

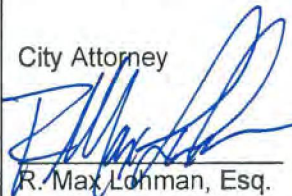
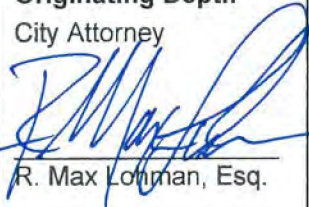
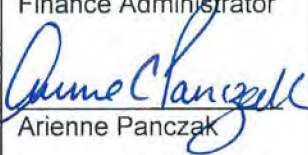

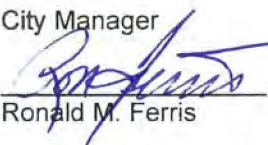
**CITY OF PALM BEACH GARDENS
CITY COUNCIL
Agenda Cover Memorandum**

**Meeting Date: December 6, 2023
Ordinance 29, 2023**

Subject/Agenda Item: Second and Final Reading and Public Hearing – Implementing Regulations Related to Public Access to City-Owned, Controlled, and Leased Property

[X] Recommendation to APPROVE

[] Recommendation to DENY

Reviewed by: City Attorney  R. Max Lohman, Esq.	Originating Dept.: City Attorney  R. Max Lohman, Esq.	Costs: \$ N/A (Total) \$ N/A Current FY	Council Action: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/ Conditions <input type="checkbox"/> Denied <input type="checkbox"/> Continued to:
Finance Administrator  Arienne Panczak	Advertised: Date: 11/26/2023 Paper: Palm Beach Post <input type="checkbox"/> Not Required	Funding Source: <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Other	Attachments: <ul style="list-style-type: none">• Ordinance 29, 2023
Submitted by: Department Director  R. Max Lohman, Esq.	Affected parties <input type="checkbox"/> Notified <input type="checkbox"/> Not required	Contract/Agreement: Effective Date: N/A Expiration Date: N/A Budget Acct.#: N/A	
Approved by: City Manager  Ronald M. Ferris			

BACKGROUND:

The City owns, controls, and leases substantial facilities, properties, and public infrastructure. The City Council has determined that a need exists to provide reasonable time, place, and manner regulations on public access to and the public's conduct within City-owned, controlled, and leased properties. It is not the City Council's intention to regulate the content of any person's or entities' speech in manner or form whatsoever.

Consistent with U.S. Supreme Court decisions, public access to areas within enclosed facilities owned, controlled, and leased by the City of Palm Beach Gardens may be restricted depending upon whether such areas are classified as a "designated public forum," "limited designated public forum," or "nonpublic forum."

The City has determined that it is a valid municipal purpose to provide such regulations so that the public will be informed of the classification of City-owned, controlled, and leased facilities, which shall be determined based upon the facilities' intended use.

CITY COUNCIL

On November 2, 2023, the City Council approved Ordinance 29, 2023 on first reading by a vote of 5 to 0.

STAFF RECOMMENDATION: Staff recommends approval of Ordinance 29, 2023 as presented on second and final reading.

ORDINANCE 29, 2023

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, AMENDING CHAPTER 42 - OFFENSES AT ARTICLE I. - GENERAL OFFENSES BY ADOPTING NEW SECTION 42-4. ENTITLED "CONTROL OF ACCESS TO CITY-OWNED, CONTROLLED, AND LEASED PROPERTY" IN ORDER TO IMPLEMENT REGULATIONS RELATED TO PUBLIC ACCESS TO SUCH PROPERTIES, PERMIT AND PROHIBIT CONDUCT WITHIN SAME, AND AUTHORIZE THE CITY MANAGER TO MANAGE SUCH PROPERTIES; PROVIDING THAT EACH AND EVERY OTHER SECTION AND SUBSECTION OF CHAPTER 42 - OFFENSES SHALL REMAIN IN FULL FORCE AND EFFECT AS PREVIOUSLY ADOPTED; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AND AUTHORITY TO CODIFY; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City owns, controls, and leases substantial facilities, properties, and public infrastructure; and

WHEREAS, the City Council has determined that a need exists to provide reasonable time, place, and manner regulations on public access to and the public's conduct within City-owned, controlled, and leased properties; and

WHEREAS, it is not the City Council's intention to regulate the content of any person's or entity's speech in manner or form whatsoever, and

WHEREAS, consistent with U.S. Supreme Court decisions, public access to areas within enclosed facilities owned, controlled, and leased by the City of Palm Beach Gardens may be restricted depending upon whether such areas are classified as a "designated public forum," "limited designated public forum," or "nonpublic forum"; and

WHEREAS, the City has determined that it is a valid municipal purpose to provide such regulations so that the public will be informed of the classification of City-owned, controlled, and leased facilities, which shall be determined based upon each facility's intended use; and

WHEREAS, the City Council deems approval of this Ordinance to be in the best interests of the health, safety, and welfare of the residents of the City of Palm Beach Gardens and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PALM BEACH GARDENS, FLORIDA, that:

SECTION 1. Chapter 42 - Offenses of the Code of Ordinances of the City of Palm Beach Gardens, Florida, is hereby amended by adopting new Section 42-4. - Control of access to City-owned, controlled, and leased property; provided that Section 42-4. shall hereafter read as follows:

Sec. 42-4. - Control of access to city-owned, controlled, and leased property.

(a) Consistent with decisions of the U.S. Supreme Court, public access to areas within enclosed facilities owned, controlled, and leased by the City of Palm Beach Gardens may be restricted depending upon whether such areas are classified as a "designated public forum," "limited designated public forum," or "nonpublic forum." Areas within enclosed facilities owned, controlled, and leased by the City of Palm Beach Gardens are classified based upon their intended use. For example: there are certain areas which are intended primarily for the use of City employees in the conduct of their business; there are certain areas which, while primarily intended for the use of City employees in the conduct of their business, may from time to time be utilized for the convening of public meetings; there are certain limited areas which may be open to the public while engaging in legitimate business with City officers or employees; and there may be certain areas which are primarily intended for the convening of public meetings.

(b) Definitions:

(1) *Employee work area* means an area to which public access is prohibited unless members of the public are escorted by an employee. Such areas are primarily intended for City employees to work and perform their duties. This specifically includes those areas within City facilities that require a City employee identification badge to access, i.e., those areas that are secured by maglock doors.

(2) *Non-employee work area* means an area which is generally accessible to members of the public during normal city business hours while engaging in legitimate business with City officers or employees or while participating in a City program, activity, or event.

(c) The City Manager is hereby authorized to manage public access to enclosed City-owned, controlled, and leased property. In the performance of such responsibilities, the City Manager shall have the authority to identify which areas are to be considered designated public forum, limited designated public forum, or nonpublic forum. The list of areas that are identified as nonpublic and limited designated public forums, as set forth hereinbelow in subsections (c) and (d), is not intended to be exclusive or limiting. Accordingly, the City Manager is hereby specifically authorized to add and/or remove such areas from the subject list and to amend an area's designation by promulgating a revised list, which shall be available for inspection in the City Clerk's office during normal working hours, Monday through Friday, except for City-recognized holidays.

- (d) Upon the classification of areas within enclosed City-owned, controlled, and leased property, the City Manager is hereby authorized, subject to the availability of appropriated funds, to employ whatever means he deems necessary and appropriate to separate designated public forums from nonpublic forums, including, but not limited to, the use of physical barriers and signage. The City Manager shall also have the authority to develop and implement procedures to regulate and control public access within City-owned, controlled, and leased property to provide for the security and privacy of public visitors; to provide for the security and privacy of City employees and officers; and to minimize potential disruptions to the work of City government. Any person who engages in conduct that causes disruptions to the work of City government shall be deemed to no longer be engaging in legitimate public business within City-owned, controlled, or leased property.
- (e) The City Council Chambers and conference rooms in City Hall, the Emergency Operations Center, the Operations Center, the Logistics Center, the Police Department Building, and all Fire Stations are hereby declared to be nonpublic forums unless or until a public meeting is convened in such areas pursuant to public notice. All City employee work areas within City Hall, the Emergency Operations Center, the Operations Center, the Logistics Center, the Police Department Building, all Fire Stations, the Burns Road Community Center, the Aquatics Center, the Tennis & Pickleball Center Clubhouse, the Sandhill Crane Clubhouse, and the Nest Clubhouse are designated as nonpublic forums. Such areas are designated by appropriate signage and/or secured by maglock doors. Members of the public are prohibited from entering City employee work areas unless they are escorted by a City employee. The main lobby and Building Department lobbies in City Hall, the Police Department lobby, all Fire Station lobbies, the Operations Center lobby, the Logistics Center lobby, and the non-employee work areas of the Burns Road Community Center, the Aquatics Center, the Tennis & Pickleball Center Clubhouse, the Sandhill Crane Clubhouse, and the Nest Clubhouse are hereby designated as limited public forums, and only persons who are present to engage in legitimate public business with City officers or employees shall be authorized. It shall be a violation of this section 42-4. to be within a nonpublic forum or a limited public forum without authorization. Unauthorized persons found by the City Manager, or his/her designee, to be within a nonpublic forum or a limited public forum and who refuse to leave the premises upon request shall be considered trespassers. At the request of the City Manager, or his/her designee, Law Enforcement is specifically authorized to issue a trespass warning notice for such conduct, and/or, at its option, Law Enforcement may take any other legally permissible action deemed operationally necessary and permissible under state law to enforce the provisions of this section 42-4.
- (f) Except within the City Council Chambers, conference rooms, and other locations in which a public meeting is being conducted pursuant to a public notice, it shall be unlawful and a violation of this section 42-4. to record video and/or sound within City-owned, controlled, and leased property without the consent of all persons whose voice or image is being recorded or could inadvertently be recorded. This prohibition

1 shall not apply to Law Enforcement personnel while engaged in law enforcement
2 activities of any kind. In addition to being a violation of this section 42-4., if anyone
3 is observed to be recording video and/or sound within City-owned, controlled, or
4 leased property, without the consent of all persons whose voice or image is being
5 recorded, and such person refuses to cease activity after being advised that such
6 activity is prohibited under this section 42-4., such refusal shall be considered a
7 disruption to the work of City government. Therefore, any such person shall be
8 deemed to no longer be present within the City-owned, controlled, or leased property
9 on legitimate public business. The City Manager, or his/her designee, is hereby
10 authorized on behalf of the City of Palm Beach Gardens, Florida, to request that any
11 person who refuses to cease the unconsented video and/or sound recording
12 immediately leave the premises. Any person who refuses to cease making video
13 and/or sound recordings without the required consent and refuses to immediately
14 leave the premises following the request of the City Manager, or his/her designee,
15 shall be considered a trespasser. At the request of the City Manager, or his/her
16 designee, Law Enforcement is specifically authorized to issue a trespass warning
17 notice for such conduct, and/or, at its option, Law Enforcement may take any other
18 legally permissible action deemed operationally necessary and permissible under
19 state law to enforce the provisions of this section 42-4.
20

21 (g) The City Manager, or his/her designee, may have cause to remove any person
22 he/she determines:
23

- 24 (1) Behaves in any manner which violates or is reasonably suspected to violate
25 any federal, state, or local law, ordinance, rule, or regulation; or
26
27 (2) Behaves in any manner which violates any City rules or policies, including, but
28 not limited to, the Facility Rules or any directive on any sign or notice at the
29 public property. The City Manager, or his/her designee, is hereby authorized
30 on behalf of the City of Palm Beach Gardens, Florida, to warn persons of this
31 prohibited activity and request that such activity cease. At the request of the
32 City Manager, or his/her designee, Law Enforcement is specifically authorized
33 to issue a trespass warning notice for such conduct, and/or, at its option, Law
34 Enforcement may take any other legally permissible action deemed
35 operationally necessary and permissible under state law to enforce the
36 provisions of this section 42-4.
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- (h) The City Manager, or his/her designee, is hereby authorized on behalf of the City of Palm Beach Gardens, Florida, to warn persons who have entered into or remain in areas where they are not authorized and to request that such persons depart. The City Manager, or his/her designee, is hereby authorized to call upon Law Enforcement to treat as trespassers any persons who refuse to depart after such a request has been made. At the request of the City Manager, or his/her designee, Law Enforcement is specifically authorized to issue a trespass warning notice for such conduct, and/or, at its option, Law Enforcement may take any other legally permissible action deemed operationally necessary and permissible under state law to enforce the provisions of this section 42-4.
- (i) Facility Rules. The following conduct is prohibited within the interior spaces of all City-owned, controlled, and leased buildings of the City of Palm Beach Gardens:
- (1) Engaging in any conduct prohibited by federal, State of Florida, or City of Palm Beach Gardens law.
 - (2) Possessing any weapons, except as specifically permitted by law and/or City policy.
 - (3) Smoking, chewing tobacco, using e-cigarettes or vaping devices, or carrying any lighted or smoldering pipe, cigar, or cigarette.
 - (4) Disruptive, harassing, or unsafe behavior, including conduct which interferes with City employees or City officials in the performance of their duties or which interferes with the proper use of the City facility by others.
 - (5) Abusive or harassing behavior, including use or display of obscene language, gestures, or graphics.
 - (6) Blocking entrances, exits, fire exits, or access areas or otherwise interfering with the provision of services or the use of City property.
 - (7) Entering or remaining in nonpublic areas without authorization. Areas inside City buildings, including offices, hallways, stairways, and elevators, are open to the public only to the extent necessary to attend to City business; to attend a City-authorized function, event, or activity to which the person is an invitee; or to attend a duly noticed public meeting. Otherwise, such areas are deemed nonpublic areas.
 - (8) Any act which could result in substantial risk of harm to persons or property.
 - (9) Disrupting City business, events, or other City-sponsored or authorized activities.

- 1 (10) Leaving packages, backpacks, luggage, or other personal items unattended.
2 Any such items are subject to immediate confiscation.
3
- 4 (11) Lying down or sleeping on chairs, benches, or otherwise.
5
- 6 (12) Possession of illegal drugs.
7
- 8 (13) Posting or affixing to City property, without permission from the City Manager,
9 or his/her designee, any signs, leaflets, posters, flyers, pamphlets, brochures,
10 or written, pictorial, or graphic material of any kind.
11
- 12 (14) Tampering with or unauthorized use of building or facility systems or devices,
13 including electrical equipment, plumbing, locks, doors, or cameras.
14
- 15 (15) Audio and/or video recording anywhere inside of City buildings except during
16 duly noticed public meetings or as otherwise approved by the City Manager, or
17 his/her designee. Except as otherwise approved by the City Manager, or
18 his/her designee, audio and/or video recording may only be conducted within
19 the City Council Chambers and any room or office within which said activity has
20 been authorized by law. Any person found to be conducting audio and/or video
21 recording, except as authorized herein, must cease doing so immediately if any
22 visitor, City employee, or City official expresses his/her desire not to be
23 recorded. This rule does not apply to audio and/or video recording performed
24 by authorized law enforcement personnel engaged in the performance of their
25 official duties. Audio and/or video recording of public meetings must be
26 undertaken in a quiet and orderly manner so as not to interfere with the conduct
27 of the meeting, block the view of any person attending the public meeting, or
28 block any aisle, row, ingress, or egress.
29
- 30 (16) Remaining in a City building after posted hours of operation or after the
31 conclusion of an authorized "after hours" public meeting or event.
32
- 33 (17) Failure to cease conduct specifically prohibited in items (1) through (16) above
34 immediately after a request by City staff to do so.
35

36 A copy of the foregoing Facility Rules shall be posted in close proximity to all public
37 entrances of City-owned, controlled, and leased buildings of the City of Palm Beach
38 Gardens.
39

40 **SECTION 2.** All Ordinances or parts of Ordinances in conflict be and the same are
41 hereby repealed.
42

43 **SECTION 3.** Should any section or provision of this Ordinance or any portion
44 thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction
45 to be invalid, such decision shall not affect the validity of the remainder of this Ordinance.
46

SECTION 4. Specific authority is hereby granted to codify this Ordinance.

SECTION 5. This Ordinance shall become effective immediately upon adoption.

(The remainder of this page intentionally left blank.)

PASSED this 2nd day of November, 2023, upon first reading.

PASSED AND ADOPTED this _____ day of _____, 2023, upon second and final reading.

CITY OF PALM BEACH GARDENS	FOR	AGAINST	ABSENT
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BY: _____	_____	_____	_____
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Chelsea Reed, Mayor

Carl W. Woods, Vice Mayor

Marcie Tinsley, Councilmember

Robert G. Premuroso, Councilmember

Dana P. Middleton, Councilmember

ATTEST:

BY: _____

Patricia Snider, CMC, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY**

BY: _____

R. Max Lohman, City Attorney

