



October 6, 2014

Honorable Lucy Krakowiak, Mayor
Members of the Burien City Council
Burien City Hall
400 SW 152nd Street, Ste. 300
Burien, WA 98166

VIA U.S. MAIL AND ELECTRONIC MAIL

Re: Ordinance No. 606 (Issuance of Trespass Warnings on City and Other Publicly-Owned Property)

Dear Mayor Krakowiak and Members of the Burien City Council,

The American Civil Liberties Union of Washington (ACLU-WA) writes to urge the city council to repeal Chapter 9.125 of the Burien Municipal Code, “Trespass Warnings on City and Other Publicly Owned Property.” The ACLU-WA and its more than 20,000 members are dedicated to preserving civil rights and civil liberties throughout Washington State. We believe this Chapter, recently adopted as Ordinance No. 606, is both counterproductive as a matter of policy and unconstitutional, and we urge you to repeal it.

The city has a legitimate interest in maintaining safe and accessible public parks, libraries, and offices. But current assault, harassment and disorderly conduct laws already empower police officers to cite or arrest those whose conduct poses a genuine risk of harm to others. This ordinance goes much further, designating a broad, vaguely-defined set of behaviors (“loud vocal expression” or “boisterous physical behavior,” “aggressive language or gestures”) and personal attributes (“insufficient clothing,” “bodily odor or scent”) as grounds for exclusion from all publicly owned property in the city. While we realize that some of the ordinance language comes from the King County Library Code, it is neither appropriate policy nor legal to apply rules for behavior in the particular environment of the library to all public property in the city.

Such banishment laws rarely solve the problem—instead, they move it elsewhere and fail to address the underlying issues of poverty, homelessness, and mental illness. Homeless individuals who are slapped with criminal penalties under this ordinance will face additional barriers to finding employment and housing, while the city bears

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON

901 5TH AVENUE, SUITE 630
SEATTLE, WA 98164
T/206.624.2184
WWW.ACLU-WA.ORG

JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

the costs of their arrest, prosecution, incarceration, and public defense. Instead of this heavy-handed and ineffective approach to the problem, the council should take steps to connect people with urgently needed services such as shelter, temporary housing, counseling for substance abuse and mental illness, and access to facilities for basic hygiene.

Chapter 9.125.015(4) is also unconstitutionally vague and overbroad. Courts in our state have repeatedly struck down laws that do not provide reasonable notice of what conduct is prohibited or that prescribe such nebulous standards as to invite arbitrary or discriminatory enforcement. Terms such as “unreasonably hostile or aggressive language or gestures,” “unreasonably boisterous physical behavior,” “unreasonably offensive bodily hygiene or scent,” and “unreasonably inconsistent with normal use of public property” are inherently subjective. Officers and city employees are given broad discretion to enforce the law, causing potentially arbitrary distinctions between park-goers playing a “boisterous” touch football game, a parent needing to wash up a small child, or a library patron with an unpleasant odor due to a medical condition. Enforcement might well disproportionately target the homeless, groups of young people, or others deemed “disruptive” in public spaces.

The ability to speak, associate, and travel freely are liberty interests protected by the Constitution and enjoy special protection in “traditional public forums” like public parks and sidewalks. But this ordinance blurs the line between poor manners (cursing, expressing strong emotions, talking loudly on a mobile phone) and truly dangerous or criminal behavior. Courts have taken a dim view of novel civility standards such as the ones in this ordinance, for which there is neither a known legal standard nor a specific definition.

The ordinance’s assertion that “constitutionally protected action or speech” falls outside its scope does not resolve its constitutional problems. Indeed, it exacerbates the vagueness of the law, as ordinary people will be unable to discern which conduct crosses the line and which does not. Under this ordinance, the subjective perceptions of individual police officers – rather than the conduct of alleged offenders – determine when people can be excluded from public places they otherwise have a right to be in.

The people of Burien would be better served if the city used existing civil and criminal laws, when necessary, to address dangerous, disruptive, or other criminal conduct. Rather than maintaining a vague, overbroad trespass statute that invites arbitrary enforcement, neglects the underlying problem, wastes scarce public safety dollars, and is vulnerable to constitutional challenge, the city should support proven strategies to help people find a way out of homelessness. We ask you to repeal the ordinance.

Sincerely,



Jennifer Shaw
Deputy Director

Cc: Deputy Mayor Bob Edgar
Council Member, Position 4

Debi Wagner
Council Member, Position 3

Gerald Robison
Council Member, Position 6

Kamuron Gurol
City Manager, City of Burien

Lauren Berkowitz
Council Member, Position 1

Nancy Tosta
Council Member, Position 5

Steve Armstrong
Council Member, Position 7

Chief K. Scott Kimerer
Burien Police Department