

**Exclusion of Service Notice**

Dear: \_\_\_\_\_

Name

\_\_\_\_\_

Address

\_\_\_\_\_

City, State, Zip Code

This letter is to inform you of the fact that as of today \_\_\_\_\_, you are no longer permitted in or around the Butler Transit Authority's property, terminals, or other facilities, nor are you permitted to utilize the Butler Transit Authority transportation services for any reason during the term of this exclusion.

If you are seen in or around the premises at the above specified property and/or using Butler Transit Authority bus service after being notified of the Exclusion of Service Notice, any Butler Transit Authority employee will notify the appropriate law enforcement agency to be removed and possibly face criminal charges. You will hereafter be considered as a **"TRESPASSER"** and Police will be called to ARREST you. This notice will serve to comply with the **Pennsylvania Trespassing Statutes**, in that you were given written notice by an authorized Butler Transit Authority representative.

**This exclusion shall be in effect until:** \_\_\_\_\_.

**A copy of this letter will remain on file, and will be supplied to the appropriate law enforcement agency as necessary.**

Sincerely,

\_\_\_\_\_

Name - Print

\_\_\_\_\_

Signature

\_\_\_\_\_

Title

\_\_\_\_\_

Date

## Exclusion of Service Policy

### Section 1: Exclusion

Butler Transit Authority (“BTA”) reserves the right to exclude a person(s) from the use of facilities or service when doing so is in the best interest of safety and security for the public and BTA employees, or when otherwise authorized under the BTA Code of Conduct. A determination of exclusion of service, or the application of the Disruptive Passenger policy, may depend on the program or services utilized by an offender, or the severity of action leading to suspension/exclusion. Offenders whose own actions show a propensity or a habitual pattern of civil disobedience, disorderly conduct, loitering, terroristic threats and harassment may be excluded from service or Butler Transit Authority property or facilities at any time.

Butler Transit Authority property is inclusive of vehicles, transfer points, shelters and any other Butler Transit Authority-owned property. This list is not all-inclusive and an Exclusion of Service Notice may be issued in any situation in which Butler Transit Authority believes there is a threat to passenger and employee safety and security. The Executive Director shall make the decision based on articulable facts showing a pattern or propensity for continued unacceptable behavior and actions. The Executive Director, or his/her designee, shall be the issuing Butler Transit Authority representative. However, an authorized Butler Transit Authority representative or Law Enforcement Officer may issue an Exclusion of Service Notice to any person who is in violation of any described nuisance offenses, violates the BTA Code of Conduct, and/or or who commits an offense under applicable state or local law in or upon a Transit Facility or Transit Vehicle or Butler Transit Authority-owned property. Additionally, BTA authorizes its third-party contractor, MV Transportation, to implement and enforce this Policy, and to issue Exclusion of Service Notices when it believes it is necessary to do so, or when an immediate or emergent need arises.

Persons who have a disability, as defined by a funding source providing that individual’s trips, or utilize the Butler Transit Authority’s ADA transportation program, shall be governed under the disruptive passenger provisions of this Policy.

This Policy incorporates the federal definition of assault on a transit worker which is set forth at 49 U.S.C. 5302(1) as:

a “circumstance in which an individual knowingly, without lawful Butler Transit Authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the transit worker is performing the duties of the transit worker.”

In the event this definition changes, or state law provides a more strict definition, the Butler Transit Authority will process complaints or disruption pursuant to the most general policy.

## **Section 2: Notice**

In the event an Exclusion of Service Notice is issued, Butler Transit Authority shall provide a written copy of such Exclusion of Service Notice to any person who has been excluded from all or any portion of Butler Transit Authority property, including, but not limited to, Transit Facilities or Transit Vehicles, or any other Butler Transit Authority-owned property described within the exclusion notice. The written Exclusion of Service Notice shall specify the particular violation or reason for exclusion, all places or property from which the person is excluded, the duration of the exclusion, and the consequences for failure to comply with the Exclusion of Service Notice.

In the event that the name/address of the Offender is unknown, the Exclusion of Service Notice will be issued with a description of the Offender, and a photo obtained from on-board surveillance shall be attached to the Notice kept on file. Any Exclusion of Service Notice served upon an unnamed individual shall also have attached a statement by the BTA or MV employee or representative who personally served the Notice upon the Offender.

## **Section 3: Duration**

An Exclusion of Service Notice issued by the BTA Executive Director or his/her designee shall be effective immediately upon issuance and shall remain in effect until the exclusion expires, is terminated by Butler Transit Authority, or is overruled on appeal. Additionally, Butler Transit Authority specifically reserves the right to issue an Exclusion of Service Notice from all Butler Transit Authority property.

An Exclusion of Service Notice issued by MV personnel or representatives shall be effective immediately and shall remain in effect for up to three (3) days, until reviewed and approved by the BTA Executive Director. If the Executive Director approves the Exclusion of Service Notice, the same may be extended for a duration decided upon by the Executive Director.

## **Section 4: Appeal of Exclusion**

A person receiving an Exclusion of Service Notice, including a Notice of Permanent Exclusion, may appeal by submitting such appeal in writing to the Butler Transit Authority Executive Director. Any written appeal must be responded to in writing within ten (10) business days. In determining an appeal, the Executive Director may, but is not obligated to, hold a hearing or consider any relevant evidence to discuss the basis for an appeal.

## **Section 5: Application for Modification of Exclusion**

At any time during the period of exclusion set forth in an Exclusion of Service Notice, the person named or identified may file a written protest to Butler Transit Authority's Executive Director to allow such person to enter upon Butler Transit Authority property or service encompassed within the Exclusion of Service Notice. In his/her sole discretion, the Executive Director may grant a modification if the person establishes a pressing need (i.e. employment, medical treatment, or similar good cause) to enter upon Butler Transit Authority property, including, but not limited to, Transit Facilities and Transit Vehicles. In his/her sole discretion, the Executive Director may terminate an Exclusion of Service Notice or grant a modification if the excluded person demonstrates by clear and convincing evidence that he or she was wrongfully or unfairly excluded from Butler Transit Authority property and facilities. In granting a modification, additional conditions or requirements may be imposed upon the excluded person to prevent the excluded person from committing future offenses.<sup>1</sup> Any subsequent offenses while on an Exclusion Modification shall immediately result in a restoration of the original Exclusion from all service and all facilities.

## **Section 6: Trespass**

A person excluded pursuant to this policy may not enter or remain upon any excluded property or area during the period of exclusion. In the event an excluded person enters or remains upon such excluded property, such person shall be considered to be a trespasser and may be subject to arrest and prosecution for the crime of defiant trespass.

## **Section 7: Non-Discriminatory Policy**

Butler Transit Authority shall not base an Exclusion of Service Notice on race, color, sex, age, religion, national origin, ancestry, marital status, physical or mental handicap, or economic status. Any action shall be derived from evidentiary facts and deemed to be in the best interest of safety and security for public and employees.

## **Section 8. Disruptive Passengers/Shared Ride Program**

The terms and provisions of this Policy apply in equal force for those persons who utilize any ADA program or similar transport of persons with disabilities, such as ANR or BART, and the company providing such transportation services ("the Company") is authorized by BTA to take action under this Policy as it deems necessary. For purposes of this Section, ADA programs shall be all-inclusive for any program where the Butler Transit Authority transports persons who qualify for any state or federal program for transport of any person with a disability.

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<sup>1</sup> 49 CFR, Part 37.5 (App.D) "If an entity may legitimately refuse service to someone, it may condition service to him on actions that would mitigate the problem. The entity could require an attendant as a condition of providing service it otherwise had the right to refuse.

A. When utilizing transportation through an ADA or shared-ride program, customer conduct that is violent, seriously disruptive, or illegal will not be accepted nor allowed.

The Company may suspend individual passengers and/or refuse service to an individual with a disability who engages in violent, seriously disruptive, or illegal conduct, using the same standards for exclusion that would apply to any other person who acted in such an inappropriate way pursuant to the Butler Transit Authority's Exclusion from Service Policy.

The Butler Transit Authority will not refuse to provide service to an individual with disabilities solely because the individual's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience employees of the entity or other persons. When faced with an incident involving violent, seriously disruptive, or illegal conduct, the vehicles' operator will complete an incident report detailing the situation and forward it to his/her direct supervisor at the conclusion of the shift. In cases of imminent danger or harm, or direct threats, the vehicle operator shall make the necessary report immediately as in the case of any such incident on a Company vehicle. All reports of such incidents and resulting actions/exclusions shall be provided to the Executive Director of BTA within forty-eight hours.

With regard to considering a "direct threat," U.S. Department of Justice regulations state in 28 CFR Sec. 36.208. In determining whether an individual poses a direct threat to the health or safety of others, a public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

Examples of the violent, seriously disruptive, or illegal conduct resulting in "refusal to provide service" in the context of the Butler Transit Authority's ADA programs, include, but are not limited to, the following:

- Disrupting the driver while he/she is driving the vehicle.
- Engaging in any conduct or activity that represents a danger to himself/herself, to other passengers or to the driver.
- Making physical or verbal threats to the driver or to other passengers. Such threats may be either verbal or written.
- Damaging or destroying vehicle equipment or any employee's or passenger's property.
- Getting out of the seat while the vehicle is in motion or while the trip is underway.
- Refusing to wear a seat belt.
- Smoking, consuming alcoholic beverages or any illegal substance while on board the Butler Transit Authority's vehicle.
- Disrupting other passengers.
- Disrobing.

- Swearing, name calling and/or abusive language.
- Personal Hygiene condition, resulting in a public health hazard as categorized by the Centers for Disease control.
- Violations of the Butler Transit Authority's Code of Conduct Policy

#### B. Processing Disruptive Behavior:

If a customer engages in violent, seriously disruptive, or illegal conduct, the offending customer will:

1) Immediately be asked by either the vehicle's operator or other member of the Company's or BTA's management staff to stop or correct the disruptive behavior. If the customer continues to engage in a violent, seriously disruptive, or illegal behavior, assistance will be sought as necessary; and/or

2) Be issued a letter detailing the incident. The letter will also outline the subsequent "suspension of service" notification to the passenger and will include the reason for such determination. A copy of the letter will also be sent to the passenger's guardian, and/or the passenger's service provider. Despite this notification, the Company's staff must be mindful of the critical importance of maintaining confidentiality concerning information about a passenger's identity, personal circumstances, disability status, etc.

Further suspensions up to and including refusal of service will be determined at exclusive discretion of the BTA Executive Director in the event that the suspension of service has not mitigated the disruptive situation.

#### C. Appeals Process

Adequate documentation must be on file to support the decision that a cause for suspension has been identified and carefully investigated, and that the action taken was warranted. Adequate documentation can take many forms including videos and other digital recordings, witness statements, direct observations or other relevant evidence concerning an event and/or complaint.

When possible, if sanctions, suspensions or exclusions are imposed, the customer must be notified ahead of time in writing or in accessible format. If an immediate sanction is imposed, a verbal notification must be swiftly followed by the required written or accessible format notice.

The notice must identify the basis for the proposed action with specifics and describe the proposed sanction. It must notify the customer of his/her right to appeal and how to file an appeal. Customers who are issued a "refusal to provide service" or exclusion letter will have the right to appeal the suspension, as described below:

The individual will have sixty (60) calendar days from the date of the notification letter to

file an appeal with the Company's EEO Officer or the BTA Executive Director. The information concerning the appeals process will be included in the correspondence sent to the offending customer, caregiver, guardian or advocate. The appeal process and procedures shall follow those procedures set forth in the section of this Policy for appeals of determinations for eligibility. The Butler Transit Authority will provide transportation to the appealing party to and from the hearing free of charge.

If during the ADA appeals process it has been determined the Company or BTA has legitimately refused service to someone who has engaged in violent, seriously disruptive, or illegal conduct, either the EEO Officer or BTA Executive Director may choose to provide conditional service to him or her while imposing conditions that would mitigate the problem. For example, conditional service could be based upon requiring the presence of an attendant as a condition of providing service it otherwise had the right to refuse.

In evaluating the request, the EEO Officer or Executive Director may hold a hearing and otherwise gather evidence regarding the claim and the proposed sanction. The passenger may have an opportunity to present evidence and witnesses at the appointed time. The findings of the EEO Officer or Executive Director, as the case may be, will be final and binding.

*Adopted by the Butler Transit Authority Board of Directors on March 14, 2023.*