

From: Linda Curtis <ljcurtis@indytexans.org>  
Subject: Cease and Desist Warning Issued to City of Austin --  
Petitioning on public property (Austin Public Library property) is  
legally protected free speech  
Date: February 19, 2018 at 10:39:03 AM CST  
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Cc: Bill Aleshire <bill@aleshirelaw.com>, Bill Bunch  
<bill@sosalliance.org>, Fred Fred Lewis <f\_lewis@sbcglobal.net>

*Dear Mayor, City Council Members and City Management:*

*I am sending this letter to you on behalf of IndyAustin SPAC, signed by attorneys  
Bill Aleshire, Bill Bunch and Fred Lewis.*

*Please feel free to reach Bill Aleshire who represents IndyAustin.*

*Thank you.*

*Linda Curtis*

**[IndyAustin.org](http://IndyAustin.org)**

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***IndyAustin SPAC***

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Dear Mayor Adler, City Council Member Pro-Tem Tovo, City Council Members  
Alter, Casar, Flannigan, Garza, Houston, Kitchen, Pool, Renteria and Troxclair,  
City Manager Cronk and City Attorney Morgan:

On Saturday, February 17, petitioners for holding a public vote on CodeNEXT  
were stopped from petitioning on city owned public property, specifically at a  
number of Austin Public Library locations. Library Mangers told these petitioners  
to leave the property based on a directive from Library Management. In no case

did individual library Managers cite any complaints from library users. In one case, a petitioner was threatened with criminal trespass and issued a warning notice by police. These petitioners include Bill Bunch (Twin Oaks Library), Jeff Jack (Twin Oaks Library), Scott Royder (Spicewood Library), Mark Leszkierwicz and Hannah Young (Manchaca Library), Debbie Russell (Hampton Library) and Saira and Doug Morgan (N. Village Library).

All library managers were polite and several even expressed embarrassment about what they were directed to do – to eject obviously concerned citizens who were simply expressing their right to free speech on public property.

We believe the City's interference in petitioning for an initiative for adoption of a City ordinance—regardless of the content of the proposed ordinance—is without legal authority and violates petitioners' rights under the First Amendment, the Texas Constitution, and City law.

On Thursday, February 15<sup>th</sup>, IndyAustin petition manager, Linda Curtis, made a courtesy call to Laura Pollo, Assistant to Mr. Roosevelt Weeks, Director of the Austin Public Libraries. At that time, Ms. Pollio thanked Curtis and thought there would be no problem. Curtis mentioned on this call that petitioners had, in fact, been petitioning for months at the Austin Central Library without any problem or incident. Pollio agreed.

At approximately 12:00 pm, Friday, February 16, Ms. Curtis received a call from Dana McBee who said petitioners could not be on any library property. McBee promised that a communication to Ms. Curtis and Fred Lewis, citing the ordinance or rules governing this would be shared from Ms. Herfurth's office. No such notice came to either Curtis or Lewis.

Attached is an email dated February 16<sup>th</sup> from Sharon Herfurth, the Division Manager of the City of Austin Office of Programs & Partnerships. The Herfurth memo was not forwarded to IndyAustin until after the first petitioners being ejected – Saira and Doug Morgan – from the N. Village Library. It was forwarded to Ms. Curtis, with Herfurth's permission, by N. Village manager Michael Abramov.

Attorney Bill Aleshire represents IndyAustin – one of the groups petitioning on CodeNEXT. On Saturday, February 17, Aleshire, after reading the Herfurth memo sent this note to City Attorney Anne Morgan:

*I heard about this issue this morning and wanted to contact you right away. The attached email was sent to library staff to stop my client IndyAustin from gathering signatures on their petition regarding CodeNEXT. Frankly, the wording and link in this email from Austin staff appears to indicate a content-based enforcement, targeting these particular petitioners for this particular issue, away*

*from library patrons today. Linda Curtis, Bill Bunch, Jeff Jack, and other volunteers are at libraries, without disrupting any traffic at the entrances or operation of the libraries inviting people to sign the petition. Of note, they are getting a very enthusiastic response from people who like to read and go to libraries. The library customers are not only not complaining, they seem to appreciate the opportunity to sign the petition....*

Also in the email, Aleshire made reference to the City Charter initiative provision, Article IV, section 1:

§ 1. - POWER OF INITIATIVE.

**The people of the city reserve the power of direct legislation by initiative**, and in the exercise of such power may propose any ordinance, not in conflict with this Charter, the state constitution, or the state laws except an ordinance appropriating money or authorizing the levy of taxes...

We contend that based on the people's reservation in the Charter of their right to initiative petitioning, the Council and the City Manager lack authority, by ordinance or administrative rule, to interfere in petitioning *anywhere* unless the petitioning interferes in government operation or causes a threat to public safety. In other words, unlike other forms of free speech the Council may be able to restrict to reasonable "free-speech zones," petitioning for an initiative is an exception—a power reserved by the people of Austin—that the City Council and staff have no authority under the Charter to interfere with. Interfering in the people's right of petition is not a good way for the new City Manager to get off on the right foot with the public.

We request the city to cease and desist immediately to avoid further legal conflict and further violation of the rights of Austin citizens exercising their right to petition on public property. Petitioners, in all cases, were not in any way interfering with city business, soliciting business or funding from any person, nor distributing literature or interfering with the use and enjoyment of our city libraries. They stood away from entrances and were polite at all times. Even the City's official administrative rule recognizes that sidewalks are a "traditional public forum." Yet, the petitioners were threatened and told to leave even the sidewalk area by the libraries.

Petitioning at city libraries in a way that does not interfere with any other person's enjoyment of such property is not a criminal offense. Yet, these petitioners were removed from the area outside libraries because of what they were doing—petitioning.

***We therefore ask that the City Manager and City Attorney take immediate steps to assure that no other petitioners are cited or threatened with citation and that any warning citation issued on Saturday, February 17 be withdrawn in writing.***

Signed,

Bill Aleshire, 512.750-5854

Bill Bunch, 512.477.2320

Fred Lewis. 512.636.1389

PS Upon your request, Petitioners will share with you the specifics from each library incident, including pictures of where petitioners were standing away from entrances.

cc: Austin media