

NOTICE OF INITIATIVE PETITION

TO: Burien City Clerk

Pursuant to statute, the undersigned hereby gives notice of filing an Initiative Petition to the People of the City of Burien, Washington, to wit:

INITIATIVE NO.

Shall the City Council of the City of Burien be prohibited from entering into any memorandum of understanding or any other form of agreement with the City of Seattle and/or any other municipal jurisdiction and/or any other party or parties for the purposes of annexation the legal result of which would be any form of partitioning of the King County unincorporated urban area generally known as the North Highline Unincorporated Area; and further, shall the City Council of the City of Burien be prohibited from authorizing any annexation plan or proposal to be filed with the Boundary Review Board the legal result of which would be any form of partitioning of the King County unincorporated urban area generally known as the North Highline Unincorporated Area?

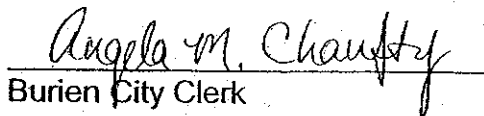
YES

NO

Signed this 26<sup>th</sup> day of January, 2009

  
Stephen Lamphear

~~ATTEST:~~ Received at City of Burien

  
Burien City Clerk

RECEIVED  
JAN 26 2009  
CITY OF BURIEN *mc*

CFTR 2-2-09  
cc Chris Bacha

# KENYON DISEND, PLLC

*THE MUNICIPAL LAW FIRM*

**11 FRONT STREET SOUTH  
ISSAQUAH, WASHINGTON 98027-3820  
(425) 392-7090  
(206) 628-9059  
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## MEMORANDUM OPINION

TO: Mike Martin,  
City Manager

FROM: Chris Bacha,  
Kenyon Disend, PLLC

DATE: January 28, 2009

RE: Initiative Petition – Sufficiency

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You have asked me to review the initiative petition recently filed by Stephen Lamphear (the content is attached as Exhibit A) regarding the subject of annexation of the North Highline Potential Annexation Area, and to determine if the City is required to take action at this time.

### DISCUSSION:

Code Cities are authorized under state law to exercise the power of initiative and referendum. The Burien City Council enacted such authority by ordinance several years following incorporation by the City. Although such power has been granted, it is subject to a number of limitations.

First, the power of initiative is legislative in nature, thus administrative decisions are not subject to the power of initiative. Second, the initiative must relate to legislative power reserved to the electorate and not to the legislative body.<sup>1</sup> Finally, the initiative petition must conform to the substantive and procedural requirements under state law.

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<sup>1</sup> The determination of whether or not an annexation should occur is delegated specifically to the legislative body and not to the electorate. See, for example, RCW 35A.14.015 which provides in pertinent part as follows: “When the legislative body of a charter code city or noncharter code city shall determine that the best interests and general welfare of such city would be served by the annexation of unincorporated

The initiative process for a code city is exercised primarily in the manner established pursuant to RCW 35.17.240 - 35.17.360 with the exception that the number of signatures required for a successful petition for code cities is specified by RCW 35A.11.100.<sup>2</sup> Under these statutes, cities arguably are not required to take action until a petition, printed on a form that meets the requirements of state law, is filed with the City designated official (City Clerk).<sup>3</sup> The initiative petition that is the subject of this memo is not in the form required for petitions under state law neither does it contain any signatures other than the signature of Mr. Lamphear; thus, the petition is insufficient.

In an abundance of caution, I would suggest that the City Clerk review the "Notice of Petition" for sufficiency and return her certificate with her findings to Mr. Lamphear by no later than ten days (February 6<sup>th</sup>) following the filing of the petition. See, RCW 35.17.280. Presumably the City Clerk would find that the petition, containing only one signature, is not legally sufficient.

I hope that the foregoing answers you questions.

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territory contiguous to such city, such legislative body may, by resolution, call for an election to be held to submit to the voters of such territory the proposal for annexation. . . . See also, *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673 (1965) (An ordinance providing for annexation is not subject to a referendum because the powers of annexation have been granted by the legislature to the mayor and city council.) Thus, annexation decisions are delegated to the legislative body of the City and are not the subject of an initiative or referendum.

<sup>2</sup> RCW 35A.11.100 states in pertinent part, ". . . the number of registered voters needed to sign a petition for initiative or referendum shall be fifteen percent of the total number of names of persons listed as registered voters within the city on the day of the last preceding city general election . . ."

<sup>3</sup> A helpful resource that outlines the initiative procedures can be found on the MRSC website and is titled, *Initiative and Referendum Guide for Washington Cities and Counties*, Report No. 28, January 2006.

Attachment A

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YES

NO

Signed this 26th Day of January, 2009:

Stephen Lamphear