

A BILL FOR AN ORDINANCE AMENDING)	ORDINANCE BILL NO.	6
SECTIONS 9.18.070 AND 9.18.110 OF THE)	for 2010	
LEBANON MUNICIPAL CODE CONCERNING)		
SERVICE OF NOTICE AND TIME PERIODS FOR)	ORDINANCE NO.	2789
APPEAL OF NOTICES ISSUED IN THE)		
ALCOHOL IMPACT ENHANCED ENFORCEMENT)		
AREAS AND DECLARING AN EMERGENCY)		

THE PEOPLE OF THE CITY OF LEBANON ORDAIN AS FOLLOWS:

Section 1. Lebanon Municipal Code Section 9.18.070, Civil Exclusion/Notice, is hereby amended to read as follows:

9.18.070 Civil exclusion/notice

The exclusion or restriction notice shall be issued by an enforcement officer or police officer and shall be served upon the person cited or arrested for the commission of the identified violation or enumerated criminal offense. In the case of city ordinance violations resulting in exclusion or other restriction, the notice shall be personally served or, after reasonable attempts for personal service have failed to personally serve the person for whom the notice of exclusion is issued, the notice may be sent by mail to the residence address of the involved party. The notice shall be in writing, shall specify the offense or offenses upon which the notice is based, the geographical extent of the exclusion, dates of exclusion, exemptions, and the procedure for filing an appeal. The period of exclusion shall commence at the time of service of the notice or, if the notice is mailed, at the time of the mailing of the notice

Section 2. Lebanon Municipal Code Section 9.18.110, Appeals, is hereby amended to read as follows:

9.18.110 Appeals

- A. A person to whom an exclusion notice, or extension thereof, has been issued may appeal the notice or extension by filing a written request with the city recorder, within five business days after service of the notice of exclusion, setting forth the name and address of the appellant and the appellant's reasons why s/he believes that the notice or extension should be rescinded. Failure to file an appeal within this five-day period shall be a waiver of all rights to review the issuance and validity of the notice of exclusion or extension, and the hearings officer shall dismiss any appeal filed outside of this time frame. The name and address set forth in the request shall be deemed conclusively correct, and mailing to the person at that address, by first class mail, shall be deemed delivery three days after the date of mailing. Failure of the person to actually receive a notice of hearing or the hearings officer's decision if mailed to the address set forth in the request shall not in any way invalidate or otherwise effect the validity of any notice or decision.
- B. If a request for an appeal is filed, the notice or extension shall be subject to a stay until such time as a hearings officer has issued a final decision upholding or rescinding the notice.

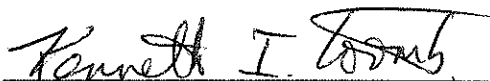
- C. The request shall be accompanied by an appeal fee, in an amount established by resolution of the city council. Except as provided in subsection G of this section, the appeal fee is not refundable.
- D. Unless the appellant and the city agree to a longer period, a hearings officer shall hear an appeal within ten days of the filing of the request. At least five days prior to the hearing, the city shall mail notice of the time and location of the hearing to the appellant at the address set forth on the request.
- E. The hearings officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the hearings officer deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The city has the burden of proof to demonstrate, by a preponderance of the evidence, that the issuance or extension of the exclusion notice is based upon probable cause that the appellant committed a criminal act or other requisite offense in an enhanced enforcement area. The formal rules of evidence under the Oregon Evidence Code shall not apply.
- F. The hearings officer shall issue a written decision within five business days of the hearing date. A copy of the decision shall be mailed to the person's address as set forth on the request, and shall be deemed effective upon actual receipt, or three days after mailing, whichever is sooner. If upheld, the period of exclusion shall commence immediately upon the effective date of the decision.
- G. The decision of the hearings officer is final, and may include a determination that the appeal fee be refunded to the appellant upon a finding that the issuance of the exclusion notice or extension thereof was not grounded in law or fact.

Section 3. This ordinance shall only apply to notices of exemptions issued or served after the effective date of this ordinance.

Section 4. Because the issuing and service of notices of exclusion from the AIEEA within the city is necessary for the peace, health and safety of the people of the city of Lebanon, an emergency is declared to exist, and this ordinance is effective upon its passage by the City Council.

Passed by the Lebanon City Council by a vote of 4 in favor and 0 against and approved by the Mayor on this 10th day of February, 2010.

CITY COUNCIL OF LEBANON, OREGON


 Kenneth I. Toomb, Mayor
 Bob Elliott, Council President

ATTEST:


 Linda Kaser, City Clerk/Recorder