

ALESHIRELAW

A PROFESSIONAL CORPORATION

700 LAVACA STREET, SUITE 1400
AUSTIN, TEXAS 78701

Bill Aleshire

Bill@AleshireLAW.com

512 320-9155 (call) 512 320-9156 (fax)

March 8, 2018

VIA EMAIL: spencer.cronk@austintexas.gov

Spencer Cronk
Austin City Manager

VIA EMAIL: Roosevelt.Weeks@austintexas.gov

Roosevelt Weeks
Director of Austin Library

VIA EMAIL: Anne.Morgan@austintexas.gov

Anne Morgan
Austin City Attorney

RE: Request for Hearing – Lucas Burdick, Criminal Trespass Warning 3-7-18

Dear Mr. Cronk, Mr. Weeks, and Ms. Morgan,

I represent Lucas Burdick, who is working for my client IndyAustin SPAC (a political action committee) gathering signatures on a petition for initiative concerning CodeNEXT, a highly controversial issue of public concern.

The Criminal Trespass Warning

Yesterday, Mr. Burdick was standing about 25 feet away from the entrance way to the Main Library. Exhibit P-1. A uniformed officer instructed Mr. Burdick to move off the library sidewalk used by pedestrians entering the library from the parking garage located to the left side of the entrance way. The officer gave Mr. Burdick the attached Criminal Trespass Warning (Exhibit P-2) merely because he was petitioning at that location. The officer required Mr. Burdick to move to the sidewalk by the street, so far away and with traffic noise that no patron of the library would notice the petitioner or even hear him if he called out to them. The warning cited Library Rules “chapter [sic] 13(A)(5), which makes it a violation to:

(5) distribute literature or otherwise solicit customers on library property.

Library Use Rules (eff. 2/1/2017), section 13(a)(5)

As you can see from the warning notice, Mr. Burdick was prohibited from “coming on the property or premises of the City of Austin located at ALL Austin Public Libraries [] For Any Reason at All.” The ban lasted until today, March 8, 2018. Section 2(B)(3) of the Library rules define “library” (as in “library property”) as meaning:

“... any building or facility of the Austin Public Library, including the entrance ways and adjacent lawns, landscaping, and parking areas.”

Mr. Burdick was not located inside the building, nor was he in the entrance way, adjacent lawns, landscaping or parking area of the library. Yet, he was cited and barred from *every* Austin library. Despite the more limited definition of the term “library,” apparently library staff is enforcing the petitioning ban everywhere within “library property boundaries”—a demarcation that is not visible by the public and extends to areas that are not included in the rule definition.

Request for a Hearing

Since this incident (and others that have occurred and others that may occur in the next few days) will likely result in litigation against the city to challenge the City staff’s rules severely restricting petitioning, I am writing to request that Mr. Burdick be afforded whatever administrative appeals process the rules allow. As I read the Library Use Rules and the Rules for Public Use of City Properties, there is no hearing granted for someone unless and until they are denied access to city property for a year. However, out of an abundance of caution (against a later claim by the City that plaintiffs failed to exhaust administrative remedies), this is a request that Mr. Burdick be afforded a hearing, as well as any appeals allowed, so that he can have the Criminal Trespass Warning rescinded. We ask that the information in this letter be considered for such a hearing.

Ultra Vires and Content-Based Violation of Free Speech

In addition to our contention, that Mr. Burdick’s location was not in or on the “library” as that term is defined in the staff’s Rules, we contend the staff lacks authority to interfere in such petitioning outside on the sidewalks leading to Austin public libraries. The Austin City Charter does not empower the City Manager, Library staff, or others to interfere in the reserved right of the people of Austin to petition for initiative, such as what IndyAustin and Mr. Burdick are doing. The Manager’s authority, and limitations on that authority, is derived from the City Charter, and Article IV, section 1 says:

§ 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. Any initiated ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number

to the number of signatures required by state law to initiate an amendment to this Charter.

In addition, the Texas Constitution, art. I section 8, in affirmative language, guarantees Texans' free speech ("Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege....") and section 19 substantively and procedurally protects our "liberty" and "privileges," not just our property. Exercising the petitioning rights recognized in the City Charter is a unique form of free speech, requiring a degree of physical proximity to potential petition-signers that is not necessary for other forms of speech, such as demonstrations and protests. The further the City staff tries to move petitioners away from potential petition-signers, the greater their interference is in the people's exercise of this "reserved right" of petitioning for initiatives.

There are relatively few locations of city property in Austin, especially when viewed by Council member districts, where people gather or congregate and provide a feasible and efficient opportunity for the exercise of the people's reserved power to petition. Austin, by mere staff rules which have not been endorsed by the City Council, apparently outright prohibits petitioning for initiative at the very locations where the most potential petition-signers can be found, *e.g.*, at Palmer Auditorium (even though it is located on parkland) and outside of every Austin library. Section 3 of the staff's Library Rules broadly proclaim "...the library is not a public forum." IndyAustin and its petitioners have never asserted any claim to be petitioning inside the library or in manner that interferes with library patron use of the facility. Staff apparently thinks that even sidewalks leading up to the library entrances are not forums for free-speech petitioning ... at least not for IndyAustin and their CodeNext petition.

We continue to gather evidence that the Library Rules are being enforced based on the content of the activity at issue. When library staff member Sharon Herfurth sent an email on Friday, February 16th to library staff, she did not just remind them about the Library Rules, she specifically targeted IndyAustin by name as planning to be "present on Saturday at your locations to collect signatures on a petition *to force an election on CodeNEXT*." Exhibit P-3. Ms. Herfurth even included, *unnecessarily*, unless to further emphasize what IndyAustin stands for, the IndyAustin website "<https://indyaustin.org/event/library-day-rain-date-march-3/>." Note also Ms. Herfurth broad ban on these petitioners being anywhere within "library property boundaries." ("IndyAUSTIN is welcome to be stationed *beyond Library property boundaries*, just not inside the Library or in the Library parking lot.").

On Saturday, March 3rd at Twin Oaks Library, not only was a foster-care group allowed to "distribute literature or otherwise solicit customers on library property," they were allowed to set up a table and chairs encroaching on the sidewalk within about 10 feet of the library door. Exhibit P-4. Not only is the City Manager's staff effectively barring the people from exercising their "reserved right" to petition, the staff is using a content-based enforcement strategy.

I would also note that some of the libraries have been used as election polling places, and even if the 100-foot electioneering distance marker is considered, in some cases political candidates have been allowed on the library "property boundaries" to campaign ("solicit"?) and distribute their literature.

No Staff Effort to Avoid Confrontation or Litigation

I think it's important to note how City staff have handled this serious matter. When my clients first told me about this library issue, on Saturday, February 17, 2018, I sent an email to City Attorney Anne Morgan to which she responded. Exhibit P-5. I have received no further communication from her about this. On Monday, February 19, 2018, co-counsel Bill Bunch, Fred Lewis, and I sent a request to you and Council specifically asking "that the City Manager and City Attorney take immediate steps to assure that no other petitioners are cited or threatened with citation" merely for petitioning near the libraries. Exhibit P-6. The only response we received to this letter was an interim response from Library Director Weeks, on that Monday, indicating he would "respond by the end of business on tomorrow [Feb. 20th]." Exhibit P-7. I am not aware of any other response to our letter of February 19th, but IndyAustin petitioners continue to be harassed at the libraries. I expect that if you want to give citations to more of IndyAustin's petitioners outside of libraries, IndyAustin will continue to give you that opportunity ... at least until we get into court for relief. However, the criminal trespass warnings issued so far are having the effect of chilling the exercise of free speech by some IndyAustin petitioners.

IndyAustin's and Mr. Burdick's position is that the City Manager and staff lack authority to interfere in their right to petition for the CodeNext initiative or any other initiative. Mr. Burdick asserts that he did not even violate the published rules by his location, yet was removed. And, even if the City staff has some rulemaking authority as to the place and manner in which petitioning can occur, the rules that have been adopted, and as they are being enforced, are unreasonable in their broad effect, in that they practically ban petitioning at the very locations *where the people are*.

Please let me know if Mr. Burdick will get a hearing. Be advised that I will be out of town from the afternoon of March 13th until March 28th, but I can be reached by phone (512 750-585) or email (Bill@AleshireLaw.com).

ALESHIRELAW, PC



Bill Aleshire



EXHIBIT P 1

CRIMINAL TRESPASS NOTICE FOR CITY OF AUSTIN PROPERTY (FORM B – Effective Immediately)

CURRENT DATE		TIME	
3-7-18		14	
		AM <input checked="" type="radio"/> PM	
TRESPASS LOCATION		NAME OF CITY BUILDING OR PROPERTY (IF NAMED)	
710 W CASAR CHAVEZ ST.		Austin Central Library	
SUBJECT INFORMATION: (INCLUDE ALL AVAILABLE INFORMATION)			
LAST NAME		FIRST NAME	MIDDLE NAME
Burdick		Lucas	
RACE / SEX	HEIGHT	WEIGHT	HAIR
W/M	57	145	Blonde
EYES	IDENTIFICATION NUMBER	STATE	TYPE
Blue		TX	
HOME ADDRESS		CITY	ZIP CODE
6912 Wildsdate Ln		Austin	78724
EMPLOYER OR WORK ADDRESS		WORK PHONE	CELL PHONE /PAGER
			(512) 203-1601
VEHICLE INFORMATION: (IF APPLICABLE AND AVAILABLE)			
YEAR	COLOR	MAKE	MODEL
STYLE	STATE	LICENSE NUMBER OR V.I.N.	

YOU, Lucas Burdick, ARE HEREBY NOTIFIED TO IMMEDIATELY LEAVE THESE PREMISES. YOU ARE PROHIBITED FROM COMING ON THE PROPERTY OR PREMISES OF THE CITY OF AUSTIN LOCATED AT: ALL AUSTIN Public LIBRARIES UNTIL: 3/7/18, FOR ANY REASON AT ALL.

THIS NOTICE TO LEAVE THE PROPERTY IS BASED ON YOUR CONDUCT INVOLVING: Violation of City of Austin Public Library Rule Chapter 13(A)(5)

IF YOU ARE FOUND ON THE PROPERTY DURING THE PERIOD LISTED ABOVE, YOU WILL BE ARRESTED FOR THE OFFENSE OF CRIMINAL TRESPASS.

I, Lucas Burdick, THE UNDERSIGNED, UNDERSTAND THIS NOTICE IS EFFECTIVE IMMEDIATELY. I FURTHER UNDERSTAND THAT THE ABOVE NOTICE MAY BE RESCINDED ONLY BY WRITTEN NOTIFICATION. I ALSO UNDERSTAND THAT IF I REFUSE TO SIGN THIS NOTICE IT IS STILL EFFECTIVE.

X [Signature]
SIGNATURE OF INDIVIDUAL RECEIVING NOTICE TO LEAVE

You may request a hearing on the City's denial of your access to the property listed above. If you request a hearing, you must make that request no later than the fifth business day after you received the notice. Your request must be in writing and sent to: [name] Rosevelt Weeks Department Director, LIBRARY Department, City of Austin, P.O. Box 1088, Austin, Texas 78767-1088

If you do request a hearing, you will have the opportunity to show why you should not be denied access to the property listed above. The matter will be reviewed, and a decision will be sent to you in writing. The City official conducting the review will determine (1) whether the issuance of a criminal trespass notice to you was proper, and (2) whether the area (the listed city property) of the criminal trespass notice were proper. The City official will have the authority to rescind, modify, or leave intact this Notice. The City policy regarding criminal trespass notices on City property is available on the back of this page.

CITY EMPLOYEE ISSUING NOTICE: LAST NAME Abdula FIRST NAME Abdula CITY ID NO. _____

WITNESS (IF ANY): LAST NAME _____ FIRST NAME _____ CITY ID NO. _____

WHITE PAGE = A.P.D. DATA ENTRY YELLOW PAGE = CITY DEPARTMENT FOR INVOLVED PROPERTY PINK PAGE = INDIVIDUAL

City of Austin -Rules for Public Use of City Properties
(Effective September 21, 2015)

1. Purpose.

- (A) The City recognizes its duty to the citizens of Austin to be a responsible steward of the public properties and lands under its ownership or control, to maintain these public properties and lands in a manner that promotes public safety and health, and to provide City-owned facilities where the City and the public can conduct business and other approved activities free from unlawful and disruptive interference.
- (B) The City also recognizes the right of its citizens to engage in legitimate activities protected by the First Amendment to the U.S. Constitution that may occur in or on public Properties and lands owned by the City.
- (C) Under the City's Charter, the City Manager has the authority and responsibility to control and maintain the City's public properties and lands in accord with these interests.
- (D) Except as provided, these rules apply to all City properties. A City department may adopt more stringent rules under Chapter 1-2 of the City Code for City property under the department's control. Rules adopted by a department under Chapter 1-2 are cumulative of these rules.
- (E) These rules do not apply to conduct that occurs during meetings of the Austin City Council, which is addressed separately in the Austin City Code and rules adopted by the Council.

2. Definitions.

(A) Except as provided, in these rules words and phrases mean what the words and phrases mean in the City Code.

(B) In these rules:

- (1) "director" means a department director responsible for a City property;
- (2) "designee" means an assistant director or other manager to whom a director has made a written delegation of authority to deny physical access to a city property for which the director has responsibility.
- (3) "employee" means a City employee, contractor, or volunteer in the conduct of City duties, and includes security personnel;
- (4) "person" means a person who is present on a city property, other than an on-duty City employee; and
- (5) "city property" means a property or part of a property which the City owns or controls, including the entrance ways and adjacent lawns, landscaping, and parking areas.

3. Not a Public Forum. Except for areas that are traditional public forums, such as parks and sidewalks, and areas specifically designated in writing as limited or full-purpose public forums, city properties and workplaces are not public forums.

4. Conduct.

(A) A person may not:

- (1) enter an area of a city property that is not open to the public without the permission of a person authorized to permit such entry;
- (2) block access to an entrance or passageway at a city property, or a resource on a city property; or
- (3) disrupt the normal provision of City services to the public, disrupt the use or enjoyment of a city property by the public or other persons, disrupt a public meeting, or disrupt the conduct of business in a City workplace.

(B) While at a city property, a person may not:

- (1) harass, sexually harass, abuse, threaten, assault, or fight with a person;
- (2) threaten to damage the city property;
- (3) incite a breach of the peace;
- (4) carry or display a weapon, except as expressly permitted by the City Code, or by state or federal law;
- (5) violate any local, state, or federal criminal law; or
- (6) vandalize, steal, or recklessly or intentionally damage city property or City-owned personal property at that city property.

5. Violations.

- (A) If a person violates these rules, an employee responsible for the city property shall orally warn the person to stop the behavior. If the person fails to stop the prohibited behavior, the employee shall ask the person to leave the city property for the remainder of the current day.
- (B) If an employee determines that a person's violation of these rules is so serious that the person remaining on the city property creates an immediate danger to the city property, employees, or to other persons, or interferes with the use and enjoyment of the city property by other persons, the employee may ask the person to leave without an initial oral warning.
- (C) If a person refuses a request to leave the city property, the employee should immediately seek the assistance of security or law enforcement personnel.

6. Denial of physical access to a city property.

(A) This section does not apply to a limited or full-purpose public forum.

(B) A director or designee shall deny physical access to a city property to a person as provided in this section if the person is asked to leave the city property for any violation of Section 4 three times in a six month period.

(C) A director or designee may deny physical access to a city property for any violation of Section 4(B) that involves actual damage to a City property, physical injury to any person, the theft of City-owned personal property, or an actual breach of the peace at a city property.

(D) The period for which a person is denied physical access to a city property under this section is one year, beginning on the effective date of the denial.

(E) Before a person is denied physical access to a city property, the director or designee must give written notice to the person of the denial, the specific city property to which access is denied, the reason for the denial, and the opportunity for a hearing on the denial.

- (1) The person may request a hearing in writing no later than the fifth business day after the date the person receives the written notice.
- (2) If a person requests a hearing in writing, the director or designee shall promptly schedule a hearing. The hearing may be before the director or designee, or before a hearing examiner at the discretion of the director or designee. The person conducting the hearing shall provide for an audio recording of the hearing.
- (3) If, after the hearing, the director or designee finds that the grounds in Subsection (B) of this section are met, the director or designee shall make the denial of access final, and notify the person in writing.
- (4) If, after the hearing, the director or designee finds that the grounds in Subsection (B) of this section are not met, the director or designee shall rescind the denial of access, and notify the person in writing.

(F) Except in the case of an alleged violation of Section 4(B), a denial of physical access is not effective until the earlier of:

- (1) the sixth business day after the person is provided written notice of the denial; or
- (2) in the case of a person who requests a hearing, the date the denial is made final by the director or designee.

(G) A person who is alleged to have violated Section 4(B) is entitled to a hearing in the manner provided by this rule. However, because a violation of Section 4(B) demonstrates an immediate danger to the safety of staff, other people, or City property, in the case of a person who is alleged to have violated Section 4(B) a denial of physical access is effective when the written notice is provided to the person, and remains in effect until a final decision in any hearing requested under Section 4(C). The director shall make a reasonable effort to hold any requested hearing promptly.

(H) A person who requests and attends a hearing as provided in part (E), above, may make a written request for review of a final determination by a director or designee denying access to a city property. If the final determination denying access was made by a director, the request shall be made to the Assistant City Manager over that department. If the final determination was by a designee, the request shall be made to the director of that department. Any such request shall be made within two business days of the receipt by the person of notice that the denial of access is made final. The review shall be based on the audio recording from the hearing and any other materials from that hearing, and no new information or material may be considered. A decision on the request for review shall be made within seven business days. A request for review as provided in this part does not suspend the operation of a final decision denying access to a city property.

(I) A person who is denied physical access to a city property may continue to access City services and programs at the city property in ways that do not require physical access to the city property, so long as the person meets other requirements for access to the services and programs. The director shall provide a reasonable accommodation under applicable law in the case of any person with a disability.

(J) The City Manager (or designee) may enforce the denial of physical access by a criminal trespass notice, and may provide further direction to staff by an administrative bulletin.

From: "Abramov, Michael" <Michael.Abramov@austintexas.gov>
Subject: FW: Petitioning on Library Property
Date: February 17, 2018 at 12:14:46 PM CST
To: "contact@indyaustin.org" <contact@indyaustin.org>
Cc: "Herfurth, Sharon" <Sharon.Herfurth@austintexas.gov>

FYI.

From: Herfurth, Sharon
Sent: Friday, February 16, 2018 12:27 PM
To: Library <Library@austintexas.gov>
Subject: Petitioning on Library Property

Dear Staff,

Several of you have been contacted by an organization called IndyAUSTIN about being present on Saturday at your locations to collect signatures on a petition to force an election on CodeNEXT. <https://indyaustin.org/event/library-day-rain-date-march-3/>

I have shared the following information with the organizers and am sharing it with you in case you get questions.

IndyAUSTIN is welcome to be stationed beyond Library property boundaries, just not inside the Library or in the Library parking lot.

Here is some pertinent information from the Library Use Rules as stated on the Austin Public Library website: <http://library.austintexas.gov/about-library/rules>

3. Not a Public Forum. Except for the limited purpose of accessing information, the library is not a public forum.

(7) A meeting room may not be used for a political rally or a campaign for or against a specific ballot issue or candidate. However, a meeting room may be used for a forum or study group on a political issue.

(3) "library" means any building or facility of the Austin Public Library, including the entrance ways and adjacent lawns, landscaping, and parking areas.

(A) A customer may not:

(1) unreasonably disrupt the normal use of library services or property by the library staff or other customers

(5) distribute literature or otherwise solicit customers on library property.

I hope this helps clarify.
Best,
Sharon

Sharon Herfurth
Office of Programs & Partnerships | Division Manager
512-974-7420 | sharon.herfurth@austintexas.gov





EXHIBIT P-4

Bill Aleshire

From: Morgan, Anne <Anne.Morgan@austintexas.gov>
Sent: Saturday, February 17, 2018 4:38 PM
To: Bill Aleshire
Subject: Re: Library area petitioning - Content-based enforcement

Bill: Thank you for alerting me of your concern. I don't read the attached communication as being a content based restriction. That being said, the City certainly does not intend to have any content based restrictions, and I will talk to the library folks and city management on Monday to make sure there is no misunderstanding.

Anne Morgan

On Feb 17, 2018, at 1:45 PM, Bill Aleshire <bill@aleshirelaw.com> wrote:

Anne,

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. As you know, referendum is one of those powers reserved by the people of Austin when they adopted the Charter giving power to the City government. As a result, I don't think a Library Rule can keep the people from exercising their "reserved" right to petition.

Austin Charter:

ARTICLE IV. - INITIATIVE, REFERENDUM, AND RECALL.

§ 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. Any initiated ordinance may be submitted to the council by a petition signed by qualified voters of the city equal in number to the number of signatures required by state law to initiate an amendment to this Charter.

Bill Aleshire

AleshireLAW PC

700 Lavaca, Suite 1400

Austin, Texas 78701

512 320-9155 phone

512 750-5854 cell

512 320-9156 fax

Bill@AleshireLaw.com

<2-16-18 Herfurth Email about IndyAustin.docx>

Bill Aleshire

From: Linda Curtis <ljcurtis@indytexans.org>
Sent: Monday, February 19, 2018 10:39 AM
To: steve.adler@austintexas.gov; Delia.Garza@austintexas.gov;
Sabino.Renteria@austintexas.gov; Gregorio.Casar@austintexas.gov;
Ann.Kitchen@austintexas.gov; Jimmy.Flannigan@austintexas.gov;
Ellen.Troxclair@austintexas.gov; leslie.pool@austintexas.gov;
Kathie.Tovo@austintexas.gov; allison.alter@austintexas.gov;
Ora.Houston@austintexas.gov; Anne Morgan; spencer.cronk@austintexas.gov
Cc: Bill Aleshire; Bill Bunch; Fred Fred Lewis
Subject: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

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

PO Box 41479
Austin, TX 78704
512-535-0989 office
512-657-2089 cell

IndyAustin SPAC

PO Box 41479, Austin, Texas 78704
512.535.0989 * IndyAustin.org

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 Managers 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 15th, 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 16th 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

Bill Aleshire

From: Weeks, Roosevelt <Roosevelt.Weeks@austintexas.gov>
Sent: Monday, February 19, 2018 3:18 PM
To: Bill Aleshire; Linda Curtis; Pool, Leslie
Cc: Morgan, Anne; Cronk, Spencer; Bill SOS Alliance; Fred Fred Lewis; Smith, Amy; Hensley, Sara; Thompson, Lucy
Subject: RE: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

All –

Since this is a City holiday, I am not able to get information from all of my staff members. Please allow me to respond by the end of business on tomorrow. Thank you for your patience.

Regards,

Roosevelt Weeks

Central Library | Director of Libraries

512-974-7444 | roosevelt.weeks@austintexas.gov



From: Bill Aleshire [mailto:bill@aleshirelaw.com]
Sent: Monday, February 19, 2018 1:56 PM
To: Weeks, Roosevelt <Roosevelt.Weeks@austintexas.gov>; Linda Curtis <ljcurtis@indytexans.org>; Pool, Leslie <Leslie.Pool@austintexas.gov>
Cc: Morgan, Anne <Anne.Morgan@austintexas.gov>; Cronk, Spencer <Spencer.Cronk@austintexas.gov>; Bill SOS Alliance <bill@sosalliance.org>; Fred Fred Lewis <f_lewis@sbcglobal.net>; Smith, Amy <Amy.Smith@austintexas.gov>; Hensley, Sara <Sara.Hensley@austintexas.gov>; Thompson, Lucy <Lucy.Thompson@austintexas.gov>
Subject: RE: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

Thank you for letting us know. As I understand it, the petitioners at the Main Library, for example, were required to move away from the sidewalk on Guadalupe Street (where the front door, and people are) to the sidewalk on the south side (8th Street) where there are no people. Thus, any real opportunity to offer the petition to people to sign outside the library was thwarted.

Bill Aleshire

AleshireLAW PC
700 Lavaca, Suite 1400
Austin, Texas 78701
512 320-9155 phone
512 750-5854 cell
512 320-9156 fax
Bill@AleshireLaw.com

From: Weeks, Roosevelt [<mailto:Roosevelt.Weeks@austintexas.gov>]

Sent: Monday, February 19, 2018 1:45 PM

To: Linda Curtis <ljcurtis@indytexans.org>; Pool, Leslie <Leslie.Pool@austintexas.gov>

Cc: Morgan, Anne <Anne.Morgan@austintexas.gov>; Cronk, Spencer <Spencer.Cronk@austintexas.gov>; Bill Aleshire <bill@aleshirelaw.com>; Bill SOS Alliance <bill@sosalliance.org>; Fred Fred Lewis <f_lewis@sbcglobal.net>; Smith, Amy <Amy.Smith@austintexas.gov>; Hensley, Sara <Sara.Hensley@austintexas.gov>; Thompson, Lucy <Lucy.Thompson@austintexas.gov>

Subject: RE: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

All –

I am in the process of getting information from my team and will provide input once I get that information.

The memo that was sent out by Sharon Herfurth was done so staff members understood our policy on petitioning at our library. As long as those policies are not violated, we will not stand against the rights of those to petition our customers.

I will provide update by the end of business today.

Regards,

Roosevelt Weeks

Central Library | Director of Libraries

512-974-7444 | roosevelt.weeks@austintexas.gov



From: Linda Curtis [<mailto:ljcurtis@indytexans.org>]

Sent: Monday, February 19, 2018 12:34 PM

To: Pool, Leslie <Leslie.Pool@austintexas.gov>

Cc: Morgan, Anne <Anne.Morgan@austintexas.gov>; Cronk, Spencer <Spencer.Cronk@austintexas.gov>; Weeks, Roosevelt <Roosevelt.Weeks@austintexas.gov>; Bill Aleshire <bill@aleshirelaw.com>; Bill SOS Alliance <bill@sosalliance.org>; Fred Fred Lewis <f_lewis@sbcglobal.net>; Smith, Amy <Amy.Smith@austintexas.gov>

Subject: Re: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

Thank you, Council member. We very much appreciate your prompt response to this.

We hope to hear very soon from management.

We're at a critical juncture in this petition drive and I hope the city management gets the point — that they should stand back and let citizens exercise their rights.

The current City Attorney and Manager may not know that Federal Judge Sam Sparks issued a stinging order to the City of Austin for its interference in a 1997 petition drive.

Thanks again.

Linda Curtis

IndyAustin.org

PO Box 41479

Austin, TX 78704

512-535-0989 office

512-657-2089 cell

On Feb 19, 2018, at 12:26 PM, Pool, Leslie <Leslie.Pool@austintexas.gov> wrote:

Linda, thanks for copying me, along with the entire Council, on your message protesting how volunteer petition-gatherers were treated at the City's libraries. The North Village Library is in District 7.

What happened to volunteer petitioners outside the libraries is of real concern to me, given that the Austin City Charter protects residents' right to initiative and referendum. I understand, too, that no one complained about the volunteers and, in the North Village incident, the volunteers had first gone inside to advise the library manager that they would be outside and were told that they could not petition outside the library, and so they were prevented from doing so.

The "Herfurth Memo" purports to give advance direction to city library staff with regard to the IndyAustin petitioners. I'm curious how this directive actually applies since by all reports the petitioners were not inside the libraries, were not using a meeting room (although it appears that if they had reserved a meeting room then gathering signatures would be in accord with the rules and thus allowed), were not disruptive, and were not disrupting library activity. And again, at least in the North Village incident, the volunteers were prevented from petitioning.

With this message, copied to the City Attorney and City Manager, I am requesting that staff keep me apprised of discussions and actions taken to resolve this matter.

I hope that this matter is rectified and resolved in short order.

Regards,

Leslie

Leslie Pool
Council Member, District 7
Austin City Council
512.978.2107

From: Linda Curtis <ljcurtis@indytexans.org>

Sent: Monday, February 19, 2018 10:39:03 AM

To: Adler, Steve; Garza, Delia; Renteria, Sabino; Casar, Gregorio; Kitchen, Ann; Flannigan, Jimmy; Troxclair, Ellen; Pool, Leslie; Tovo, Kathie; allison.alter@austintexas.gov; Houston, Ora; Morgan, Anne; Cronk, Spencer

Cc: Bill Aleshire; Bill SOS Alliance; Fred Fred Lewis

Subject: Cease and Desist Warning Issued to City of Austin -- Petitioning on public property (Austin Public Library property) is legally protected free speech

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.