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July 9, 2013

Hon. Miro Weinberger, Mayor
Hon. Joan Shannon, President, Burlington City Council
Members, Burlington City Council

Re: *Church Street Marketplace District Trespass Authority Ordinance Enforcement*

Dear Hon. Mayor and City Councilors,

We are gratified with and want to thank you for your decision on June 24th to release the City Attorney's previous opinion regarding the Church Street trespassing ordinance.

However, the Police Department's June 20th release of public records regarding enforcement of this ordinance shows in each and every case a substantial violation of procedural due process. Because of this, we urge you to order the Police and other City Departments to immediately suspend enforcement of this ordinance.

A trespass notice takes place under the ordinance immediately and automatically and is suspended only if the recipient files an appeal with the Marketplace District offices. These records – which spanned April 26th through June 9th -- show that

- 1) In nearly half of the cases, 24 hour notices were issued *without any practical opportunity for appeal at all* because they were issued on weekends, were effective immediately, ran their course, and expired before the Marketplace office ever opened the following Monday for an appeal to have been taken.
- 2) In *all* of the cases the notices were issued after business hours, again when the Marketplace office was not open, meaning that between 7 and 15 hours of the 24 hour notice had expired before any appeal could be taken.
- 3) In three cases, the notices were issued despite the fact that the individual was incapacitated, in custody and either jailed at the Correctional Center, at the Howard Center undergoing drug or alcohol detoxification, or at the hospital undergoing an emergency mental health evaluation. The only possible point to issuing a trespassing notice in such situations is to get the first 24 hour notice "booked" against the individual so that the next one(s) can be enhanced to 90 days and then 1 year.
- 4) In all of the cases, the trespass notices do not inform the recipient in easy to understand language that (a) they have a right to appeal (b) that the appeal suspends the effect of the trespass order (c) that failure to take an appeal can mean that any future no trespass orders can be for up to 90 days for the second notice and up to a year for the

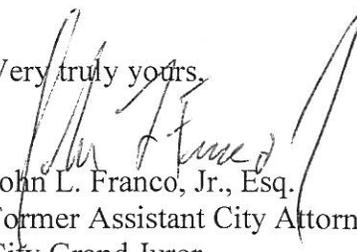
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third notice, (d) where, when, and how an appeal can be taken, or (e) how to get to the Marketplace offices on Church Street without violating the trespass notice. Due process requires notices of ordinance violation to have this kind of notice. *Town of Randolph v. White*, 166 Vt. 280 (1997).

These records also show that the ordinance tends to be enforced seasonally during warmer weather. By the time the Committee reports back in October, the principal season for enforcement will have expired.

Thank you for your attention to this matter.

Very truly yours,



John L. Franco, Jr., Esq.
Former Assistant City Attorney and
City Grand Juror



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