



Community Advisory Committee on Law Enforcement Oversight

October 31, 2023

To: King County Executive Dow Constantine, King County Sheriff Patti Cole-Tindall
CC: Burien Police Chief Ted Boe, Burien City Manager Adolfo Bailon, Burien City Council, King County Council, King County Office of Law Enforcement Oversight (OLEO)
From: King County Community Advisory Commission for Law Enforcement Oversight (CACLEO)
Subject: Ban on unsheltered homelessness in Burien (Ordinance 818/827)

The Community Advisory Commission for Law Enforcement Oversight (CACLEO) provides guidance on policing practices in King County and advises the King County Sheriff's Office and the King County Council on matters of equity and social justice related to law enforcement. It is in this purview that CACLEO would like to condemn, in the strongest terms, the ban on so-called camping in the City of Burien (Ordinance 818, amended by Ordinance 827) which becomes effective on November 1, 2023.

This ban criminalizes homelessness and contradicts City and County values. CACLEO asks the King County Executive's Office to decline to enforce the newly created misdemeanor B.M.C. 9.85.150 "Public Camping," and to direct that County resources, including KCSO deputies, must not be used to sweep unhoused individuals' belongings without an available alternative offer of housing or shelter.

History

On May 19, 2023, the King County Executive's Office wrote to the Burien City Manager and Council to advise the City of Burien of the impermissibility of evicting unhoused persons from public property without offering an available alternative.

"Because the City's plan to relocate unhoused campers off the City Lot without offering alternative housing violates the Constitution, KCSO personnel cannot participate in this effort. The County's True North Values also do not include forcibly ejecting homeless people who have no other housing available to them. In accord with federal law, the County's approach is to offer resources and direct campers to available housing. Sometimes people utilize alternate shelter housing and sometimes they move their campsite to a new location, but they cannot be subject to criminal penalties if they have nowhere else to go. The KCSO cannot cite anyone from this lot for criminal trespass, under these circumstances."

The Executive’s office requested “[T]hat the City of Burien focus on working with the County to find a solution to identify alternative housing for unhoused campers **rather than potentially criminalizing homelessness in Burien.**”

The City of Burien responded (May 25 Press Release), arguing that their actions were permissible because “**Burien does not have a city-wide ordinance** or policy that refuses to permit people experiencing homelessness like the communities in the recent Ninth Circuit cases that were referenced,” and “that Burien **does not prohibit or seek to prohibit people from sleeping on all public property** like the communities in the recent Ninth Circuit cases.”

Nonetheless, the council proceeded to pass Burien Ord. 818, as amended by Ord. 827 (“An Anti-Camping or Anti-Dwelling Ordinance”), defining residing (“Camping, dwelling, lodging, residing, or living”) on “any street, sidewalk, Burien public park, or any other open area” in the city as a misdemeanor.

The courts have made it clear in *Martin v. Boise* (9th Cir. 2018) and subsequent decisions that homelessness is not a crime, that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” In *Johnson v. Grants Pass* (9th Cir. 2022), the court reaffirmed, and characterized civil citations for behavior the homeless could not avoid as “imposing a few extra steps before criminalizing the very acts *Martin* explicitly says cannot be criminalized.”

The City of Burien’s website states that

“Homelessness is a serious regional and national issue that **cannot be solved by arresting people. Laws that unintentionally criminalize homelessness are not long-term solutions, and in some cases are not supported by the Federal Court of Appeals.** The Burien Police Department works in collaboration with the City’s Human Services staff to work to **address homelessness at its root and to reduce the harm done to the unhoused community.**”

For months, city and county agencies, staff, partners, and human services providers who directly work with community members experiencing homelessness have been emphasizing the housing shortage that has led to increased homelessness—and in particular unsheltered homelessness—in Burien and throughout King County. King County has offered Burien an allocation of \$1 million and up to 35 Pallet Shelters to support residents experiencing homelessness once the city identifies land for a sanctioned encampment. The city has failed to accept the county’s offer.

Unsheltered homelessness is a particularly deadly form of homelessness for community members to face, and it can be exacerbated by many things, such as addiction, lack of access to mental and physical health services, vulnerability to crime and theft, and unnecessary interactions with law enforcement.

Request

In light of Burien officials' continued defiance of its partners and stated values, CACLEO formally requests that the King County Executive's Office reaffirm that "policy decisions on when it is appropriate and constitutional to eject a homeless camper from a public place" belong exclusively with the County, and that KCSO deputies should uphold and protect the civil and constitutional rights of unhoused community members to be free from harassment and the destruction of their belongings by anyone, whether sworn officers or any other public or private individuals.

Thank you in advance for your consideration and making a timely response, which may be sent to Committee Chair Abiel Woldu at CACLEO9@kingcounty.gov. We look forward to hearing back from you soon.

Respectfully,

Abiel Woldu, Chair
At-large, Position 9

Nick Allen, Co-Chair
At-large, Position 11

Daniel Martin
Contract Cities – Burien, Position 6

Ruby Welloffmann
Contract Cities – Shoreline, Position 3

Mark Toner
Unincorporated, Position 5

Resources:

- [Burien Ordinance 818 \("An Anti-Camping or Anti-Dwelling Ordinance"\)](#), creating Burien Municipal Code 9.85.150 Unlawful Public Camping
- [Burien Draft Ordinance 827, Amending Ordinance 818 \("An Anti-Camping or Anti-Dwelling Ordinance"\)](#)
- [Letter from Executive's Office](#), May 19, 2023
- City of Burien Press Release, "[City of Burien Response to King County's Letter Refusing to Provide Sheriff's Service](#)", May 25, 2023
- *Martin v. City of Boise*, 920 F.3d 584, 618 (9th Cir. 2018)
- *Johnson v. City of Grants Pass*, 50 F.4th 787, 807 (9th Cir. 2022)
- *City of North Bend v. Bradshaw*, Case No. Y1 32426A (North Bend Muni. Ct. 2015)
- *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006)
- [King County: True North and Values](#)
- Burien Resident Resources: [Homelessness Response](#)
- [Burien Housing Policy Evaluation: Racially Disparate Impacts, Displacement, and Exclusion in Housing](#)
- [King County: Community Advisory Committee for Law Enforcement Oversight \(CACLEO\)](#)
- Erica C. Barnett, "Burien Council Bans Sleeping Outside at Night, Still Has No Plan to Address Homelessness", [Publicola](#), September 26, 2023
- Casey Martin, "A record number of unhoused people have died in King County in 2022", [KUOW](#), December 12, 2022
- Anna Patrick, "Burien still can't decide whether it'll take homelessness offer", [Seattle Times](#), July 19, 2023