

Complaint Against Newberg City Government
Thursday, November 3, 2011

This complaint is dedicated to Newberg City Attorney Terry Mahr. Without his persistent opposition to the voting rights of the Newberg electorate, my education in municipal government would have been neither extensive nor necessary. – email Hank.Grum@HankForNewberg.org

Update: See Conclusion at the end for an unexpected and remarkable development.

Newberg Mayor, Council , City Attorney , Fellow Travelers Oppose Our Right to Vote

Some people in Newberg City Government are opposed to Measure 36-149. Fair enough. The cap on the growth rate of property taxes has squeezed budgets in many Oregon cities. So they find ways to slip in charges and fees to recover the shortfall. But to deliberately mislead the voting public is fraud. Repeatedly, in their statements, they have **deliberately withheld from the voting public a material fact** that affects the voting decisions of the electors of the City of Newberg.

The Municipal Legislation Ambiguity (MLA)

They have repeatedly issued the claim that

- “10% of the city can **challenge any legislation** and that issue will go to a special election”.
- Council members opposition argument in Measure Arguments pamphlet

http://www.co.yamhill.or.us/clerk/Elections_2011/20111108/Newberg_Measure_Arguments_1.PDF

Mayor Andrews supplied the information for the Council opposition argument.

This statement is ambiguous because it can be true or false depending on what meaning the reader attributes to the word “legislation”. The material fact is that orders and resolutions are NOT municipal legislation. Their adoption by the City Council cannot be challenged via the current referendum process. Therefore Measure 36-149 **is needed** to refer these acts to the ballot.

If the reader believes that all revenues, that is all fees and charges as well as taxes, are adopted by “legislation”, then this ambiguous claim **leads the public to infer** that Measure 36-149 is not needed when the opposite is true.

To clearly understand this, recast the claim:

True: “10% of the city can challenge any **ordinance** and that issue will go to a special election”.

False: “10% of the city can challenge any **order** and that issue will go to a special election”.

False: “10% of the city can challenge any **resolution** and that issue will go to a special election”.

False: “10% of the city can challenge any **ordinance, order, or resolution** and that issue will go to a special election”.

????? “10% of the city can challenge any **legislation** and that issue will go to a special election”.

True: if and only if legislation means ordinance only ; **otherwise** the statement is **False**

Mayor Andrews Understands the MLA

Mayor Andrews made the following statement at the CRRC meeting on November 10, 2009. Members present were Matson Haug, chair; Mike Gougler; Ernie Amunson; David Maben; Mayor Bob Andrews, *ex-officio*. “Chair Haug changed the agenda order by asking Mayor Andrews to share his thoughts regarding the Town Hall meeting in January 2010. Mayor Andrews addressed the idea of having a public meeting”. [Emphasis mine.]

*“When the City Council takes an action, it does it in one of three ways: through a resolution or administrative type activity which is a formal action of the City; by ordinance which is a legislative type of activity, and the is the area of quasi-judicial in which an order is issued. The way the City Council takes an action, **only the legislative process is subject to referendum**. ...One of the reasons the City uses the Citizens’ Rate review Committee (CRRC) is to provide an open and administrative basis to help avoid the vulnerability of it [the water rate hike] being a legislative action....rate change itself is a Council administrative action...versus subject to referendums and referrals”*

– Mayor Andrews, Nov 10, 2009, item #3, page 15 of 37, Citizens’ Rate Review Committee minutes available on Newberg City website.

http://www.newbergoregon.gov/sites/default/files/minutes/11-10-09_Complete%20Packet.pdf

Smoke and Mirrors: How We Get Conned

The ruse is rather simple. Use an ordinance to establish a committee to “study the problem” and submit recommendations to the Council. The ordinance directs the Council to adopt a fee or a charge with a non-legislative order or resolution. Presto! The taxpayer can do nothing but pay the bill. This is how the Council set the PSF and our water charges.

Order – The Quasi-Judicial Power

I quote from the Quick Links – Newberg Orders page:

“Approval of an Order is the exercise of the City Council’s quasi-judicial authority. This is for matters of land use.”

http://www.newbergoregon.gov/citymanager/orders_new

All the orders listed in the index are for land-use actions except two: One abates a “public nuisance”, a dog, and Order 2009-0021, which establishes the PSF. This order has nothing to do with land use and is an improper use of quasi-judicial power.

The Council passed Ordinance 2009-2714 to establish the use of the Order mechanism.

Resolution – The Administrative Power

I quote from the Quick Links – Newberg Resolutions page:

“Resolutions are an administrative power of the City Council. Resolutions are generally used as means to guide staff on the policies or directives of the Council.”

<http://www.newbergoregon.gov/citymanager/resolutions>

The Council passed an ordinance to establish the Citizen rate Review Committee (CRRC) to study the problem and submit water rate recommendations to the Council. The ordinance directs the Council to set the rates with a resolution.

See NMC: 2.15.120 Established.

There is established a citizens' rate review committee ("committee") for the City of Newberg, Oregon. [Ord. [2585](#), 7-21-03; Ord. [2418](#), 10-2-95. Code 2001 § 32.70.]

On 4/19/10, the Council passed resolutions 2885, 2886, and 2886 to set water, sewer, and storm-water rates respectively.

City Attorney Mahr Understands the MLA

Mahr wrote the following in his EXPLANATORY STATEMENT FOR YAMHILL COUNTY VOTER'S PAMPHLET: [emphasis mine]

"The current process for **taxes, fees and charges** includes public review.

- For Example: A seven-member Citizen Rate Review Committee reviews any proposed increase in utility rate fees or charges at a public meeting. Their recommendations are given to the elected seven member city council for further review and deliberation before decisions are made.
- Proposed taxes (room tax), fees (permits, applications, utility and building inspection) and charges (public records, system development or meter installation) are modified, approved or denied by the City Council.
- Voters must approve most **new or increased taxes**, such as property taxes for capital improvement bonds or levies, under current law."

http://www.co.yamhill.or.us/clerk/Elections_2011/20111108/Newberg_ballot_title_voters_pamphlet.PDF

For example? What kind of legal definition is an example? Answer: It's not. Notice that he introduces taxes and fees and charges, but when he gets to the statement about voter approval, he limits his scope to **taxes only, a misleading statement.**

On September 9, 2011, Mahr kindly sent me an email with draft copies of two versions of the explanatory statement that he was considering. Here is my email response dated the same day:

Terry,

I am appalled that you still emphasize the fact that legislative measures ("taxes" via ordinance) can be referred to the ballot and conveniently omit the fact you and the council deliberately used "non-legislative" measures (Public Safety "FEE" via quasi-judicial order and utility "charge" via resolution) to block the referendum process

Draft #1: Presently, legislative measures can be referred by petition to an election through the State referendum process. (***no mention that we can't refer non-legislative measures***)

Draft #2: Voters must approve most new or increased taxes, such as property taxes for capital improvement bonds or levies, under current law. (***again no mention that you claimed Public Safety "FEE" didn't require a vote and couldn't be referred to the ballot because" it wasn't a tax"***).

Mayor Andrews is quoted in CRRC minutes pointing this out to the committee.

You and I have had this discussion several times, especially when Margaret Olney filed her ballot title challenge. So you can't say you forgot, or worse, didn't know. Or is the whole thing "submitted by" Dawn Wilson?

Election Costs:

Draft #2: The city would be responsible for **all** election costs except November elections every other year

I discussed this with both Gayle Jensen of the Yamhill County Clerk's office and Dawn Wilson . The city shares costs with other entities when there are other state or county candidates or measures. Please verify this before proceeding.

I do appreciate you sending me the drafts, and I hope you will be able to submit an accurate explanatory statement for the voter's pamphlet.

Due to the tight time schedule, do not hesitate to telephone me if needed over the weekend.

Sincerely,
Hank Grum

On 9/9/2011 5:32 PM, Terry Mahr wrote:
Hank,

Attached are two different DRAFT versions of the Explanatory Statement. The one labeled second version may be easier to read at a glance. I struck a lot out of the other version.

This needs to be filed Monday so just give me any of your thoughts. I am conferring with the Secretary of State's election division personnel to get some direction so the statement will not sound or read adversarial. They are both drafts so please do not circulate widely. I will furnish you a copy of what is filed.

-Terry

Mr. Mahr did correct his statement about election costs, but he did not remove the ambiguity in his reference to "taxes, fees, charges" versus "taxes". He did not otherwise respond to my comments

I spoke to City Attorney Mahr at the last October Council meeting about this omission of material fact in his explanatory statement.

Q. "Whatever happened to the Truth, the whole Truth, and nothing but the Truth"?

A. "That's only on TV, not real life." (Dear reader, *hear that Twilight Zone theme?*)

I pay taxes for a flippant answer to a serious question?

Q. "What about the similar statement in the Council's opposition argument?"

A. "I don't advise the Council in these matters".

Really? Who does advise the Council?

Mahr Started Events leading to Measure 36-149

On July 6, 2009, the Newberg City Council adopted Order 2009-0021, the Public Safety FEE (PSF). I was present at that meeting and asked City Attorney Mahr why this tax (we were paying for Police and Fire service with property TAX) was not put to a vote of the taxpayers. He informed me that the PSF was not a tax and we couldn't vote on it. He also informed me that I could write a referendum petition against it because it was adopted by an order not an ordinance.

This was all new to me and quite a shock to hear I couldn't vote on a tax. Thus began my two-year struggle to learn how we taxpayers are manipulated and what could be done about it. See my website

for details of the history. Briefly, I submitted the very short Damascus version of the petition. Mahr rejected it with the following Letter of Determination. The letter reads in part:

“2. Article IV, Section 1 (5) of the Oregon Constitution limits the initiative powers reserved to municipal voters to “municipal legislation”. Although the proposed new provisions would limit City Council authority to enact ordinances which are legislative, other provisions are not legislative. Those provisions would limit City Council authority to adopt resolutions (administrative) and approve orders (quasi-judicial).”

from Initiative Petition to Amend Charter - Determination by Elections Officer Sept 28 2009-SIGNED.DOC.pdf available here: <http://hankfornewberg.org/wp-content/uploads/2010/05/InitiativePetitionVersions.zip>

Councilor Mckinney Understands MLA

In his guest opinion in the *Graphic of October 22*,McKinney praises the Evil League of Oregon Cities Model Charter:

The LOC model city charter is widely used in Oregon. It is time- tested and proven to be a trustworthy document. It serves us in the following manner: the charter allows us to conduct our city’s affairs administratively (setting policies and processes, etc.); legislatively (creating laws and ordinances); and quasi-judicially (procedures regarding land uses).

McKinney omits the truth when he fails to point out that the Public Safety Fee was passed quasi-judicially rather than legislatively. He also omits the truth by not mentioning that the water rate increases were passed administratively.

He knows because he attended my discussion of the issue with Mahr after the October 17 council meeting.

Newberg Graphic Editor Understands the MLA?

Gary Allen, Editor of the Newberg *Graphic*, invited me to appear before their editorial board on October 19, 2011 to answer questions about Measure 36-149. I first explained to them this issue of orders and resolutions not being subject to referral, and that the whole point of the measure is to close this loophole.

On Saturday, October 22, this statement appeared in Allen's editorial:

“ Furthermore, there is an apparatus in place to require that legislative decisions made by the council be put to a vote of the people.”

A few days later, I could no longer contain my curiosity, and went to his office to ask a question:

Q. I explained to you and your editorial board, how this statement is misleading. How could you still print it?

A. Huh?

Q. I again related the full, detailed explanation.

A. I don't understand.

Q. I think you do.

A. When 10% of the people petition an order or resolution, **it becomes legislative.** (Cue *Twilight Zone Theme*)

Not even City Attorney Mahr could think up that new legal theory! Is he flipping me off or just too

dense to teach? I couldn't decide,I just walked out. You decide.

Do Fellow Travelers Understand the MLA?

Bob Ficker, Treasurer of Newberg's Future, the PAC opposed to Measure 36-149, supplied the information for eight of the eleven opposition arguments in the Measure Argument Pamphlet. Arguments by Senior Citizens and the Chehalem Valley Chamber of Commerce in the Argument Pamphlet, and opinions and letter to the Newberg *Graphic* all contain a form of the MLA.

Did he get his information from the City Attorney or the Mayor? The MLA and other talking points are identical.

I took a new peek at the financial activity of the Newberg's Future, our Mayor's PAC opposing our right to vote. Note: If you want to see for yourself go to

[https://secure.sos.state.or.us/orestar/cneSearch.do?
cneSearchButtonName=search&cneSearchFilerCommitteeId=15093](https://secure.sos.state.or.us/orestar/cneSearch.do?cneSearchButtonName=search&cneSearchFilerCommitteeId=15093)

The PAC spent \$4000 on PAC/WEST, a public relations firm based in *Wilsonville*, Oregon specializing in: campaigns & political strategy, crisis management, government affairs & lobbying, marketing. Then a flurry of letters to the *Graphic* appeared. Big money spreads the MLA to a lot of voters.

Legal Definition of Fraud:

1 a : any act, expression, omission, or concealment calculated to deceive another to his or her disadvantage; *specifically* : a misrepresentation or concealment with reference to some fact material to a transaction that is made with knowledge of its falsity or in reckless disregard of its truth or falsity and with the intent to deceive another and that is reasonably relied on by the other who is injured thereby

Dictionary.com <http://dictionary.reference.com/browse/fraud>

Remedy Requested

1: Publish in a place readily accessible and conspicuous to the voting public of Newberg, for example in the *Graphic*, an apology and acknowledgment that they have omitted aforesaid material fact.

Make available on the Newberg City website an electronic copy of said document. The file must be a PDF (Portable Document Format) file with text copy enabled.

And

2: Editor of the Newberg *Graphic* to do his job: report this story and retract his MLA claims. I also object to his stripping my web site address from my letter published November 2 in the *Graphic*. I ask that it be included in his editorial or story.

Conclusion

If the reader has grown weary from reading this extensive detail and citations, I apologize. But I have

been accused, especially by some members of the Council, of spreading “misinformation”. This precise presentation is necessary to avoid more harsh criticism.

On October 17th, I decided to take my case just one more time to the Council, and perhaps get an explanation for the presence of the MLA in their opposition argument. Audio of meeting here: <http://www.newbergoregon.gov/sites/default/files/audiorecordings/citycouncil/2011-1017councilbusiness.MP3>

As usual, they didn't answer the question and I have received none by email either. Tonight I went to the City website to verify the Council meeting date. On the home page I found a brand new FAQ elections coverage with the MLA correctly addressed in question #4:

4. Would any action by the City Council be subject to the initiative process? If so, why is this process different?

Answer: No, not all City Council actions are subject to the initiative process. City legislative action is subject to initiative process, which is usually taken through an ordinance. **Matters that are done by resolution or order are generally not subject to the initiative and referendum process.** If passed, this measure would establish a process by which any increase in taxes, fees, and charges would be submitted to the voters if requested by five or more electors of the city. [Emphasis mine.]

Daniel Danicic, Newberg City Manager
11/20/2011

<http://www.newbergoregon.gov/legal/initiative-petition-amend-charter-nov-8-2011-election>

I am literally “shocked, stunned and amazed”. My MLA analysis is vindicated. However, there is no reference to or apology for the false MLA in the Council voter argument.

The date signed is November 20? Today is November 2. I downloaded the FAQ Sheet and it has a date of November 11, 2011. When DID he first post this? Why didn't he notify me by email or telephone?

I will contact Mr. Danicic and thank him for posting the correct information. It doesn't fix all the harm done by the voter pamphlet, but it's a positive step. I sincerely appreciate it.

Yours in Liberty,
Hank Grum, Newberg Thursday, November 3, 2011
www.HankForNewberg.org
