ORDINANCE NO. 20-0570

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
EDGEOUOD, PIERCE COUNTY, WASHINGTON, ADOPTING
A NEW CHAPTER 12.20 OF THE EDGEOUOD MUNICIPAL
CODE ENTITLED “TRESPASS WARNINGS ON CITY
PROPERTY”; PROVIDING FOR SEVERABILITY; AND
ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the City recognizes that members of the public have legitimate interests and
rights regarding the use and enjoyment of City owned or operated 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; and

WHEREAS, there is a demonstrated need for the City to adopt a legally sound process
for being able to exclude from City property individuals whose behavior is dangerous, unsafe,
illegal, or unreasonably disruptive to other users; and

WHEREAS, the City desires to provide a specific method 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; and

WHEREAS, this ordinance is enacted 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 City property; and

WHEREAS, the Council considered this Ordinance during its January 21, 2020, study
session; and

WHEREAS, the Council considered this Ordinance during its regular City Council
meeting of January 28, 2020;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEOUOD,
WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. EMC Chapter 12.20 (Trespass Warnings on City Property) Enacted. A new
Chapter 12.20 of the Edgewood Municipal Code entitled “Trespass Warnings on City Property”
is hereby established to read as set forth in Exhibit A attached hereto and by this reference fully
incorporated herein.

Section 2. Severability. If any section, sentence, clause or phrase of this ordinance
should be held to be invalid or unconstitutional by a court of competent jurisdiction, such
invalidity or unconstitutionality shall not affect the validity or constitutionality of any other
section, sentence, clause or phrase of this ordinance.
Section 3. Effective Date. A summary of this Ordinance consisting of its title 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 final passage. The full text of this Ordinance shall be mailed without charge, upon request.

PASSED BY THE CITY COUNCIL ON THE 28TH DAY OF JANUARY, 2020

Mayor Daryl Eidinger

ATTEST/AUTHENTICATED:

Rachel Pitzel, CMC
City Clerk

APPROVED AS TO FORM:

Interim City Attorney, Ann Marie J. Soto

Date of Publication: January 30, 2020
Effective Date: February 5, 2020
Exhibit A

CHAPTER 12.20
TRESPASS WARNINGS ON CITY PROPERTY

Sections:
12.20.010  Purpose, authority, and applicability.
12.20.020  Definitions.
12.20.030  Trespass warnings on City property.

12.20.010 Purpose, authority, and applicability.

A. The purpose of this chapter is to adopt a legally sound process for being able to exclude from City-owned or operated 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.

B. This chapter is enacted as an exercise of the City’s authority to protect and preserve the public health, safety and welfare.

C. This chapter shall apply to all City property in the City of Edgewood, which for the purposes of this chapter shall include, but not be limited to: City buildings and other facilities, outdoor areas, parks, unimproved property, open spaces, property that is under lease to or otherwise operated and/or controlled by the City, and any property that City owns in common with another property owner. This chapter shall not apply to public streets and sidewalks. Enforcement action shall only be taken for conduct violating rules adopted by the City for the location in which the conduct occurs, including any location covered by rules of conduct incorporated into any relevant City rule. Provided, that officers of the Edgewood Police Department may take enforcement action consistent with EMC 12.20.030.A, based on violations of other City codes, state statutes, and government rules or regulations.

12.20.020 Definitions.

A. Behavior that is “dangerous” is behavior that creates an imminent and unreasonable risk of injury or harm to either persons or property of another or the actor.

B. Behavior that is “illegal” is behavior that is prohibited by the laws of the United States, Washington State, Pierce County, or the City of Edgewood and that includes, but is not limited to, any of the following types of behavior:

1. Threatening another person by communicating either directly or indirectly to another person the intent to cause bodily injury in the future to the person threatened or to any other person; or

2. Selling or using alcohol or drugs; or
3. Threatening or harassing behavior (e.g., fighting or threatening to fight, brandishing a weapon, stalking, verbally threatening to harm others or their property); or

4. Assaulting staff or other patrons; or

5. Sexual misconduct or harassment (e.g., indecent exposure, offensive touching, sexual acts).

C. Behavior that is “unreasonably disruptive to other users” is behavior that is not constitutionally protected and that, in consideration of the nature, scope, use and purpose of the property in question, unreasonably interferes with others’ use and enjoyment of said property. Examples of behavior that may unreasonably interfere with others’ use and enjoyment of City property include, but are not limited to, any of the following:

1. Use of unreasonably hostile or aggressive language or gestures; or

2. Unreasonably loud vocal expression or unreasonably boisterous physical behavior; or

3. Using electronic or other communication devices in a manner that is unreasonably disruptive to others; or

4. Unreasonably interfering with the free passage of staff or patrons in or on City property; or

5. Behavior that is unreasonably inconsistent with the use for which the City property was designed and intended to be used (e.g., bathing, shaving, or washing clothes in a public bathroom or skateboarding in a public parking area or plaza).

D. Any constitutionally protected action or speech is excluded from the prohibited behavior listed in this section.

12.20.030 Trespass warnings on City property.

A. Officers of the Edgewood Police Department, and their designee(s), 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 City property, as defined in EMC12.20.020, while such individual is on or within any City property, as more specifically set forth in EMC12.20.010.C.

B. 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.

C. 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.

D. If the offender:
1. Has not been excluded from City 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.

2. 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.

3. 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.

4. Has been excluded from City 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 EMC Section12.20.030.D.1-3.

E. 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.

F. Administrative Appeal.
   1. A person receiving an trespass warning for an expulsion of seven (7) days, or longer, may file an appeal to have the trespass warning rescinded or the duration of the expulsion shortened.

   2. The appeal must be in writing, provide the appellant’s current address, and shall be accompanied by a copy of the trespass warning that is being appealed.

   3. The written notice of appeal must be sent to the Mayor and postmarked no later than seven (7) calendar days after the issuance of the trespass warning.

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

G. Hearing on Appeal.

   1. The Mayor or their designee (hereinafter “Hearing Official”) shall:
      a. Notify the appellant of the hearing date, time, and location;
      b. Conduct a hearing within thirty (30) calendar days of receipt of the notice of appeal; and
c. Issue a ruling upholding, rescinding, or shortening the duration of the expulsion set forth in the trespass warning no later than five (5) business days after the hearing.

2. The Hearing Official may consider a sworn report or a declaration under penalty of perjury as authorized by RCW 9A.72.085, written by the officer who issued the trespass warning or by the person upon whose observation the trespass warning was based, without further evidentiary foundation, as prima facie evidence that the offender committed the violation as described. This evidence creates a rebuttable presumption that the violation occurred and the burden thereafter rests with the appellant to overcome the presumption. Such sworn reports or declarations may be considered either in addition to or in lieu of the live testimony of the officer who issued the trespass warning or by the person upon whose observation the trespass warning was based.

3. The Hearing Official shall consider the trespass warning and may consider any written or oral sworn testimony of the appellant or witnesses, as well as pictorial or demonstrative evidence offered by the appellant that the Hearing Official considers relevant and trustworthy. The Hearing Official may consider information that would not be admissible under the evidence rules in a court of law.

4. The Hearing Official may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer individual oaths to witnesses. The Hearing Official shall not issue a subpoena for the attendance of a witness at the request of the appellant unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The appellant shall be responsible for serving any subpoena issued at the appellant’s request.

5. If, after the hearing, the Hearing Official is persuaded on a “more probable than not” basis that the violation did occur, the trespass warning shall be upheld. For good cause, or upon a satisfactory showing by appellant that he or she understands his or her violation and will not repeat the violation, the Hearing Official may shorten the duration of the expulsion set forth in the trespass warning. If, however, the violation is not proved on a “more probable than not” basis, then the Hearing Official shall rescind the expulsion. If the Hearing Official rescinds a trespass warning, the trespass warning shall not be considered a prior expulsion for purposes of this this chapter. For purposes of this section, “good cause” to rescind, shorten or modify a trespass warning shall be found where:

a. The alleged offender demonstrates to the satisfaction of the Hearing Official 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
d. In the judgment of the Hearing Official, the circumstances warrant a modification or rescission of the trespass warning. The Hearing Official 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 City property at that time.

6. The decision of the Hearing Official is final.

7. No determination of facts made by the Hearing Official under this section 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.

8. In no event will the Hearing Official be a person who is subordinate to the person who issued the trespass warning.

H. If the Hearing Official 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 12.20.030.D.

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

J. No determination of facts made by the Hearing Official 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.

K. This section shall be enforced so as to emphasize voluntary compliance with laws and City property rules and so that inadvertent minor violations that would fall under EMC 12.20.030 can be corrected without resort to a trespass warning.

L. 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 and is guilty of a misdemeanor, which shall be punishable by a fine of up to $1,000 and/or imprisonment for a term not to exceed 90 days.

M. 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 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.

N. The decision of the Hearing Official will be the City’s final decision.