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**NORTH OGDEN CITY  
MEMORANDUM**

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**TO:** ANNETTE SPENDLOVE, CITY RECORDER  
**CC:** MAYOR AND CITY COUNCIL  
**FROM:** DAVE CARLSON  
**SUBJECT:** RESOLUTION CALLING FOR A SPECIAL ELECTION  
**DATE:** 2/22/2012

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Annette, it does not appear that the state law allows the City to put the type of question to the voters discussed by the City Council last night. Special elections are limited to the purposes described in the following section:

**20A-1-203. Calling and purpose of special elections -- Two-thirds vote limitations.**

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(5) (a) The legislative body of a local political subdivision may call a local special election only for:

- (i) a vote on a bond or debt issue;
  - (ii) a vote on a voted local levy authorized by Section [53A-17a-133](#);
  - (iii) an initiative authorized by Chapter 7, Part 5, Local Initiatives - Procedures;
  - (iv) a referendum authorized by Chapter 7, Part 6, Local Referenda - Procedures;
  - (v) if required or authorized by federal law, a vote to determine whether or not Utah's legal boundaries should be changed;
  - (vi) a vote authorized or required by Title 59, Chapter 12, Sales and Use Tax Act;
  - (vii) a vote to elect members to school district boards for a new school district and a remaining school district, as defined in Section [53A-2-117](#), following the creation of a new school district under Section [53A-2-118.1](#); or
  - (viii) an election of town officers of a newly incorporated town under Subsection [10-2-125\(9\)](#).
- (b) The legislative body of a local political subdivision may call a local special election by adopting an ordinance or resolution that designates:
- (i) the date for the local special election; and
  - (ii) the purpose for the local special election.
- (c) A local political subdivision may not call a local special election unless the ordinance or resolution calling a local special election under Subsection (5)(b) is adopted by a two-thirds majority of all members of the legislative body, if the local special election is for:
- (i) a vote on a bond or debt issue as described in Subsection (5)(a)(i);
  - (ii) a vote on a voted leeway or levy program as described in Subsection (5)(a)(ii); or
  - (iii) a vote authorized or required for a sales tax issue as described in Subsection (5)(a)(vi).

Utah Code Ann. § 20A-1-203(5).

Where we stand with the ballot title is not entirely clear. I prepared the ballot title and provided it to you and the former City Council. You provided it to the ballot sponsors. The law anticipates they will review it, provide comments, I will then consider their comments and create a final ballot title. The final ballot title is then sent to the sponsors which triggers their right to protest to the Supreme Court. In our case, we never received any comments but I do not believe we then sent the "final" title back to the sponsors.

My recommendation, therefore, is that we send the ballot title back to them with a note that it was provided to them for comment, that no comment was received, so this is the final ballot title. The City Council should also receive a copy of the final ballot title. Here is the controlling state law:

**20A-7-608. Ballot title -- Duties of local clerk and local attorney.**

(1) Whenever a referendum petition is declared sufficient for submission to a vote of the people, the local clerk shall deliver a copy of the petition and the proposed law to the local attorney.

(2) The local attorney shall:

(a) entitle each county or municipal referendum that has qualified for the ballot "Proposition Number \_\_" and give it a number as assigned under Section [20A-6-107](#);

(b) prepare a proposed ballot title for the referendum;

(c) file the proposed ballot title and the numbered referendum titles with the local clerk within 15 days after the date the referendum petition is declared sufficient for submission to a vote of the people; and

(d) promptly provide notice of the filing of the proposed ballot title to:

(i) the sponsors of the petition; and

(ii) the local legislative body for the jurisdiction where the referendum petition was circulated.

(3) (a) The ballot title may be distinct from the title of the law that is the subject of the petition, and shall express, in not exceeding 100 words, the purpose of the measure.

(b) In preparing a ballot title, the local attorney shall, to the best of his ability, give a true and impartial statement of the purpose of the measure.

(c) The ballot title may not intentionally be an argument, or likely to create prejudice, for or against the measure.

(4) (a) Within five calendar days after the date the local attorney files a proposed ballot title under Subsection (2)(c), the local legislative body for the jurisdiction where the referendum petition was circulated and the sponsors of the petition may file written comments in response to the proposed ballot title with the local clerk.

(b) Within five calendar days after the last date to submit written comments under Subsection (4)(a), the local attorney shall:

(i) review any written comments filed in accordance with Subsection (4)(a);

(ii) prepare a final ballot title that meets the requirements of Subsection (3); and

(iii) return the petition and file the ballot title with the local clerk.

(c) Subject to Subsection (6), the ballot title, as determined by the local attorney, shall be printed on the official ballot.