

## Nancy Ide

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**From:** J. Kevin Hunt, Esq. [jkheseq@comcast.net]  
**Sent:** Wednesday, August 29, 2012 1:44 PM  
**To:** Nancy Ide; Betty Mumm; City Manager; Doug Neeley; kroth211@gmail.com; Rocky Smith, Jr.; Carol Pauli; esullivan@gsblaw.com  
**Subject:** Why Section 2 (Emergency Declaration) is False as Now Written  
**Attachments:** 8-29-2012 MEMORANDUM TO OREGON CITY COMMISSION.docx

I ask that City Recorder Ide please make this email and its attached document (*Word* file) party of the official record under whatever agenda item number is assigned to consideration of the Measure #3-407 explanatory statement, at the September 4, 2012 Special City Commission meeting and (if applicable) the September 5, 2012 regular City Commission meeting.

I respectfully request that Commissioners and the City Attorney review the attached 3-page memorandum (large font for us presbyopic types) explaining why Section 2 of Ordinance No. 12-1008 (declaring an emergency to permit insertion of Voters' Pamphlet explanatory statements) is flawed and will likely lead to a citizen backlash against the Commission if not amended to state the true reason for declaring the emergency.

Respectfully submitted,

/s/ J. Kevin Hunt  
Co-Chief Petitioner, Measure #3-407

## MEMORANDUM TO OREGON CITY COMMISSION

Re: SECTION 2 OF ORDINANCE No. 12-1008

*Why the wording of Section 2 cannot be true and  
will likely incite public disdain for the Commission*

J. Kevin Hunt  
Co-Chief Petitioner, Measure #3-407

As a matter of simple comprehension of the English language, it is ineluctable that the grounds recited for declaration of an emergency in Section 2 of Ordinance No. 12-1008 cannot be true.

Please look at the plain text of that section, with special attention to the underlined and boldfaced text:

**“Section 2.** In order that the City Attorney or City Manager are properly authorized to prepare the explanatory statements submitted to the Clackamas County Voter’s Pamphlet **for upcoming referendum or initiative measures that may arise in the next thirty days**, an emergency is hereby declared and this ordinance is and shall be effective from and after its passage by the Commission.”

Without resorting to the dreary task of diagramming that sentence and invoking that task’s parlance, it’s easy to separate Section 2’s single sentence into its components:

- (1) An emergency is declared.
- (2) The reason for declaring the emergency is that:
  - (a) upcoming referenda or initiative measures may arise in the next thirty days,

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(b) for which it is desired that the City Attorney or City Manager are properly authorized to submit explanatory statements to the Voters' Pamphlet.

There ARE NO "upcoming" referenda or initiative measures "that may arise in the next thirty days" for which the City could submit an explanatory statement within that time period. The reason stated for the emergency is therefore false.<sup>1</sup>

As alluded to by Michael Berman in his August 28 testimony, the mere declaration of an emergency, *in and of itself*, casts a cloud of partisanship over any Explanatory Statement the City might submit to the Voters' Pamphlet on Measure #3-407. When the average citizen thinks of an "emergency," images of extreme danger such as fires, hurricanes, tornados, explosions, terrorist attacks, heart attacks, car crashes, Amber Alerts, etc. – "fight-or-flight," adrenalin-producing events – go through the mind. The word "emergency" may even induce unpleasant "flashbacks" in some persons suffering from Post-Traumatic Stress Disorder.

The act of declaring an emergency requiring special meetings and an explanatory statement on #3-407 conveys the *visceral message* to voters that the measure is – in the opinion of city government – *extremely dangerous*. At the same time, doing so by relying upon an obviously false pretense will likely produce substantial public disdain for the Commission. Legislators and lawyers know that there are few legal restrictions on the kinds of "emergencies" (however mundane) that may be declared by a city governing body in order to accelerate

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<sup>1</sup> One Commissioner claimed during my August 28 testimony, that (1) the Commissioner doesn't know whether Measure #3-407 might actually be on the ballot within the next 30 days instead of its statutorily-regulated date of November 6, 2012 which the Commission (with said Commissioner in attendance and voting) approved earlier this month; and (2) the Commissioner "can't predict the future" as to whether any other measure will be on the city ballot within the next 30 days. Those claims stretch credulity. If, however, the Commissioner actually believes that by some feat of magic either of those eventualities could occur, a serious flaw is possibly revealed in the means by which elected Commissioners understand basic procedural principles pursuant to the advice of the City Attorney and City Recorder. That Commissioner had, however, at the earlier August meeting voted *against* placing Measure #3-407 on the ballot despite the City Attorney's unequivocal advice to the Commission that placement of the measure on the ballot was mandated by state statute. Accordingly, it cannot be ruled out that a non-systemic process is responsible for the Commissioner's possible misapprehension of law and procedure.

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the effective date of an ordinance, but the meaning of that word in popular culture is far different.

There are various jokes in which the punch line is a variation of "Because he can." While the City legally may be free to rely on just about anything to justify declaration of an "emergency" as that term is used in legislating, that does not mean that the City Commission may properly and ethically recite a justification that is simply false.

It is legally impossible for any "upcoming" city ballot measure to "arise" for which the City could submit an explanatory statement "in the next thirty days." The real reason for declaring an emergency is in order to meet a deadline for submission of an explanatory statement on Measure #3-407.

***Why is that simple fact omitted, while a reason that cannot be true is recited?***

You most likely have full legal *power* to disguise the real reason for declaring an emergency, but that does not convey the moral and ethical *right* to do so, simply "because you can."

If you do not amend Section 2 of Ordinance No. 12-1008 to reflect the true reason for declaring an emergency, be prepared for the brickbats when a large percentage of citizens assume that declaration of an emergency under false pretenses equates to a nefarious reason for inserting the explanatory statement.

If Commissioners in good faith believe that an explanatory statement must be submitted for #3-407 and that therefore an "emergency" must be declared as to the ordinance authorizing such submissions, then the Commission should respond to the "emergency" by "putting out the fire" with water, not with gasoline.

Respectfully submitted,

/s/ J. Kevin Hunt, Esq.