

Nancy Ide

From: J. Kevin Hunt, Esq. [jkheshq@comcast.net]
Sent: Monday, September 03, 2012 6:43 AM
To: Nancy Ide; Betty Mumm; City Manager; Doug Neeley; kroth211@gmail.com; Rocky Smith, Jr.; Carol Pauli; esullivan@gsblaw.com
Cc: Michael Berman
Subject: ADDENDUM & PUBLIC RECORDS REQUEST re. Berman City Commission Candidacy
Attachments: 9-3-2012 ADDENDUM to Nancy Ide letter.docx

TO: Oregon City Recorder; Mayor & City Commission; City Attorney; City Manager

FROM: J. Kevin Hunt, Attorney for Michael Berman

DATE: 3 September 2012

RE: ADDENDUM to 9/3/2012 Letter re. Eligibility of Mr. Berman for City Office; and associated PUBLIC RECORDS REQUEST

Greetings:

Attached (*Word* file) please find my 3-page ADDENDUM to my previous letter concerning the candidacy of Oregon City resident MICHAEL TRISTAN BERMAN for the City Commission seat currently occupied by incumbent Commissioner Carol Pauli.

Said attached letter also constitutes an associated PUBLIC RECORDS REQUEST.

Please enter this email and said attachment into the official record of the City Commission's September 5, 2012 regular meeting proceedings.

Sincerely,

/s/ J. Kevin Hunt
Attorney for Michael Berman

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September 3, 2012

Ms. Nancy Ide
City Recorder of Oregon City
625 Center Street
Oregon City, OR 97045

Copies: City Attorney; City Manager; City Commissioners; Mayor

VIA EMAIL

RE: ADDENDUM to 9/3/2012 Letter to You Concerning Candidacy of Michael Tristan Berman; and **PUBLIC RECORDS REQUEST**

Greetings:

This is an addendum to my prior letter of this date, in which I referenced the issue of Mr. Berman's continuous residency within Oregon City for at least 12 months prior to August 30, 2012. It is also a public records request.

The actual requirement is such continuous city residency by a candidate for the twelve months immediately preceding "the election" (not the filing date) as provided by Article III, Section 13 of the City Charter.

This is important because it means that it would never be possible for the City Recorder to disqualify a person from the ballot on the basis of not meeting that residency requirement (unless the candidate had not, as of the date of filing for office on the filing deadline, lived in the city for 10 consecutive months immediately preceding such filing), because a candidate could move outside of the City between the time of filing for office and the date of the election.

That indisputable fact supports a construction of Article III, Section 13 of the City Charter under which the City Commission is the final judge of the qualifications of persons *elected to the Commission*, rather than of the eligibility of persons to *appear on the ballot*. If a candidate resided in Oregon City for ten continuous months immediately preceding filing for office on the filing deadline, the Recorder must presume that the candidate meets the residency requirements of Section 13 and of ORS 221.110. If, after the election, it turns out that such a candidate moved outside the city after filing but before election day, then the

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Commission has the power under Article III, Section 13 of the Charter to *refuse to seat* the candidate and to declare the seat vacant.

Such a construction is consistent with, for example, the effect of an identical clause in the United States Constitution under which Congress is the final judge of the qualifications of its members. Under that clause of the Constitution, Congress may refuse to seat a candidate who has been elected to fill a Congressional seat, and has done so. But the clause does not permit Congress to prevent a candidate's name from appearing on the state ballot.

Also of import is that ORS 221.110 does not set forth any requirement of minimum residency, but merely declares: "Any resident of a city shall be eligible to hold an office of the city." "Any resident" includes a person who has resided within the City for one day. By virtue of Article VI, Section 26 of the Oregon City Charter, ORS 221.180, and ORS 249.200, ORS 221.110 is a statute that "govern[s] the manner of nominating and electing candidates for municipal offices of all cities."

No appellate decisions could be located interpreting ORS 221.110.

There is no means by which any candidate could, on the date of filing for office, ever "prove" that the candidate would, as of election day, have lived within the City limits for the 12 months immediately preceding the election. The City Recorder is therefore demanding that Mr. Berman perform an impossible act in order to appear on the November 6, 2012 ballot. The law does not require futile acts. Refusing Mr. Berman a place on the November 6, 2012 ballot will therefore be an act of selective application of Article III, section 13 of the City Charter that will deny Mr. Berman equality of rights and privileges guaranteed him by Article I, section 20 of the Oregon Constitution and equal protection of the laws guaranteed him by the Fourteenth Amendment to the United States Constitution.

This questioning of Mr. Berman's residential eligibility for City office is spurious and akin to those who insist that President Obama is illegally occupying the White House by virtue of not really being a "natural born citizen."

This ADDENDUM also constitutes a public records request for all memorializations, in any form, of:

1. All communications between/among city staff, the city attorney/assistant city attorney, each and all Commissioners, City Recorder, Mr. Dan Fowler, Mayor Neeley, City Manager, Michael Berman and/or any other person(s) regarding Mr. Berman's eligibility to run for the City Commission;

2. All such communications and records regarding eligibility of all other candidates who filed for city office for the last four General Elections.

City Recorder, *et al*

ADDENDUM Re: Candidacy of Michael Tristan Berman; and

PUBLIC RECORDS REQUEST

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Time being of the essence, it is hereby respectfully demanded that these public records be supplied to counsel for Mr. Berman in time for the September 5, 2012 regular City Commission meeting. The requested records are essential to a determination whether Mr. Berman's aforesaid rights pursuant to Article I, section 20 of the Oregon Constitution, and the Equal Protection Clause of the United States Constitution, are being afforded, or whether they rather are being denied to Mr. Berman. The compressed time frame of this request is not the fault of Mr. Berman but rather is the direct result of the refusal of the City Recorder to duly register Mr. Berman as a candidate for the Commission seat currently occupied by Carol Pauli, up for election on November 6, 2012.

Sincerely,

J. Kevin Hunt

Attorney for Michael Berman