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Des Moines, Iowa 50309
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2012 OCT -5 AM 10:01

CITY CLERK
IOWA CITY, IOWA

October 5, 2012

Council Members
Iowa City City Council
410 E Washington Street
Iowa City, Iowa 52240

Re: Submission of Affidavit to Commence Initiative, Proposed Ordinance, and Memo on Behalf of Iowa City Residents Aleksey Gurtovoy and Martha Hampel

Dear Council Members,

Enclosed please find an Affidavit to Commence Initiative and Proposed Ordinance (the Initiative) filed by Iowa City residents and registered voters Aleksey Gurtovoy and Martha Hampel on this date, October 5, 2012. We have reviewed the Memoranda written by Iowa City City Attorney Eleanor M. Dilkes and submitted to the City Council on June 27, 2012 and August 21, 2012, in which she recommended that Mr. Gurtovoy's and Ms. Hampel's initiative be barred for consideration as a referendum in disguise.

We are becoming involved because of the importance of this issue to the access all Iowa City residents will have to the democratic processes protected by the Charter. The City Attorney's position is one that encourages a content-discriminatory basis for evaluating whether direct citizen action is time-barred or not in a given case. Such an interpretation runs afoul of the City Charter and well-established principles of statutory interpretation.

As explained in this memorandum, we respectfully disagree with the City Attorney's findings and analysis. For the following reasons, and on behalf of Mr. Gurtovoy and Ms. Hampel, we ask that the enclosed Affidavit to Commence Initiative and Proposed Ordinance be accepted by this Council as an initiative. Upon the acceptance of Mr. Gurtovoy's and Ms. Hampel's Affidavit to Commence Initiative, they will have six months from the date of filing to secure sufficient signatures for consideration by this Council. If the Initiative is not adopted by the Council at that time, they are entitled to put the matter before the voters during the 2013 regular city election.

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To: Iowa City City Council
Date: October 5, 2012
Re: Validity of Gurtovoy-Hampel Initiative under the City Charter

MEMORANDUM

SUMMARY

The Iowa City Charter expressly provides that initiatives are not invalid because they repeal or amend existing measures, nor are more restrictive requirements for filing initiatives permitted by the Charter. The interpretation and course of action proposed by the Iowa City City Attorney regarding the Initiative filed by Mr. Gurtovoy and Ms. Hampel in July 2012 is in conflict with well-established principles of statutory interpretation and the plain language of the Charter. In order to remain in compliance with the laws of Iowa City, the City Council should recognize this initiative action filed by Mr. Gurtovoy and Ms. Hampel October 5, 2012 as a valid initiative, not a referendum, so that Mr. Gurtovoy and Ms. Hampel can begin the process of collecting the necessary signatures.

DISCUSSION

1. **The Iowa City Charter Expressly Allows for Initiatives that Repeal Existing Measures.**

The Iowa City Charter expressly permits initiative actions which repeal existing ordinances in whole or in part, as well as initiative actions which amend existing measures:

(2) Initiative. It is intended that (a) no initiative petition will be invalid because it repeals an existing measure in whole or in part by virtue of proposing a new measure and (b) an initiative petition may amend an existing measure.

Iowa City Charter Section 7.01(C)(2). In the June 27, 2012 Memorandum to the City Council, the City Attorney attempted to reconcile Section 7.01(C)(2) of the City Charter provided above with her determination that an initiative including a repeal on an existing ordinance is a referendum in disguise by presenting a novel interpretation of the words "by virtue of" in that Section:

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In order to reconcile this provision with the definitions and time requirements of Article VII of the Charter, the words "by virtue of" must have significance. Often, a proposed measure will require the repeal of certain other portions of the code. In such cases, repeal is a coincidence or by-product of the new proposal. . . . This incidental repeal, or repeal "by virtue of" the proposed measure, is much different than a repeal as a result of a substitution that renders the recently enacted ordinance completely meaningless.

We find this reading to be fairly convoluted, and in violation of well-defined and established principles of statutory interpretation in Iowa. When words are undefined in a statute, they are given their ordinary and common meaning. See, e.g., *Mason v. Schweizer Aircraft Corp.*, 653 N.W.2d 543, 548 (Iowa 2002). The court will only depart from the ordinary meaning of statutory language when the statute's literal terms are in conflict with its general purpose. See, e.g., *State v. Hopkins*, 465 N.W.2d 894, 896 (Iowa 1997). Statutes are interpreted in their context. See *Griffin Pipe Prods. Co. v. Guarino*, 663 N.W.2d 862, 865 (Iowa 2003). When no ambiguity exists, a statute's language is read and rationally applied as written. See *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 376, 379 (Iowa 2000) and *Larson Mfg. Co. v. Thorson*, 763 N.W.2d 842, 859 (Iowa 2009).

In this case, there is no ambiguity as to the plain and ordinary meaning of "by virtue of." Rather, the plain and ordinary meaning of "by virtue of" does not lend itself to the City Attorney's interpretation that it excludes initiatives which substitute new language for old and thereby render existing ordinances meaningless, but that initiatives calling for "by-product" or "coincidence" repeals would be permissible. Rather, the plain and ordinary meaning is as stated in the Charter: that initiatives are not invalid because they call for a new measure that would require the repeal or amendment of an existing one. When taken in context, we find that Section 7.01(C)(2) appears to protect against the exact sort of interpretation the City Attorney is offering in this case, rather than to support the City Attorney's position: Section 7.01(C)(2) simply says initiatives cannot be excluded by virtue of, or because of, their effect to repeal or amend existing measures. Moreover, the City Attorney's suggested limitation would be inconsistent with the Charter's directive that "[i]t is intended that this article confer broad initiative and referendum powers upon the qualified electors of this city. City Charter Section 7.01(C)(1).

The City Attorney finds that it would be irrational to allow a city ordinance to be repealed by an initiative if the time for a referendum has expired. In fact, the converse is true. The City Attorney's analysis, if adopted by the Council, would significantly undermine the City Charter's grant to citizens of the power of initiative, by necessarily making any initiative whose effects would include repeal of a decision more than 60 days, but less than 2 years old subject to the same deadlines as referenda.

The City Charter recognizes this circumstance, and reaches a conclusion contrary to that of the City Attorney, by expressly providing that "...no initiative

petition will be invalid because it repeals an existing measure... by virtue of proposing a new measure..." (Section 7.01(C)(2)(a)). Because Section 7.01(A)(3) defines "measure" as "...all ordinances... of a legislative nature, however designated, which (a) are of a permanent rather than temporary character and (b) include a proposition enacting, amending, or repealing a new or existing law, policy, or plan...", any petition that creates a broader policy, and in so repeals an existing policy, is an initiative.

2. The Initiative Enclosed Seeks to Enact an Ordinance that is Broader in Scope than Mere Repeal of Existing Measures.

The initiative filed by Mr. Gurtovoy and Ms. Hampel seeks to accomplish far more than a repeal of Iowa City's new traffic camera ordinance, Ordinance No. 12-4466, as the City Attorney has argued. In fact, it allows for traffic cameras, so long as certain safeguards are met, such as requiring an officer to be present on the scene, witness the infraction, and issue the citation; the image captured by the traffic camera could still be used as evidence under their proposed initiative. But more to the point, its goal is also much broader: it would, for example, limit the ability of Iowa City police to use automatic license plate readers in ways which would violate the terms of the proposed ordinance, and would prohibit non-emergency warrantless use of drone technology in routine traffic enforcement efforts.

Such a policy amounts to more than a mere repeal of the decision to authorize red light cameras, and renders it quite clearly an "initiative." The City Attorney's analysis incorrectly assumes that policy is only created when an existing policy is modified. Here, she assumes the revised petition is a referendum and not an initiative because, out of all activities that it would ban, only one method of enforcement has thus far been authorized by the City. However, policy is also created through forward-looking prohibitions. Policymaking is seldom purely reactive: it identifies future problems and seeks to prevent them from occurring or becoming worse. This is precisely what the revised petition seeks to do: it identifies the problem of increased surveillance, and seeks to prevent that problem from becoming increasingly severe by both restricting currently authorized surveillance and preventing the use of certain new surveillance tools.

The above cited Charter provision (Section 7.01(C)(2)(a)) supports this analysis by explicitly providing that initiatives are still valid, (and therefore not "referenda"), merely because they repeal an existing policy through proposals for a new policy.

3. The Charter Prohibits the Council from Setting More Stringent Requirements Affecting Initiatives Than Imposed by the Charter.

The Charter specifically prohibits the invention of new restrictions on the use of initiative and referendum proceedings:

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2012 OCT -5 AM 10:
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The council may not set, except by charter amendment, conditions or requirements affecting initiative and referendum which are higher or more stringent than those imposed by this charter.

Iowa City Charter Section 7.07. The plain meaning of the requirements of an initiative are clear in the charter, as is the express prohibition on discounting a petition because it requires repealing or amending an existing city ordinance, as discussed above. The City Attorney's invention of a new requirement for valid initiatives, namely, that they may not require repeal of an existing ordinance by virtue of supplanting it with broad policy, is thus highly suspect and challengeable.

4. Conclusion

The City Attorney is incorrect in concluding that any petition that repeals the City's decision to permit the use of red light cameras is necessarily a referendum according to the plain and ordinary meaning of the Charter. Mr. Gurtovoy's and Ms. Hampel's petition has a substantially broader scope to create new policy regarding the use of technology to identify vehicles and their owners or occupants, and would therefore be an initiative. Additional restrictions on the use of initiatives by Iowa City residents is improper under the Charter, and unduly burdens the democratic processes available to Iowa City residents protected by the Charter. On behalf of Mr. Gurtovoy and Ms. Hampel, we respectfully ask this body to accept the enclosed filings so that they may proceed with signature collection as is their right as Iowa City residents.

Respectfully,



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AFFIDAVIT TO COMMENCE INITIATIVE

STATE OF IOWA)
)
COUNTY OF JOHNSON)

The undersigned petitioners hereby propose to commence Initiative proceedings pursuant to Article VII of the Charter of Iowa City.

1. Each of the undersigned is a voter who is registered to vote in Iowa City.
2. The undersigned will supervise the circulation of the Initiative petition and will be responsible for filing it in proper form with the City Clerk of Iowa City.
3. The names, addresses, and phone numbers of the petitioners are as follows:

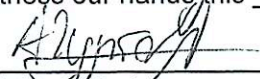
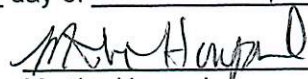
Aleksey Gurtovoy 4362 E. Court St. Iowa City, IA 52245 (319) 936-0565 agurtovoy@meta-comm.com	Martha Hampel 915 Oakcrest #11 Iowa City, IA 52246 (319) 471-7319
--	--

4. All relevant notices relating to the initiative proposal shall be addressed as follows:

Aleksey Gurtovoy
4362 E. Court St.
Iowa City, IA 52245

5. The ordinance proposed is attached hereto as an exhibit and by this referendum made a part hereof.

Witness our hands this 5 day of October, 2012.

 Aleksey Gurtovoy	 Martha Hampel
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Subscribed and sworn to before me, a Notary Public, on this 5 day of October 2012, by Aleksey Gurtovoy and Martha Hampel, to me known to be the persons who executed the foregoing Affidavit, and each of whom acknowledged that he/she executed the same as his/her voluntary act and deed.


Notary Public

My commission expires 9/23, 2015.

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ORDINANCE NO. _____

AN ORDINANCE ENACTING A NEW CHAPTER OF TITLE 9 OF THE CITY CODE OF IOWA CITY TO RESTRICT THE USE OF TRAFFIC ENFORCEMENT CAMERAS, DRONES, AND AUTOMATIC LICENSE-PLATE RECOGNITION SYSTEMS.

2012 OCT 5 AM 10:01
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WHEREAS we find the public safety benefits of police traffic surveillance technology to be unproven and outweighed by the civil liberties and due process rights of the citizens of Iowa City; and

WHEREAS independent studies have shown that traffic engineering and public education efforts, such as driver feedback signs, yellow light timing, an all-red clearance interval, and other less punitive means have much more significant and lasting effectiveness in reducing traffic violations than traffic enforcement cameras; and

WHEREAS the Iowa Department of Transportation has issued Guidelines governing the use of automated traffic enforcement technology, approving its use only after other engineering and enforcement solutions have been explored and implemented, and limit their use to locations where there is a significant crash history and where the placement of automatic traffic enforcement technology can directly address the primary traffic safety issue; and

WHEREAS automated traffic citations disproportionately impact low income residents who have registered their vehicles and function equivalently to a highly regressive municipal taxation system; and

WHEREAS Iowa City is home to a new set of students every year, and is visited by thousands of parents and hundreds of thousands of sports fans; it's also home to the University of Iowa Hospitals and Clinics, a nationally renowned hospital receiving more than half a million patient visits per year; the punitive enforcement of minor, technical violations of traffic rules will damage the City, the University, the hospital, and the businesses who are reliant on visitors, and a large portion of students operate vehicles registered to a parent who unfairly will be held liable for the traffic citation; and

WHEREAS laws prohibiting automatic traffic enforcement systems have passed in over ten U.S. states given the growing concern over the civil liberties implications of the systems and their unproven effects on traffic safety, especially compared to less punitive traffic engineering and other enforcement solutions; and

WHEREAS automatic license plate recognition technology is unregulated in terms of data collection, storage, sharing, and poses significant risks to privacy and core constitutional rights; and

WHEREAS domestic drones are unregulated in terms of data collection, storage, and sharing, and pose significant risks to privacy and core constitutional rights; and

WHEREAS drones should be deployed by law enforcement only with a warrant, in an emergency, or when there are specific and articulable grounds to believe that the drone will collect evidence relating to a specific criminal act, and not for routine traffic surveillance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF IOWA CITY, IOWA:

SECTION I. AMENDMENT. A new chapter of Title 9, entitled "Limitations On The Use of Traffic Surveillance Systems," is adopted as follows:

1. **GENERAL:** The city of Iowa City, including its various boards, agencies, and departments, shall not:
 - A. Use any automatic traffic surveillance system or device, automatic license plate recognition system or device, or domestic drone system or device for the enforcement of a qualified traffic law violation, unless a peace officer is present at the scene, witnesses the event, and personally issues the ticket to the alleged violator at the time and location of the violation; nor
 - B. Store, archive, transmit, share, publish, grant access to, sell, index, cross-reference, or otherwise aggregate, distribute, analyze, or process any data obtained through automatic traffic surveillance system or device, automatic license plate recognition system or device, or domestic drone system or device unless the data directly pertains to a qualified traffic law violation or other criminal law violation for which a ticket, citation, or arrest was issued or made by a peace officer who was present at the scene.

2. **DEFINITIONS:** As used in this chapter:
 - A. "Qualified traffic law violation" means a violation of any of the following: (1) any state or local law relating to compliance with a traffic control signal or railroad crossing sign or signal; or (2) any state or local law limiting the speed of a motor vehicle.
 - B. "Ticket" means any traffic ticket, citation, summons, or other notice of liability, whether civil, criminal, or administrative, issued in response to an alleged qualified traffic law violation detected or recorded by a traffic surveillance system or device.
 - C. "Automatic traffic surveillance system or device" means a device or devices including but not limited to a camera system(s) that uses any electronic, photographic, video, digital, or computer system to produce any photograph, microphotograph, videotape, digital video, or any other recorded image or digital record of a vehicle and/or its operator

2012 OCT -5 AM 10: 01

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and/or its occupants that can be used to establish identity or ownership of a vehicle and/or identify its operator, owner, or occupants.

- D. "Automatic license plate recognition system" means a computer-based system(s) that captures an image of a license plate(s) and converts it to a data file to be compared with databases or hot lists generated by various law enforcement agencies, and which produces an alert when there is a match between the collected license plate data and those databases.
- E. "Domestic drone", "drone", or "unmanned aerial vehicle" means an aerial vehicle that does not carry a human operator that can fly autonomously or be piloted remotely that is equipped with one or more on-board cameras or other sensors for registering, observing, or recording persons, objects, or events or for transmitting such information as it is occurring or thereafter.

SECTION II. REPEALER. All other ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION III. SEVERABILITY. If any section, provision, or part of this Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION IV. EFFECTIVE DATE. This Ordinance shall be in effect after its final passage, approval, and publication, as approved by law.

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