



January 5, 2015

Honorable Lucy Krakowiak, Mayor, and
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

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON

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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

**Re: Ordinance No. 621 - Proposed Amendments to Ordinance No. 606
(Issuance of Trespass Warnings on City and Other Publicly-Owned
Property) City Council Agenda Item for 1/5/2015 Meeting**

Dear Mayor Krakowiak and Members of the Burien City Council,

We reviewed the most current draft of Ordinance No. 621, posted on the City's web site on the evening of January 2, 2015. We appreciate the opportunity to comment on the proposed amendments to the Burien City Ordinance No. 606.

While we appreciate the additional proposed revisions, the ordinance remains unnecessary and unconstitutional. We urge the Council to reject it, or at a minimum defer action to allow in-depth consideration of the ordinance's harmful effects.

As the Council is aware, the ACLU of Washington previously raised significant concerns with the constitutionality of Ordinance 606. Attached to this letter are two previous letters that we submitted to the City regarding our concerns. We ask that you include all of these letters in the record of the Council's consideration of Ordinance No. 621.

As we have mentioned in our prior discussions with the City, Ordinance No. 606 is unnecessary because there are already a panoply of both crimes and rules of conduct on the books applicable to public places in Burien. These existing laws and rules provide adequate tools for responding to unreasonably disruptive behavior. The public library and transit agencies already have rules of conduct and procedures for excluding a person who violates those rules; some of the language in Ordinances 606 and 621 is copied from those rules. Other public places such as City Hall, community centers and parks either have such rules of conduct or are free to adopt them.

The existing rules of conduct clearly notify the public that certain behaviors are prohibited in specific kinds of public places and explain the consequences for violations. These rules give users fair and appropriate notice about what constitutes unsafe or unreasonably disruptive conduct in the library, or what constitutes such conduct in an outdoor park.

In contrast, the Burien ordinance is unconstitutionally vague and confusing. It repeatedly uses but does not define the term “unreasonably” when describing prohibited behaviors: “unreasonably hostile or aggressive language or gestures”; “unreasonably loud vocal expression”; “unreasonably boisterous physical behavior”; “unreasonably disruptive to others”; “unreasonably inconsistent.” This lack of clear definition gives public employees unfettered discretion to determine which conduct is prohibited and when or if to enforce the ordinance. The use of undefined terms creates confusion for both the public and city employees. In failing to provide the predictability needed for a measure to be constitutional, it invites arbitrary and discriminatory enforcement.

Language in the ordinance purporting to consider the location of the conduct, and excluding constitutionally protected conduct, does not save the ordinance from being unconstitutionally vague. Ordinary citizens would still be left to guess at how and when the examples of prohibited behavior would be applied.

The City currently has the ability to curb disruptive behavior under existing laws. It does not need this unconstitutional ordinance that will significantly limit rights of Burien’s residents to use and enjoy their public places. We again urge the Council to repeal Ordinance No. 606 and reject the proposed amendments in Ordinance No. 621, or at a minimum to defer action to allow further consideration of the issue.

Sincerely,



Jennifer Shaw
Deputy Director

Cc:	Bob Edgar Deputy Mayor, Position 4	Steve Armstrong Council Member, Position 7
	Lauren Berkowitz Council Member, Position 1	Gerald Robison Council Member, Position 6
	Debi Wagner Council Member, Position 3	Nancy Tosta Council Member, Position 5
	Kamuron Gurol City Manager, City of Burien	Chris Bacha Interim City Attorney, City of Burien