

EXECUTIVE ORDER No. 2015-1

Establishing Interim Rules of Conduct Policy for The Common Areas of the City-Library Condominium

WHEREAS, on August 18, 2014 the City Council adopted Ordinance No. 606 implementing a process for excluding individuals from public property who have engaged in dangerous, illegal or unreasonably disruptive behavior on public property in violation of state or local law or government rules or regulations; and

WHEREAS, Ordinance No. 606 has been codified within the Municipal Code as Chapter 9.125 of the Burien Municipal Code (“**BMC**”); and

WHEREAS, on January 5, 2015 the City Council adopted Ordinance No. 621 amending certain provisions of Chapter 9.125 BMC; and

WHEREAS, BMC 9.125.010(4) authorizes and directs the City Manager to, (1) promulgate rules and regulations defining and describing the types of conduct on or within city owned property that is considered to be dangerous, illegal, or unreasonably disruptive to other users of such property for the purpose of this chapter; and (2) 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; and

WHEREAS, the City of Burien (the “**City**”) and the King County Rural Library District dba King County Library System (the “**Library District**”) are the separate owners of condominium units within the City Hall and King County Library condominium created pursuant to that certain condominium declaration filed with the official records of King County; and

WHEREAS, the condominium contains the city unit (“**City Hall**”) the library unit (the “**Library**”) and certain common areas that are jointly and commonly owned by the City and Library District all of which are more particularly described in the condominium declaration; and

WHEREAS, in cooperation with and consultation with the Library District rules addressing conduct in Common Areas should be established in furtherance of BMC Chapter 9.125 and for the reasons more fully set forth herein; and

WHEREAS, the Common Areas subject to the interim rules of conduct promulgated herein include the first floor entrance hall together with two restrooms

that are accessed from the entrance hall, the public stairwell, the elevator, the exterior grounds and the parking structure, all as more particularly described in attached Exhibit “A-1” (the “**Common Areas**”); and

WHEREAS, the purpose of the Common Areas is to function as a space to provide access to and ingress and egress to and from the public sidewalks, neighboring park, parking garage, city streets, and City Hall, the Library and the interior and exterior Library book drops, so that Library patrons and visitors to City Hall can patronize and conduct business at the Library and City Hall; and

WHEREAS, the entrance hall in particular functions as a space to provide ingress and egress to and from the Library and to and from City Hall by providing access to the interior library entrance and the interior Library book drop, and to the elevator leading to the second (Library) and third (City Hall) stories of the building and the stairwell leading to City Hall; and

WHEREAS, the entrance hall is additionally used by the City and Library to provide space for display of informational material; and

WHEREAS, the restrooms attached to the entrance hall were designed and intended to be utilized by patrons of the Library and visitors to City Hall; and

WHEREAS, the exterior Library book drop is intended to function as a location where Library patrons can return books to the Library both during regular Library business hours and during hours that the Library is closed while the interior Library book drop is intended to function as a location where Library patrons can return books to the Library during regular Library business hours; and

WHEREAS, the exterior Common Areas are considered to be a limited public forum for the public to engage in constitutionally protected expression subject to reasonable time, place, and manner restrictions; and

WHEREAS, activities within the common areas not associated with gaining access to, or ingress and egress to and from, the Library or City Hall, can be disruptive to the purpose and function of the commons areas, the purpose and function of the Library as a knowledge commons that creates an environment encouraging the community to encounter the rich diversity of concepts on which a democratic society depends in any number of personal and communal ways and the purpose of City Hall for conducting the business of the City; and

WHEREAS, some of the disruptive activities experienced by the Library and the City not associated with ingress and egress include, (a) persons blocking the exterior doorways and points of ingress and egress to and from the entrance hall, non-public entrances, and the parking garage, (b) persons blocking access to both the interior and exterior Library book drops, (c) persons blocking and interfering with use of the common areas by Library Patrons and City Hall visitors to access the entrances to the entrance hall, (d) loud and/or unreasonably disruptive behavior that interferes with and disrupts the use of the Library and City Hall by patrons of the Library and persons conducting business at City Hall, (e) loud and disruptive behavior that interferes with and disrupts the use of the spaces in City Hall and the Library utilized by employees and officials of the Library and City in the course of their official duties; and (f) loud and/or unreasonably disruptive behavior that interferes with and disrupts use of meeting rooms for activities conducted therein, including Library programs and meetings, City Council meetings, and public meetings, and (g) criminal activity including but not limited to assaults, public fighting, drug use, and intimidating and threatening behavior that cause patrons and visitors to the Library and City Hall as well as Library and City employees and public officials to fear for their safety; and

WHEREAS, the City and the Library District have a substantial interest in maintaining and preserving the intended use and purpose of the Common Areas, the Library and City Hall, through the promulgation and application of rules of conduct intended to, (a) ensure that Library patrons and City Hall visitors have safe, convenient and unfettered access to, and ingress and egress to and from, the Common Areas, the Library book drops, the Library and City Hall, (b) ensure that Library patrons and City Hall visitors are able to safely and efficiently patronize, and conduct business while at, the Library, Library book drops and City Hall, (c) create a welcoming environment that provides assurance to Library patrons and City Hall visitors that they will have a safe environment in which to patronize, and conduct business at, the Library and City Hall, and (d) ensure that all persons who want to patronize the Library or conduct business at City Hall are able to do so without unreasonable disruption, interference or fear for their safety; and

WHEREAS, the City Manager and Library District have jointly determined that rules of conduct applicable to the Common Areas are necessary in order to preserve the purpose and function of the Common Areas as described above by minimizing interference with and disruption of such intended uses; and

WHEREAS, the City Manager and Library District have determined that there is need to adopt interim rules of conduct applicable to the Common Areas in collaboration with the Library District; and

WHEREAS, it is the intent of the City Manager to implement these interim rules as reasonable restrictions upon the time, place and manner in which the Common Areas may be used for the purposes described herein in order to preserve such public property for the use for which it was lawfully dedicated and to limit access and use where disruption of such uses might occur; and

WHEREAS, it is the intent of the City and Library District through the adoption and application of these rules to regulate activities of persons in, over or upon the Common Areas only to the extent such activities may disrupt or interfere with the intended use of the Common Areas; and

WHEREAS, it is not the intent of the City and Library District, through the adoption and application of these rules, to regulate constitutionally protected expressive activity occurring upon areas recognized as a traditional or limited public forum for expressive activity, except to the extent these rules may be lawfully applied as reasonable time, place and manner regulations upon such constitutionally protected expressive activity to ensure safe use and access to public property; and

WHEREAS, it is the intent of the City and Library District to ensure that those persons authorized to enforce these rules have adequate training to apply these rules in a consistent and lawful manner; and

WHEREAS, the City Manager has authority pursuant to BMC 9.125.010(4) to promulgate such rules and has determined that it is reasonable and necessary to promulgate the rules of conduct attached hereto, which rules shall be effective upon the effective date set forth therein;

NOW THEREFORE, the City Manager, upon due and deliberate consideration, adopts and promulgates, the interim rules of conduct as set forth in Exhibit "A" attached hereto and incorporated as though set forth herein in, which interim rules shall be effective upon the date set forth therein.

EXHIBIT “A”

INTERIM RULES OF CONDUCT

Common Areas

The purpose of these Rules is to provide notice to all persons of the rules of conduct applicable to use of the Common Areas depicted and described in “Exhibit “A-1”. The following observable behaviors and activities are not allowed within the Common Areas:

1. Any activity that unreasonably disrupts others’ use and enjoyment of the library, city hall or the common areas, examples include, but are not limited to:
 - a. Creating loud noises that either exceed the ambient noise level of the Common Area or disturbs the peace of persons beyond a 10 foot radius;
 - b. Impeding pedestrian traffic, ingress or egress;
 - c. Impeding or disrupting the performance of the official duties of City and Library District officials and employees;
 - d. Preventing the general public from obtaining City services or Library District services in a timely manner;

These examples specifically do not include behaviors or activities that do not unreasonably disrupt others’ use and enjoyment of the library, city hall or common areas. Further, it is intended that these Rules of Conduct not prohibit or limit constitutionally protected activities and expression. These Rules are intended to address the behaviors, conducts, and activities identified herein and are not to be used based on a person’s appearance or socio-economic status.

2. Using materials, equipment, fixtures, furniture, buildings or grounds in any manner that,
 - a. Is inconsistent with normal uses of City Hall – Library entrance hall and associated restrooms;
 - b. Can be expected to damage public property or property of others;
 - c. Is likely to cause personal injury to one’s self or others; or
 - d. Involves the independent location and posting of signs, posters, bills or other advertising devices outside of permitted locations (unless a permit has been issued authorizing the same).
3. Disobeying the direction of a library staff member or the City Manager, or his or her designee, when asked to stop a prohibited behavior or when requested to leave for violations of these rules of conduct.
4. Any observable behavior that is prohibited by law or regulation, including but not limited to laws to protect public health and safety such as fire and building codes; and in

particular with respect to impeding or failing to keep clear areas that are utilized for emergency access and egress, such as the stairwells and ramps to the condominium structure and its associated parking areas.

Persons violating these Rules of Conduct will be subject to the provisions of Burien Municipal Code (BMC) 9.125 and shall have appeal and other rights as specified therein. A copy of BMC 9.125.020 is attached hereto as Exhibit "A-2".

Promulgated and Effective this 6th day of April, 2015.

CITY OF BURIEN
Office of City Manager



By: Kamuron Gurol, City Manager

Attested by:



By: Monica Lusk, City Clerk

EXHIBIT "A-1"

(Depiction of Common Areas)

EXHIBIT "A-2"

(Burien Municipal Code 9.125.020)

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, and shall describe the behavior that is the basis for the trespass warning, shall specify the length and place 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 establish rules and procedures for seeking prompt review of a trespass warning issued for less than seven days.

(7) 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 hearing, the violation must be proved by a preponderance of the evidence in order to uphold the trespass warning. The 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 hearing examiner may consider information that would not be admissible under the evidence rules in a court of law but that the 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 hearing examiner rescinds an exclusion, the exclusion shall not be considered a prior trespass warning for purposes of subsection (4) of this section.

(10) The decision of the hearing examiner is final. 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.

(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 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.

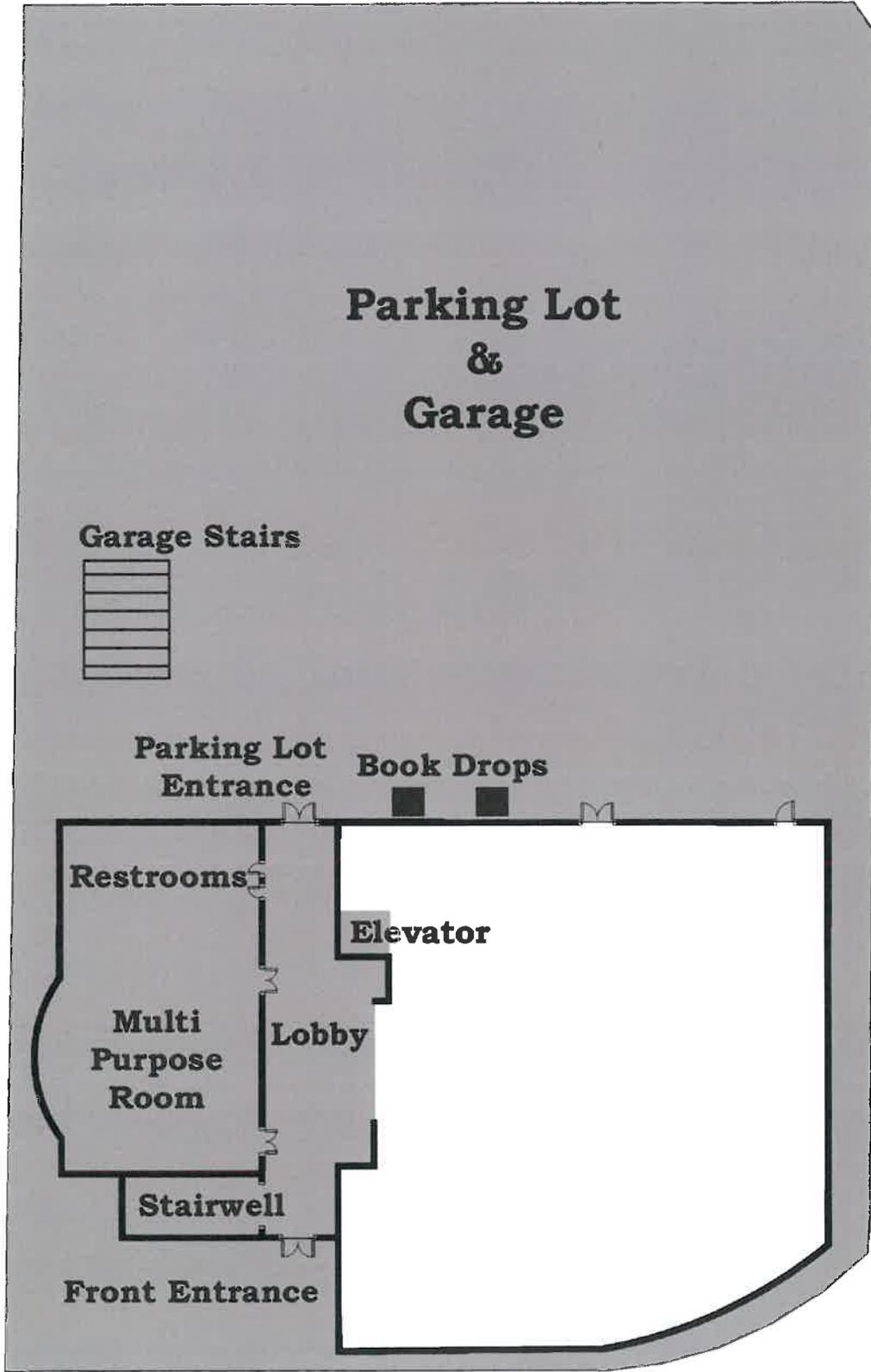
(14) Any person, who is found on city or other publicly owned property in violation of a trespass warning issued in accordance with this chapter for a period longer than seven days and who accordingly has had the right to a hearing regarding the trespass warning, may be arrested for trespassing, except 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. [Ord. 621 § 2, 2015; Ord. 606 § 1, 2014]

SW 151st St Public Sidewalk

Town Square Park

4th Ave S Public Sidewalk



SW 152nd St Public Sidewalk



This map is for reference only

