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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JOHN WHITE, JOSE LUIS RANGEL  
OLIVERA, LYNETTE STORER, and DAVID  
BURKE,

Plaintiffs,

vs.

THE CITY OF BURIEN, a Washington  
Municipal Corporation,

Defendant.

No.

**COMPLAINT FOR WRIT OF  
MANDAMUS, DECLARATORY  
JUDGMENT, AND INJUNCTIVE  
RELIEF**

**COMES NOW** Plaintiff JOHN WHITE (“Plaintiff”), by and through his attorneys Robert P. Dickson, Alexander J.R. Wisbey, and Jennifer Yoo of DICKSON FROHLICH PS, and for claims against Defendant, allege and aver as follows:

**I. PARTIES**

1.1 Plaintiff JOHN WHITE is an individual residing in King County, Washington.

1.2 Plaintiff JOSE LUIS RANGEL OLIVERA is an individual residing in King County, Washington and the owner of Tortas Locas, which is located approximately 1,000 feet of the DESC Project.

1.3 Plaintiff LYNETTE STORER is an individual residing in King County, Washington and the owner of Burien Towing, which is located less than 1,000 feet from the

1 DESC Project.

2 1.4 Plaintiff DAVID BURKE is an individual residing in King County, Washington  
3 and the owner of Q & B Enterprise, LLC, which owns the property from Ambaum Boulevard  
4 to 8<sup>th</sup> Avenue, SW—directly across the street from the DESC Project.

5 1.5 Defendant CITY OF BURIEN is a Washington municipal corporation.

## 6 II. JURISDICTION AND VENUE

7 2.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
8 pleading as though set forth in full.

9 2.2 Jurisdiction and venue are appropriate in King County as both Parties reside in  
10 King County and the actions alleged took place in King County.

## 11 III. FACTS

12 3.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
13 pleading as though set forth in full.

14 3.2 On November 4, 2019, the Burien City Council adopted Ordinance 718, which  
15 was designed to create an affordable housing demonstration program.

16 3.3 Ordinance 718 was then codified in Burien Municipal Code 19.18.

17 3.4 Burien Municipal Code 19.18 allows for the development of five (5) affordable  
18 housing projects in the City of Burien (“Affordable Housing Program”).

19 3.5 Pursuant to Burien Municipal Code 19.18.050(2) “‘Affordable’ means that the  
20 total housing costs, including basic utilities as determined by the City, must not exceed 30  
21 percent of the household income.”

22 3.6 However, rather than move forward with an affordable housing project, the City  
23 of Burien has been working with the Downtown Emergency Service Center (“DESC”) to

1 develop a 95-unit supportive housing facility for disabled and homeless single adults (“DESC  
2 Project”). According to the letter published by the DESC, only “single adults who are disabled  
3 and formerly homeless” will be eligible for housing.

4 3.7 The DESC Project is not open to people in relationships, people with children,  
5 families, people without disabilities or substance abuse issues, or people with pets.

6 3.8 The DESC Project only provides supportive housing to a small segment of the  
7 population and will not provide affordable housing in the City of Burien.

8 3.9 Supportive house and affordable housing are distinctly different types of  
9 housing and Burien Municipal Code 19.18 only authorizes projects that provide affordable—  
10 not supportive—housing.

11 3.10 The DESC Project fails to comply with the requirements of the Affordable  
12 Housing Program and, as a result, is ineligible for accommodations and exceptions under the  
13 Affordable Housing Program.

14 3.11 In spite of the fact that the DESC Project does not comply with the Affordable  
15 Housing Program, the City of Burien has pushed forward and on December 16, 2021, approved  
16 the DESC Project.

17 3.12 The named Plaintiffs, along with a large group of concerned citizens, have  
18 attempted to work with the City of Burien to make sure that the generous exceptions to zoning  
19 and other requirements from the Affordable Housing Program are only used to provide  
20 affordable housing in the City of Burien. However, the City of Burien has continued to move  
21 forward with the DESC Project even though the DESC Project does not qualify under the  
22 Affordable Housing Program.

23 3.13 Plaintiffs and the concerned citizens of Burien wish to stop the development of

1 projects that do not meet the standards of the Affordable Housing Program and that fail to  
2 provide affordable housing in the City of Burien.

3 3.14 Because of its inclusion in the Affordable Housing Program, the DESC Project  
4 has been granted numerous design departures and exceptions to the normal zoning  
5 requirements and regulations. These exceptions should only be granted to projects that actually  
6 accomplish the goals of the Affordable Housing Program.

7 3.15 Plaintiffs have no objection to the DESC Project in principle—provided the  
8 DESC meets all of the requirements—the central issue is that the exceptions and wide latitude  
9 granted to projects under the Affordable Housing Program cannot be used for anything other  
10 than affordable housing and supportive housing does not qualify.

11 3.16 Plaintiffs have filed this Complaint as soon as possible in order to minimize the  
12 impact that this lawsuit will have on the DESC Project and on the DESC. According to the  
13 City of Burien, “DESC is anticipated to apply for building permits in early 2022.”

14 3.17 Additionally, the City of Burien failed to meet the meeting requirement of  
15 Burien Municipal Code 19.18.040. Property owners and residents located within 1,000 feet of  
16 the DESC Project location were not provided notice of the first or second neighborhood  
17 meeting. By failing to provide the required notice, the DESC Project cannot be permitted to  
18 move forward under Burien Municipal Code 19.18.040.

19 **IV. CAUSES OF ACTION**

20 4.1 Plaintiffs reallege and incorporate herein the preceding paragraphs of this  
21 pleading as though set forth in full.

22 **First Cause of Action: Writ of Mandamus**

23 4.2 The City of Burien is a municipal corporation and has specific legal duties and

1 obligations. The City of Burien is not permitted to act without authorization and cannot use  
2 funds earmarked for a specific program for another program.

3 4.3 The Affordable Housing Program does not permit the City of Burien to fund  
4 supporting housing—it only authorizes the City of Burien to fund affordable housing.

5 4.4 The City of Burien is attempting to use City funds to fund the DESC Project  
6 without legal authorization or authority.

7 4.5 Plaintiffs are entitled to a Writ of Mandamus under RCW 7.16.160 compelling  
8 the City of Burien to remove the DESC Project from the Affordable Housing Program.

9 **Second Cause of Action: Declaratory Judgment**

10 4.6 Under RCW 7.24.010, this Court has the power to declare rights, status and  
11 other legal relations, whether or not further relief is or could be claimed. These proceedings  
12 shall not be opened to objection on the ground that a declaratory judgment or decree is prayed  
13 for. The declaration may be either affirmative or negative in form and effect, and such  
14 declarations shall have the force and effect of final judgment or decree.

15 4.7 There is an actual, present, and existing dispute whether and if the City of  
16 Burien can legally grant design and regulatory exceptions from the Affordable Housing  
17 Program for the DESC Project and Plaintiffs, as citizens of the City of Burien, have the right  
18 to have this Court make such a decision. Plaintiffs' interests are direct and substantial. And the  
19 Court's determination will be final and conclusive.

20 4.8 The Court should enter an order finding that the City of Burien is prohibited  
21 from granting design and regulatory exceptions from the Affordable Housing Program to  
22 provide anything other than affordable housing in the City of Burien.

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**Third Cause of Action: Injunctive Relief**

4.9 Plaintiffs have a clear legal and equitable right as citizens of the City of Burien to have the City of Burien follow the law and to prevent the City of Burien from violating the law and granting design and regulatory exceptions to private companies.

4.10 Plaintiffs are justifiably concerned that the City of Burien will continue this behavior during the pendency of this action.

4.11 Therefore, Plaintiffs are entitled to an injunction under common law and RCW 7.40.020 preventing the City of Burien from including the DESC Project in the Affordable Housing Program.

**V. PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs having asserted claims for relief now pray for judgment as follows:

5.1 That the Court issue of Writ of Mandamus prohibiting the City of Burien from including the DESC Project in the Affordable Housing Program.

5.2 That the Court issue a Declaratory Judgment prohibiting the City of Burien from including the DESC Project in the Affordable Housing Program.

5.3 That the Court issue an injunction preventing the City of Burien from including the DESC Project in the Affordable Housing Program.

5.4 That the Court award such other and further relief as it deems just and equitable.

5.5 That Plaintiffs be granted leave to amend their pleadings to confirm to evidence present at any hearing, trial or obtained during the course of discovery.

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**DATED** this 23<sup>rd</sup> day of December, 2021.

DICKSON FROHLICH, PS

*s/Alexander Wisbey*

Robert P. Dickson, WSBA No. 39770  
Alexander J. R. Wisbey, WSBA No. 49696  
Jennifer Yoo, WSBA No. 55012  
Attorneys for the Plaintiffs