

## City of East Wenatchee, Washington

### Ordinance No. 2016-04

An Ordinance of the City of East Wenatchee adopting a process for being able to exclude an individual from publicly-owned property for engaging in illegal behavior by adding Chapter 9.42 to the East Wenatchee Municipal Code.

Una Ordenanza de la Ciudad de East Wenatchee adoptar un proceso para poder excluir a un individuo por bienes de propiedad pública para el ejercicio de una conducta ilegal mediante la adición de 9,42 Capítulo al Código Municipal de East Wenatchee.

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#### 1. Alternate format.

- 1.1. Para leer este documento en otro formato (español, Braille, leer en voz alta, etc.), póngase en contacto con el vendedor de la ciudad al [alternatformat@east-wenatchee.com](mailto:alternatformat@east-wenatchee.com), al (509) 884-9515 o al 711 (TTY).
- 1.2. To read this document in an alternate format (Spanish, Braille, read aloud, etc.), please contact the City Clerk at [alternateformat@east-wenatchee.com](mailto:alternateformat@east-wenatchee.com), at (509) 884-9515, or at 711 (TTY).

#### 2. Recitals.

- 2.1. The City of East Wenatchee (“City”) is a non-charter code City duly incorporated and operating under the laws of the State of Washington.
- 2.2. The City Council finds that there is a demonstrated need for the City to adopt a legally sound process for being able to exclude an individual from publicly-owned property for engaging in illegal behavior.
- 2.3. The City Council recognizes that a member of the public has legitimate interests and rights regarding the use and enjoyment publicly-owned property, as well as certain rights protected by the United States Constitution and the Washington State Constitution and laws, including, but not limited to, the right to petition the government, the right to assembly, and the right to access sources of information.

2.4. The City Council desires to provide a specific method for the issuance of trespass notices to an individual who engages in illegal behavior, including placing limitations on trespass notices and providing procedures for such individuals to promptly appeal the issuance of trespass notices.

2.5. The City Council enacts this ordinance as an exercise of the City's authority to protect and preserve the public health, safety and welfare, while recognizing the rights of individuals to engage in legitimate activities that may occur on publicly-owned property.

3. **Authority.** RCW 35A.11.020 and RCW 35A.12.190 authorize the City Council to adopt ordinances of all kinds to regulate its municipal affairs and appropriate to the good government of the City.

THE CITY COUNCIL OF THE CITY OF EAST WENATCHEE DO  
ORDAIN AS FOLLOWS:

4. **Enactment.** The City Council enacts Chapter 9.42 of the East Wenatchee Municipal Code:

## Chapter 9.42

### TRESPASS NOTICES

**9.24.010 Authorization.**

**9.42.020 Arrest; Exceptions.**

**9.42.030 Appeal of trespass notice.**

**9.42.040 Appeal Hearing.**

**9.42.010 Authorization.**

A. A police officer may issue a written trespass notice to an individual if the officer has a reasonable ground to believe the individual has violated a provision of the East Wenatchee Municipal Code (as enacted or amended) or a provision of the Revised Code of Washington (as enacted or amended) while on or within public property. This authorization excludes sidewalks that abut a paved street. The trespass notice must be limited to the specific property where the violation occurred.

B. A police officer may issue a written trespass notice based on personal observation, the report of a City employee, or a civilian report that a police officer would ordinarily rely upon to determine probable cause.

C. For a first violation, a trespass notice may not exceed 60 days. For a second or subsequent violation, a trespass notice may not exceed 365 days.

D. When issuing a trespass notice, a police officer must hand deliver a copy of the trespass notice to the individual. The trespass must contain the following information: the date of issuance, a description of the behavior that formed the basis for the trespass notice, the length exclusion, the place of exclusion, how to appeal the trespass notice, where to file an appeal, and the penalty for violating the trespass notice. A police officer must also provide the Police Chief with a copy of the trespass notice within 24 hours of its issuance.

#### **9.42.020 Arrest; Exceptions.**

A. An individual found on public property in violation of a trespass notice may be arrested for trespassing, except as otherwise provided in this section.

B. A City employee or official having control over a City facility, building, or outdoor area, may authorize an individual who has received a trespass notice to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, must specify the duration of the authorization and any conditions thereof, and may not be unreasonably denied.

#### **9.42.030 Appeal of trespass notice.**

A. An individual who has received a trespass notice has a right of appeal. The individual must file a written notice of appeal within ten days of receiving a trespass notice. The notice must include the individual's name, mailing address, email address, and phone number. The City may not charge a fee for filing an appeal.

B. The individual must file the written notice of appeal at the information desk of the East Wenatchee Police Department located at 271 9th St. N.E., East Wenatchee, WA 98802.

#### **9.42.040 Appeal Hearing.**

A. The Police Chief hears an appeal.

B. Within five days of an appeal being filed, the Chief must send notice regarding the time and place of the appeal hearing. The Chief of Police must provide the appellant with notice of the hearing:

1. By sending a notice of hearing to the appellant's email address;
2. By sending a text message to the appellant's phone number;
3. By mailing a notice of hearing to the appellant's mailing address; or
4. By posting the notice at the information desk of the East Wenatchee Police Department. If appellant cannot be reached by email, by telephone, or by mail, then notice at the information desk is sufficient.

C. The appeal hearing must occur no sooner than seven days after a notice of appeal is filed no later than 30 days after a notice of appeal is filed. Upon written request of the appellant, the Police Chief may hold an appeal hearing after the 30-day time limit.

D. Upon request and at no cost, the police department will send the appellant a copy of each document in the City's control which it intends to use at the hearing, and which directly relates to the issuance of the trespass notice to the appellant.

E. The appellant and the City have the right to attend the appeal hearing, the right to testify, the right to call witnesses, the right to cross examine witnesses, and the right to present evidence. The appellant has the right to bring an attorney and/or a court reporter to the appeal hearing, at appellant's own expense.

F. The appellant need not be charged, tried, or convicted of any crime or infraction for the issued trespass notice to be effective.

G. The Police Chief must consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing. Formal rules of evidence do not apply, but fundamental due process governs the proceedings.

H. At the appeal hearing, the City must prove, by a preponderance of the evidence, that the trespass notice was properly issued.

I. Within five days of the hearing, the Police Chief must issue a written decision on the appeal and must deliver the decision to the appellant at the address provided. If no address is provided, the Police Chief must post a copy of the decision at the

information desk of the East Wenatchee Police Department. If posted, a copy of the decision may be removed after 30 days.

J. If the Police Chief finds that the City properly issued the trespass notice, the Police Chief must uphold the terms of the trespass notice. For good cause shown, the Police Chief may shorten the duration of the exclusion. For good cause shown, the Police Chief may reduce the areas covered by the trespass notice.

K. If the Police Chief finds that the City did not properly issue the trespass notice, the City may not consider the trespass notice as a prior notice for purposes of EWMC 9.42.010.C.

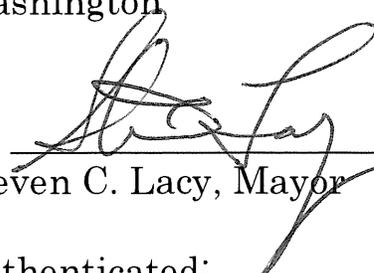
L. The decision of the Police Chief is final and the appellant is deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant. The City may not appeal a decision of the Chief of Police.

M. The trespass notice remains in effect during the appeal and review process, including any judicial review.

5. **Severability.** If a court of competent jurisdiction declares any provision in this Ordinance to be contrary to law, such declaration shall not affect the validity of the other provisions of this Ordinance.
6. **Publication.** The City Council directs the City Clerk to publish a summary of this Ordinance. The summary shall consist of the title of this Ordinance. The City Council directs the City Clerk to publish a copy of this Ordinance on the City's website.
7. **Effective Date.** This Ordinance becomes effective five days after the date its summary is published.

Passed by the City Council of East Wenatchee, at a regular meeting thereof on this 12<sup>th</sup> day of July, 2016.

The City of East Wenatchee,  
Washington

By   
Steven C. Lacy, Mayor

Authenticated:

*Dana Barnard*

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Dana Barnard, City Clerk

Approved as to form only:

*Devin Poulson*

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Devin Poulson, City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Published:  
Effective Date:

6/8/16  
7/12/16  
7/15/16  
7/20/16

**Summary of  
City of East Wenatchee, Washington  
Ordinance No. 2016-04**

On the 12<sup>th</sup> day of July, 2016, the City Council of the City of East Wenatchee, Washington approved Ordinance No. 2016-04, the main point of which may be summarized by its title as follows:

An Ordinance of the City of East Wenatchee adopting a process for being able to exclude an individual from publicly-owned property for engaging in illegal behavior by adding Chapter 9.42 to the East Wenatchee Municipal Code.

The full text of this Ordinance is available at [www.east-wenatchee.com](http://www.east-wenatchee.com).

Dated this 12<sup>th</sup> day of July, 2016.

*Dana Barnard*  
Dana Barnard, City Clerk