

EXECUTIVE ORDER No. 2015-2

Establishing Rules for Review Hearings on Appeals of Trespass Warnings/Exclusion Notices

Whereas, pursuant to Burien Municipal code (BMC) 9.125, Burien police officers are empowered to issue a trespass warning to any individual who the officer has probable cause to believe has violated any city ordinance, state statute, or government rule or regulation, relating to or prohibiting conduct that is dangerous, illegal, or unreasonably disruptive to other users of public property; and

Whereas, BMC 9.125 authorizes graduated warnings accompanied by temporary exclusions from public property based on conduct; and

Whereas, on July 20, 2015, the Burien City Council voted unanimously to adopt Ordinance No. 624, which amends the City's trespass warning code to clarify due process, scope and standards for use of trespass warnings on City and other publicly-owned property; and

Whereas, Ordinance No. 624 directs the City Manager to establish rules and procedures for seeking prompt review of any trespass warning;

NOW THEREFORE, the City Manager, adopts and promulgates rules and procedures for seeking prompt review of trespass warnings/exclusion notices as set forth in Exhibit A, attached hereto and incorporated as though set forth herein, which rules and procedures shall be effective upon the date set forth herein.

Exhibit A

Rules and Procedures for Prompt Review of Trespass Warnings/Exclusion Notices

1. Deadline and method for appealing/requesting review hearing.

Any person who has received a King County Sheriff's Office and Burien Police Department Trespass Warning/Exclusion Notice may appeal such Trespass Warning/Exclusion Notice to the City of Burien, Attention: City Manager. The request for review must be

- (a) submitted in writing and signed by the recipient of the Trespass Warning/Exclusion Notice; and
- (b) have attached a copy of the Trespass Warning/Exclusion Notice signed by a King County Sheriff's Deputy/Burien police officer;
- (c) include an address where the recipient of the Trespass Warning/Exclusion Notice currently resides (if any); and
- (d) mailed (post-marked) or brought to the front desk of Burien City Hall, 400 SW 152nd Street, Burien, WA 98166, within one (1) business day of the date of the Trespass Warning/Exclusion Notice.

The request for appeal does not need to be on any particular form, but the recipient of the Trespass Warning should include a description of what happened and why the recipient is appealing, especially if the recipient is uncertain about whether he/she will be participating in the review hearing.

2. For exclusions of seven or fewer days – deadline for conducting review hearing.

For Trespass Warnings that indicate exclusions of seven or fewer days, the City Manager or designee shall conduct a review hearing within one (1) business day of receipt of the written request for review hearing.

3. For exclusions of more than seven days – deadline for conducting review hearing.

For Trespass Warnings that indicate exclusions of more than seven days, the City Manager or designee shall conduct a review hearing within two (2) business days of receipt of the written request for review hearing.

4. Procedures for conducting review hearings.

- (a) The City Manager or designee shall act as the Hearing Officer for the purpose of conducting a review hearing on the appeal of any Trespass Warning/Exclusion Notice covered by BMC 9.125.
- (b) The review hearing shall provide the person appealing (“Appellant”) an opportunity to be heard by the Hearing Officer regarding the following:
 - (i) Appellant’s account of the conduct that led to receiving the Trespass Warning/Exclusion Notice;
 - (ii) Whether Appellant was previously told that the same conduct may lead to a Trespass Warning/Exclusion Notice, and if so, when;
 - (iii) Appellant’s account of circumstances that warrant the Hearing Officer rescinding the Trespass Warning/Exclusion Notice, shorten the period of exclusion, or otherwise modifying the Trespass Warning/Exclusion Notice.
- (c) The review hearing may be conducted by telephone or in person at the discretion of the Hearing Officer.
- (d) If the review hearing is conducted by telephone, the City shall provide a dial-in number, as well as date and time for the hearing, along with instructions on how to access the review hearing.
- (e) If the review hearing is conducted in person, the review hearing shall be held at City Hall and the City shall identify the room within City Hall, as well as date and time of the hearing.
- (f) For information about their particular review hearing, Appellants shall call City Hall’s Main Line, at (206) 241-4647. The City may also post on the City of Burien’s website information regarding any review hearing.
- (g) For the Trespass Warning to be upheld by the Hearing Officer, the Hearing Officer must find that the preponderance of the evidence demonstrates that Appellant engaged in conduct subject to a trespass warning under BMC 9.125.
- (h) The Hearing Officer shall refer to and be guided by the “good cause” standards for review in Ordinance 624 amending BMC 9.125.020 in finding “good cause” to rescind, shorten or modify a Trespass Warning/Exclusion Notice.
- (i) The Burien Police Department/King County Sheriff’s Office may present evidence to uphold the Trespass Warning/Exclusion Notice by any one or more of the following means:
 - including an attested description of the Appellant’s conduct in the Trespass Warning/Exclusion Notice;
 - at least two hours in advance of the hearing time, submitting to City Hall, Attn: City Manager, a supplemental declaration that notes the hearing date and time on the top right hand corner of the declaration;
 - testifying at the review hearing; or

- having witnesses testify at the review hearing on behalf of the Trespass Warning/Exclusion Notice.
- (j) The Appellant may present evidence against upholding the Trespass Warning/Exclusion Notice by any one or more of the following means:
- including in Appellant’s written and signed request for review, a description of what happened, why recipient is appealing, and an attest that Appellant’s account is true;
 - at least two hours in advance of the hearing time, submitting to City Hall, Attn: City Manager, a supplemental declaration that notes the hearing date and time on the top right hand corner of the declaration;
 - testifying at the review hearing; or
 - having witnesses speak at the review hearing on his/her behalf against the Trespass Warning/Exclusion Notice.
- (k) No attorneys representing the Burien Police Department or City of Burien are anticipated or required at the review hearing. However, the Appellant may choose to engage the services of an attorney and/or a court reporter, at the Appellant’s own expense, and have legal representation at the review hearing.

5. Prompt communication of review decision.

The Hearing Officer shall promptly communicate the review decision, and shall make his/her best efforts to communicate the review decision verbally immediately after the conclusion of the review hearing to Appellant - if the Appellant has participated in the review hearing. If the Hearing Officer needs more time to make a decision, or the Appellant fails to participate in the review hearing, the Hearing Officer shall communicate the decision to City Hall Front Desk staff no later than two (2) business days after the review hearing, and Appellant may call the City Hall Main Line, at (206) 241-4647, to learn of the review decision.

Immediately after the conclusion of the review hearing, the Hearing Officer shall communicate the review decision of any appeal to the Burien Police Department by leaving a voice message at the Burien Police Department’s Main Line. The Burien Police Department shall ensure that the review decision is promptly communicated to Burien police officers.

6. Service of written decision.

(a) Within two (2) business days after the review hearing, the Hearing Officer shall issue written findings and state whether the decision is to rescind, shorten the exclusion period, otherwise modify the trespass warning, or affirm the trespass warning/exclusion notice in its entirety (“written decision”). The written decision shall be served on the Appellant,

with a copy to the Burien Police Department. Service shall be accomplished by any one of the following methods:

(i) “Personal service” is accomplished by handing the written decision to the Appellant or by leaving it at his or her last known dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or leaving it at his or her office or place of employment with a person in charge thereof.

(ii) “Service by mail” is accomplished by sending the written decision by regular first class mail to the last known address of the Appellant. The last known address shall be the address (if any) provided by the Appellant in his/her written request for review, or in the Trespass Warning/Exclusion Notice.

(iii) “Service by posting” is accomplished by affixing a copy of the written decision in a conspicuous place on the subject property or structure, or as near to the affected property or structure as feasible, with at least one copy of such document placed at an entryway to the property or structure if an entryway exists.

(iv) “Service by publication” is accomplished by publishing the written decision on the City of Burien’s website and by leaving a copy of the written decision at Burien City Hall with Front Desk staff for pick-up by Appellant.

(b) Service – When Complete. If service is accomplished by personal service, service shall be deemed complete immediately. If service is accomplished by mail, service shall be deemed complete upon the third day following which the written decision is placed in the mail, unless the third day falls on a Saturday, Sunday, or legal holiday, in which event service shall be deemed complete on the first day other than a Saturday, Sunday, or legal holiday following the third day. If service is accomplished by posting, service shall be deemed complete upon the third day following the day on which the written decision is posted. If service is accomplished by publication, service shall be deemed complete upon the third day following the day of publication on the City’s website.

(c) Proof of Service. The City Manager shall maintain records of proof of service of written decisions issued by the Hearing Officer. Proof of service shall be made by written affidavit or declaration under penalty of perjury executed by the person effecting the service, declaring the time and date of service and the manner by which service was made. If service was made solely by posting or publication, the proof of service shall include a statement as to what steps were used in attempting to serve personally and by mail the person at whom service of the document is directed. If service was made by posting, a photograph of the posting showing date and time stamp may be taken and retained by the City as documentation.

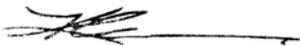
7. Right to seek judicial review of City’s review decision.

(a) Every written decision on appeal of a Trespass Warning/Exclusion Notice shall inform the Appellant of the Appellant’s right to seek judicial review of the City’s final decision, using the following language:
“This written decision is the City’s final decision on your appeal of the Trespass Warning/Exclusion Notice, but you have the right to seek judicial review of the City’s final decision.”

(b) Every written decision on appeal of a Trespass Warning/Exclusion Notice shall inform the Appellant that if Appellant desires judicial review, legal action must be taken within fifteen (15) days of service of the written decision. The following language may be used:

“If you wish to appeal the City’s final decision on your appeal of the Trespass Warning/Exclusion Notice, and seek judicial review, you must file an application for writ of review in King County superior court, within 15 days of the City accomplishing service of the written decision.”

CITY OF BURIEN, WASHINGTON

By:  _____

Title: City Manager

Date: July 27, 2015