

# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 624

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AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, AMENDING CHAPTER 9.125 OF THE BURIEN MUNICIPAL CODE TO CLARIFY DUE PROCESS, SCOPE AND STANDARDS FOR USE OF TRESPASS WARNINGS ON CITY AND OTHER PUBLICLY-OWNED PROPERTY, AMENDING ORDINANCE 606 AND ORDINANCE 621

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THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

**Section 1. Purpose of Amendments to BMC 9.125.** The purpose of this Ordinance is to: (a) clarify that the City must provide more due process, including immediate appeal rights for every person, so that even a first warning is subject to appeal and review; (b) provide more standards to guide and limit official discretion; (c) clarify that BMC 9.125 will only apply at locations for which there are City Manager rules adopted pursuant to this Ordinance; and, (d) clarify that BMC 9.125 does not apply to activity conducted on public streets and sidewalks.

**Section 2. Amending BMC 9.125.010 (Purpose, authority, and applicability).** Section 9.125.010 is hereby amended (amendments shown in legislative revision marks) to read as follows:

9.125.010 Purpose, authority, and applicability.

(1) The purpose of this chapter is to adopt a legally sound process for being able to exclude from city and other publicly owned property individuals whose behavior is dangerous, unsafe, illegal, or unreasonably disruptive to other users. It is further the purpose of this chapter to provide for a specific method to allow for the issuance of trespass warnings to such individuals, including placing limitations on trespass warnings and providing procedures for such individuals to promptly appeal the issuance of trespass warnings in order to protect their right to engage in legitimate activities protected by the state and federal constitutions.

(2) This chapter is enacted as an exercise of the city's authority to protect and preserve the public health, safety and welfare.

(3) This chapter shall apply to all city and other publicly owned property in the city of Burien, including property that public entities own in common with each other. This chapter shall not apply to public streets and sidewalks. Enforcement action shall only be taken for conduct violating rules adopted by the city manager for the location in which the conduct occurs.

including any location covered by rules of conduct incorporated into any relevant city manager rule. Provided that, officers of the Burien police department may take enforcement action consistent with subsection (1) of BMC 9.125.020, based on violations of other city codes, state statutes, and government rules or regulations.

(4) The city manager is hereby authorized and directed to promulgate rules and regulations defining and describing the types of conduct on or within city owned property that is considered to be dangerous, unsafe, illegal, or unreasonably disruptive to other users of such property for the purpose of this chapter. The city manager is further authorized and directed to cooperate with and/or assist other owners of publicly owned property in promulgating such rules and regulations for property that is under their control or that is owned in common with another public entity.

**Section 3. Amending BMC 9.125.020 (Trespass warnings on city and other property generally open to the public).** Section 9.125.020 is hereby amended (amendments show in legislative revision marks) to read as follows:

9.125.020 Trespass warnings on city and other property generally open to the public

(1) Officers of the Burien police department shall be 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, as defined in BMC [9.125.015](#), while such individual is on or within any city or other publicly owned facility, building, or outdoor area that is open to the general public, as more specifically set forth in BMC [9.125.010](#)(3).

(2) Trespass warnings may be delivered in person to the offender or by first class mail to the offender at the offender's last known address.

(3) The offender need not be charged, tried, or convicted of any crime or infraction in order for the trespass warning to be issued or be effective. The warning may be based upon observation by a police officer or a city or other government employee or may be based upon a civilian report that would ordinarily be relied upon by police officers in the determination of probable cause.

(4) If the offender:

(a) Has not been excluded from city or other publicly owned property by a trespass warning issued within one year prior to the violation, then the warning may exclude the offender for a period not exceeding seven days from the date of the warning.

(b) Has been the subject of only one prior trespass warning issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than seven days but not more than 90 days from the date of the current warning.

(c) Has been the subject of two or more prior trespass warnings issued within one year prior to the current violation, then the warning may exclude the offender for a period of more than 90 days but not more than one year from the date of the current warning.

(d) Has been excluded from city or other publicly owned property by a trespass warning, and a published rule or regulation applicable to such property establishes a different period of time for an offender to be excluded, the time period under such rule or regulation shall apply notwithstanding the provisions of subsection (4)(a), (b) or (c) of this section.

(5) The trespass warning shall be in writing, shall contain the date of issuance, shall describe the behavior that is the basis for the trespass warning, shall specify the length and place(s) of exclusion, shall be signed by the issuing police officer, and shall state the consequences for failure to comply. A trespass warning for a place or places shall not prohibit access to another place or places that is unrelated to or not a part of the place where the conduct that is the subject of the trespass warning occurred.

(6) For good cause ~~shown by the offender~~, the city manager, or his or her designee, or other government official who is responsible for the property in question may rescind, shorten or modify a trespass warning ~~issued for a period not exceeding seven days~~. The city manager ~~may~~ shall establish rules and procedures for seeking prompt review of any trespass warning ~~issued for less than seven days~~. The rules shall, at a minimum, provide the following:

(a) The deadline and method for requesting review of a trespass warning;

(b) Require review by the city manager or specified designee within at least one (1) business day of receipt of a request for review of any trespass warning that excludes the alleged offender for seven or fewer days;

(c) Require review by the city manager or specified designee within at least two (2) business days of receipt of a request for review of any trespass warning that excludes the alleged offender for more than seven days;

(d) Require that information be made available to the alleged offender regarding the date, time, and place or telephone number at which the review will be conducted;

(e) Specify how and where information will be made available to the alleged offender regarding the date, time and place or telephone number at which review will be conducted; and

(f) Specify how the review decision will be communicated if the decision is not issued verbally immediately after the conclusion of the review hearing. The review decision shall be communicated no later than two (2) business days following the review;

(g) As a follow-up to verbal communication, specify how a written decision will be served on the alleged offender; and

(h) At the end of every written decision, inform the alleged offender that he/she has the right to seek judicial review of the decision and that the time-frame for seeking judicial review runs from the date of service of the written decision.

(7) For purposes of BMC 9.125.020, “good cause” to rescind, shorten or modify a trespass warning shall be found where:

(a) The alleged offender demonstrates to the satisfaction of the city manager or his/her designee, that his or her conduct was intended to be expressive conduct protected by the First Amendment; or

(b) The offender was not given prior warning that the conduct in question was subject to a trespass warning; or

(c) The trespass warning was based solely upon the statement of a third party, was not observed personally by the issuing officer or a city or other government employee, would not ordinarily be relied upon by police officers in the determination of probable cause, and the alleged offender claims that he or she did not commit the action for which he or she was warned; or

(d) In the judgment of the city manager or his/her designee, the circumstances warrant a modification or rescission of the trespass warning. The city manager or his/her designee shall rescind the trespass warning if, considering all the circumstances, he or she finds that reasonable minds could differ on the question of whether the conduct in question was unreasonably disruptive to others on the same public property at that time.

The review by the city manager or designee shall constitute the only City review available for a trespass warning.

~~An alleged offender receiving a trespass warning for a period longer than seven days may seek a hearing to have the trespass warning rescinded, the period of exclusion shortened, or the areas of~~

~~exclusion reduced. The hearing examiner shall be the city's hearing examiner, unless the city designates another person as the hearing examiner. The request for a hearing shall be delivered to the city's legal department, 400 SW 152nd Street, Burien, WA 98166, and shall be postmarked no later than 15 days after the issuance date of the trespass warning. The request for hearing shall be in writing and shall be accompanied by a copy of the trespass warning on which the hearing is sought. Such requests shall be forwarded by the legal department to the hearing examiner. The hearing should occur within 30 days after the legal department receives the request for hearing or as soon as reasonably practicable. Hearings will be conducted upon written request only. The alleged offender shall have the right to engage an attorney and/or to bring a court reporter, at the alleged offender's own expense.~~

(8) At the review hearing, the violation must be proved by a preponderance of the evidence in order to uphold the trespass warning. The city manager or designee hearing examiner shall consider a sworn report or declaration from the officer who issued the trespass warning or upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the offender committed the violation as described. The city manager or designee hearing examiner may consider information that would not be admissible under the evidence rules in a court of law but that the city manager or designee hearing examiner considers relevant and trustworthy. If the warning was issued because of the alleged violation of any criminal law, the offender need not be charged, tried, or convicted for the warning to be upheld.

~~(9) If the violation is proved, the trespass warning shall be upheld, but upon good cause shown the hearing examiner may shorten the duration of the exclusion or reduce the areas covered by the exclusion. If the violation is not proved by a preponderance of the evidence, the hearing examiner shall rescind the exclusion. If the city manager hearing examiner rescinds an exclusion, for good cause or because the violation was not proved, the exclusion shall not be considered a prior trespass warning for purposes of subsection (4) of this section.~~

(10) The decision of the city manager or his/her designee hearing examiner ~~is will be the City's final decision. An offender seeking judicial review of the hearing examiner's decision must file an application for a writ of review in the King County superior court within 15 days of the date of that decision. An offender seeking judicial review of the City's final decision must file an application for a writ of review in King County superior court within fifteen (15) days of receipt of the City's final decision.~~

(11) The trespass warning shall remain in effect during the pendency of any administrative or judicial proceeding.

(12) No determination of facts made by the hearing examiner city manager or designee shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

(13) This section shall be enforced so as to emphasize voluntary compliance with laws and city (or other governmental entity) property rules and so that inadvertent minor violations that would fall under subsection (4)(a) of this section can be corrected without resort to a trespass warning.

(14) Any person, who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter for a period longer than seven days and who accordingly has had the right to a hearing regarding the trespass warning, may be arrested for trespassing, except as otherwise provided in subsection (15) of this section.

(15) The chief of police or his/her designee may upon request authorize an individual who has received a trespass warning in accordance with this chapter to enter city or other publicly owned property to exercise his or her First Amendment rights or to conduct government business, if there is no other reasonable alternative location to exercise such rights or conduct such business. Such authorization must be in writing and specify the duration of the authorization and any conditions thereof. The city manager shall establish rules directing the chief of police in the consideration of requests for entries onto public property by the recipient of a trespass warning during a period of exclusion. Such rules shall require a prompt response from the chief of police to any request by the recipient of a trespass warning for entry onto public property to exercise his or her First Amendment rights or to conduct government business. Such rules shall specify objective standards to be used by the chief of police in determining whether to grant or deny such request, and also state that if the request is denied, the denied requester may appeal the denial to King County superior court.

**Section 4. Severability.** Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

**Section 5. Effective Date.** This Ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20<sup>TH</sup> DAY OF JULY, 2015, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 20<sup>TH</sup> DAY OF JULY, 2015.**

CITY OF BURIEN

/s/ Lucy Krakowiak, Mayor

ATTEST/AUTHENTICATED:

/s/ Monica Lusk, City Clerk

Approved as to form:

/s/ Soojin Kim, City Attorney

Filed with the City Clerk: July 20, 2015

Passed by the City Council: July 20, 2015

Ordinance No.: 624

Date of Publication: July 23, 2015