

WATERTOWN POLICE DEPARTMENT GENERAL ORDER



**JOANNA W. VIEK
CHIEF OF POLICE**

Effective Date: January 12, 2009	Rescinds: Amends: N/A	Number: B-150
Subject: Trespass		Re-evaluation Date: January 2012
Distribution: ALL PERSONNEL	Related CALEA Standards: None.	

This order consists of the following numbered sections:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. PURPOSE

To provide standardized guidelines to officers for enforcement of trespass laws.

2. POLICY

This General Order applies to all sworn officers. Officers frequently have encounters with persons who are on public and private property without authorization. This General Order is designed to provide guidelines for officers to make decisions and take action in such trespass situations.

3. DEFINITIONS

- A. **AUTHORIZED PERSON** - Authorized person is the owner, lessee, tenant, resident, or any person who has been given authority over the property by the owner, lessee, tenant, or resident.
- B. **BUSINESS COMPLEX** - A business complex is a group of businesses on one piece of land, having a single owner, manager, or landlord, and has businesses which are open to the public during specified business hours. It includes, but is not limited to, office complexes, shopping centers, and enclosed shopping malls.
- C. **CONSENSUAL CITIZEN ENCOUNTER** - an Officer engages a citizen in conversation with the citizen's consent. The Officer has no reasonable suspicion that the person is involved in criminal activity. The citizen is free to without delay withdraw his or her consent, ignore the Officer's questions, and walk away.
- D. **RESIDENTIAL COMPLEX** - Any multiple-unit residential complex. A residential complex includes, but is not limited to, a condominium complex, an apartment complex, cottages, a duplex, triplex or greater, a hotel or motel, or a mobile home park.

4. PROCEDURES

A. Trespass Warnings Generally:

1. There are three levels of encounters between police and citizenry which are as follows: consensual encounter, investigatory field stop, and arrest with or without a warrant (General Order B-130). The issuance of a trespass warning is a consensual encounter. Officers are reminded they are not allowed to detain someone without constitutional grounds. Ordering a person to stop, while he/she is leaving, and to return so a trespass warning could be given is a detention. Furthermore, ordering a person to stop, while he/she is leaving, and to produce identification so a trespass warning could be given is a detention.
2. Trespass warning forms (Form: WPD 175.1) are provided by the department to document the fact that a person has been warned that he or she is not welcome, authorized, licensed, or invited on the premises specified on the warning form.
3. Although it is not always necessary to issue a written trespass warning, notice must be given to the offender. Notice can be by actual communication to the offender, either verbally or in writing, or by posting, fencing, or other enclosure, as provided in SDCL 22-35-6.
4. The owner of the premises or any other authorized person must communicate to the subject that he/she is not privileged to enter or remain on the premises. It is preferred that the subject be warned by the owner or authorized person in the presence of the officer. If the trespass warning occurred

- outside of the officer's presence, the owner or authorized person shall provide the officer with a written statement indicating that he/she communicated the trespass warning to the subject. Such written notice can be on a form provided by the Department or other method, provided the nature of the warning and identity of person warned are clearly articulated.
5. Whenever possible, the officer shall positively identify the authorized person and the trespasser for purposes of prosecution, and shall document such in the Trespass Warning Form.
 6. When utilizing the trespass warning form, it is preferable, but not necessary, for the trespasser to sign the trespass warning. If he/she does not sign, the officer shall write **REFUSED** on the line provided for the trespasser's signature. If the trespasser is a juvenile, the parents of the juvenile should be notified, and if possible, sign the warning along with the juvenile. If the officer is not successful in contacting the parent or guardian, the Records personnel shall mail a copy of the trespass warning to the child's parent or guardian.
 7. It is preferable that a warning be issued while the subject is still on the property, however, it is not a requirement for an enforceable warning. It is not necessary for an officer to witness the incident that resulted in the issuance of a trespass warning to the subject.
 8. Trespass in a single family dwelling, in an individual business, or on the real property thereof:
 - a. Whenever possible, the officer shall obtain positive identification from the trespasser and the authorized person pursuant to paragraph A.(4) above.
 - b. The officer shall inform the authorized person that a trespass warning may be issued to the trespasser, or that the trespasser may be arrested. The decision to arrest is solely at the discretion of the officer, and must be based only upon probable cause and the circumstances as determined by the officer.
 9. Trespass in a business complex or shopping complex:
 - a. A person who has committed a crime against the business, or who has been disorderly inside the business, or has engaged in conduct that the owner or agent does not permit by other business invitees can be barred from the premises by an agent of the business.
 - b. Since these establishments are open to the public, the officer shall ensure that the subject has been properly warned to leave the premises and refused to do so, or has returned after receiving a previous warning.
 - c. The subject can be barred only from that area of a complex over which the authorized person has control. An individual business owner can ban a subject only from his/her business and its contiguous area. The owner or manager of a complex, or his agent, can ban a subject from the common areas of the complex.
 - d. When trespassing complaints originate from a business which is open to the public, the officer shall make a good faith effort to determine the reasons therefore, to ensure that the complaint is not based on discrimination prohibited by state or federal law.
 10. Trespass in a residential complex:
 - a. When a trespassing complaint originates from a residential complex, the officer's actions depend on the identity of the complainant.
 - b. A resident may ban a subject from his own housing unit.
 - c. An owner or manager, or their agent, may ban a subject from the common areas of the residential complex, and from any residential units with which the subject has no known connection.
 - d. A trespass warning is not enforceable within a specific unit of a residential complex if the subject has been invited by a resident of that specific unit.

JOANNA W. VITEK
Chief of Police
Watertown Police Department
Watertown, South Dakota