enable town officials in charge of town property to issue a notice of trespass and enforce that notice against an individual whose behavior is dangerous, illegal, or unreasonably disruptive, while recognizing the existing rights of individuals to engage in constitutionally protected activities on public or city-owned property.
2. **Town official authorized to issue notice of trespass.** The selectboard hereby expressly delegates its authority to issue a notice of trespass to any town official who is in charge, at the time of issuance, of the town property for which the notice of trespass is issued and the town constable (an “Authorized Official”).
3. **Issuance of notice of trespass.** If an individual violates any town ordinance, rule or regulation (including any code of conduct), or State law, or commits a Prohibited Act (as defined in Paragraph 6 below) or within a public building fails to follow the lawful directive of an Authorized Official, that Authorized Official may issue a notice of trespass for a violation which was committed while on or within a town facility, building, or outdoor area, including a municipal park.
4. **Verbal warning.** Prior to issuance of the notice of trespass, the Authorized Official must ensure that the person to whom a notice of trespass will be issued has been informed of the basis for the notice of trespass and has been given an opportunity and reasonable amount of time to change or address the underlying conduct – that is, a verbal warning must have been issued. No verbal warning is required if the reason for the trespass is an accusation of serious harmful conduct such as arson, assault, harassment or a threat of such conduct.
5. **Service of notice – Content.** In most cases, the notice of trespass must be hand-delivered to the person to whom it is issued by an Authorized Official or a law enforcement officer; however, if the circumstances do not permit safe delivery of the notice in person, in the discretion of the Authorized Official, it may be mailed to the individual’s legal address. The written notice of trespass shall detail the basis for which the notice of trespass was issued, the length of time for which the notice of trespass remains in effect, and the consequences for violating the terms of the notice of trespass; it shall also advise the recipient of the right to contest the notice of trespass and the location at which to file the appeal.
6. **Length of notice of trespass.**
  - a. For minor, first-time violations, such as Class C prohibited acts (as defined below), the notice may be issued for up to one (1) day.

- b. For moderate violations, such as Class B prohibited acts (as defined below), or for a second offense within one (1) year, the notice may be issued for up to thirty (30) days.
- c. For more serious violations, such as Class A prohibited acts (as defined below) or a third offense within one (1) year, the notice may be issued for up to one hundred eighty (180) days.
- d. Generally, it is expected that the length of time should reflect the severity or repetitiveness of the underlying conduct. Only for more serious offenses such as conduct that involves violence, harassment, or threats of physical harm to an individual may a notice be issued for over one hundred eighty (180) days, and in any event, a notice of trespass may not be issued for more than two (2) years.
- e. *Prohibited acts—Class A.* The following acts are designated as Class A acts that are prohibited on town property:
  - i. Activities or behavior that may result in injury or harm to any other person, including challenging another person to fight or engaging another person to fight.
  - ii. Directing a specific threat of physical harm against an individual, group of individuals, or property.
  - iii. Engaging in sexual conduct or lewd behavior.
  - iv. Possession, use, selling, or distribution of any regulated drug.
  - v. Destroying, abusing, or damaging town property or resources.
- f. *Prohibited acts—Class B.* The following acts are designated as Class B acts that are prohibited on town property:
  - i. Engaging in conduct that unreasonably disrupts or interferes with the normal operation of the town, or unreasonably disturbs town staff or patrons, including but not limited to, conduct that involves: (a) the use of abusive, threatening, or harassing language or gestures; (b) conduct that creates unreasonable noise; (c) conduct that consists of loud or boisterous physical

behavior or talking; or (d) entering staff-only spaces without permission.

ii. Being under the influence of alcohol or a regulated drug.

g. *Prohibited acts—Class C.* The following acts are designated as Class C acts that are prohibited on town property:

i. Using town resources in a manner inconsistent with their intended use.

ii. Possessing an open or unsealed container which contains an alcoholic beverage, or consuming or attempting to consume any alcoholic beverage, except as allowed at a town-approved event.

iii. Consuming or otherwise using marijuana.

iv. Smoking or vaping any substance of any kind.

v. Use or preparation of tobacco products, bidis, beedies, or tobacco substitutes as those terms are defined in 7 V.S.A. § 1001.

vi. Failing to abide by posted town rules.

vii. Failing to follow the reasonable direction of town staff related to a town rule or policy.

viii. Interfering with the free passage of town staff or visitors to town property.

ix. Primarily making use of the town property for sleeping.

## 7. **Appeal.**

a. *Process.* The recipient of a notice of trespass may appeal the notice of trespass by filing an appeal, in writing, within seven (7) calendar days of the issuance of the notice. The written appeal shall include the appellant's name, address, phone number, and indicate whether a hearing is requested. No fee shall be charged for filing the appeal. The appeal shall be filed at the location designated in the notice of trespass. Except for in exigent circumstances, any such appeal shall

stay the operation of the notice of trespass beginning the day after the appeal is filed, pending a written decision.

b. *Exigent circumstances.* For purposes of this policy, “exigent circumstances” means any situation in which the Authorized Official reasonably determines that a person presents an immediate and substantial threat or danger to the health, safety, or welfare of another person. In such circumstances, an appeal shall not stay the operation of the notice of trespass.

c. *Hearing panel.* All appeals made under this chapter shall be heard by the selectboard.

d. *Procedure.* When an appeal is filed, the selectboard shall meet within ten (10) business days to consider the appeal. If no hearing is requested, the selectboard may consider any written submissions as part of its decision. If a hearing is requested, the appellant must be provided at least three (3) business days’ written notice of the date, time, and location of the hearing. The selectboard shall allow oral and/or written testimony and evidence from the appellant and the Authorized Official. In reviewing the notice of trespass, the selectboard will utilize the preponderance of the evidence standard with the burden of proof on the charging Authorized Official or their representative. The selectboard shall issue a written decision within ten (10) business days of the hearing. The selectboard may extend the time period for hearing if the operation of the notice of trespass is stayed or if the appellant consents. The appellant shall have no right to have a hearing rescheduled.

e. *Waiver requests.* An individual who has received a notice of trespass may request a waiver from the issuing Authorized Official (or in the absence of that official from another Authorized Official) in order to access the property for which the notice of trespass was issued for purpose of work, residence, access to government services, or the exercise of constitutionally protected activities. If that waiver is denied, an appeal may be made to the selectboard. In addition, in the context of any appeal of a notice of trespass, selectboard shall also consider any waiver request from the individual appealing.

8. **Enforcement.** Once a notice of trespass has been issued, unless the notice has been stayed by receipt of an appeal or the notice has been overturned by a decision on appeal, a violation of the notice may be enforced pursuant to 13 V.S.A. § 3705 (a criminal violation).