

TO: TOWN COUNCIL

FROM: TOWN MANAGER 

RE: TERM LIMIT IMPLEMENTATION PROCESS

### ISSUE

The matter of implementing the Term Limits initiative and questions concerning what should be done in a legal or some other venue suggests that further Council direction is needed.

### RECOMMENDATION

1. Conduct a work shop session to hear from the public to identify issues and questions.
2. Convene a session of the Council and determine Staff direction. This may require a closed session to consider certain legal issues. Decide how Council wishes to proceed in preparing a Memorandum of Points and Authorities in Opposition to Quo Warranto. This may include obtaining special legal counsel.

### CEQA

There are no environmental issues with this matter.

### MONEY

The Town has expended approximately \$10,000 on the term limits issue at this writing. Cost going forward will depend on what Council directs. Funding for special legal expenses comes from \$25,000 that was set aside in the budget.

SPECIAL COUNSEL BUDGET LINE ITEM			
Allocated for 2010/11			25000
Legal service - Mooney re: Rocklin CEQA issues		6716	
Legal service - Larsen re: term limits		3476	
Legal service - Meyers Nave re: term limits		unknown at this writing	
Legal service - Olson, Hegal, Fishburn re term limits		6126	
		TOTAL EXPENSES----->	16318
		BALANCE	8682

### DISCUSSION

At a Special Meeting on December 7, 2010 the Council (Members Kelley, Liss and Morillas -- Ucovich recused, Scherer absent) discussed term limits and what the Town should do to insure an orderly Council transition and address issues on the recently passed term limits initiative. The Council decided to:

1. Certify the election results at the December meeting and to swear in the elected members (Calvert, Scherer and Ucovich); and
2. File a “quo warranto” action with the State Attorney General, which is a method allowed by State law to resolve disputes concerning the right to hold public office.

The Council also discussed scheduling a public meeting / workshop at a later date when, it was hoped, the State Attorney General decision would be known.

Today things are still at the point of deciding whether to file with the Attorney General or consider other options. On 1/21/11 Vice Mayor Calvert suggested to Staff that it would be useful to have a special meeting / workshop to revisit the term limit issues with the Council and the public.

Today’s meeting has a closed session, workshop and Council session. The closed session is available if needed. The workshop provides a less formal time to develop ideas and questions. The Council session provides the formal meeting time needed so Council can make decisions, authorize money and pass resolutions.

The Quo Warranto Complaint documents have been prepared by Meyers Nave (Scott Smith, Attorney) and are ready to file with the State Attorney General. The documents have been reviewed by the Yes on Term Limits Committee (Sonja Cupler and Tom Millward representing) which may submit suggestions for edits.

The Memorandum of Points and Authorities in Opposition to Quo Warranto document(s) are not yet completed by the Town Attorney.

#### **ATTACHMENTS**

- |         |   |
|---------|---|
| 3 pages | Quo Warranto Complaint prepared by Meyers Nave (Scott Smith, Attorney) and signed by Relator Perry Beck, Town Manager, to be filed with the State Attorney General when authorized by the Town Council  |
| 2 pages | Verified Statement of Facts prepared by Meyers Nave (Scott Smith, Attorney) and signed by Relator Perry Beck, Town Manager, to be filed with the State Attorney General with the Quo Warranto Complaint |
| 8 pages | Memorandum of Points and Authorities in Support of Quo Warranto prepared by Meyers Nave (Scott Smith, Attorney) to be filed with the State Attorney General with the Quo Warranto Complaint             |

**TERM LIMIT INITIATIVE QUESTIONS & ANSWERS**

Since passage of the Term Limits initiative various questions have come up that the Town Attorney has summarized and given answers to as follows:

**Q:** What is a local initiative?

**A:** A local initiative is a way to create local law without action by the Town Council. It requires that a measure be placed on the ballot for a vote of the people.

**Q:** What is an example of an initiative?

**A:** A number of years ago a project applicant proposed to rezone the Turtle Island area adjacent to the freeway by placing the issue on the ballot for the citizens of Loomis to vote on.

**Q:** Who can propose an initiative?

**A:** One or more citizens can propose an initiative. So can the Town Council. In the case of a citizen initiative, the proponents must gather enough signatures to place the matter on the ballot.

**Q:** What are the 'pros' and 'cons' of citizens using the initiative process?

**A:** On the positive side, citizens can use the initiative process to go directly to the people with a concern which the Town Council may not share. Initiatives are an important check on the legislative branch and tend to stimulate citizen interest in politics.

On the negative side, there are no public hearings associated with initiatives; no legal vetting unless the proponents hire an attorney to review the measure for legality, wording, etc., and no way to correct typos or to clarify language without a subsequent vote of the people.

**Q:** Is the term limits measure a council or citizen initiative?

**A:** It is a citizen initiative. While it is true that during circulation of the citizen initiative the Town Council requested that an identical measure be placed on the ballot as a Town measure, once it was clear that both the Town measure and the citizen initiative were headed to the November ballot, the Town measure was subsumed by the citizen initiative.

**Q:** Given this is a citizen initiative, why was the Town Council allowed to decide that the initiative should be placed on the November rather than the June ballot?

**A:** While the citizen proponents requested that the initiative be placed on the June ballot, the County Counsel and the County Registrar determined that the County should not honor this request because the proponents failed to include a written request for a special election on the face of the petition as required by law. After further interaction with Town staff, including discussions concerning whether the June date should really be considered a special election, the County agreed that the Town (rather than the County) should be allowed to decide whether to place the measure on the June or November ballot.

**Q:** Why did the Town decide to place the initiative on the November ballot?

**A:** The majority of the Town Council felt that the term limits was important enough to warrant the fullest possible vote; historically, more people have voted in November than in June.

**Q:** Is there a question concerning the legality of the August 1<sup>st</sup> provision of the term limits measure?

**A:** Yes. State law requires term limit measures to operate “prospectively” only. That would seem to mean that only years of service accrued after the effective date of the term limits measure would be counted in calculating what constitutes “two consecutive four year terms.”

**Q:** How did this question arise?

**A:** It was one of several questions Town Council asked the Town Attorney to analyze after the citizen initiative was certified.

**Q:** Once the Town received the Town Attorney’s opinion, shouldn’t the Town have done something to address this possible illegality?

**A:** The law steadfastly protects the citizens’ right to pursue an initiative, and in most cases favors waiting until after the vote before allowing litigation. Here, the Town did not want to interfere with the citizens’ term limits initiative; the Town Attorney felt a court would not hear the matter ahead of the vote; and the Town did not want to spend money needlessly litigating something that might not be enacted by the voters.

**Q:** Now that term limits have passed, does the Town intend to address this possible illegality in any manner?

**A:** Yes. Because the Town officers and officials have a duty to uphold the laws and the Constitution, the Town must address what it believes to be an illegal provision in order to assure the legal implementation and enforcement of the term limits measure.

**Q:** What does the Town intend to do?

**A:** The Town intends to file a quo warranto lawsuit in the name of the Town Manager seeking a ruling on the ability of council members Walt Scherer and Miguel Ucovich to continue serving on the Town Council in light of the August 1<sup>st</sup> provision since both members have served more than two consecutive four year terms prior to August 1, 2010.

The Town also intends to seek a ruling concerning whether or not it is legal (and appropriate, given the wording of the initiative) to count time served prior to the enactment of the term limits measure towards the accrual of a four year term.

**Q:** How does this type of lawsuit work?

**A:** If, after the California Attorney General's staff has conducted its own legal analysis it agrees with the Town Attorney's opinion that the August 1<sup>st</sup> provision is illegal, she will prepare an Attorney General's Opinion to that effect, and prohibit further litigation of this matter. Otherwise, the Attorney General will send the matter to court for a ruling.

With respect to the question of whether time served prior to enactment of the term limits measure can (or should) be counted towards the calculation of "two consecutive four year terms," the Town intends to request that the Attorney General also provide an opinion on these issues.

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EXEMPT FROM FILING FEES  
GOV'T CODE § 6103

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF PLACER**

11 The People of the State of California, ex rel.  
Perry Beck in his capacity as Town Manager  
12 for the Town of Loomis, a Municipal  
Corporation,

13 Plaintiffs,

14 v.

15 Walt Scherer and Miguel Ucovich

16 Defendants.

CASE NO.

**QUO WARRANTO COMPLAINT**

Trial Date: None

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18  
19 1. The Town of Loomis is a municipal corporation existing within the State of California,  
20 and operates as a "general law city" as it does not have a city charter. It is governed by a five  
21 member Town Council, with each member being elected to a four year term of office, which begin  
22 on the second Tuesday in December and end on the second Tuesday in December four years later.

23 2. Relator Perry Beck is the Town Manager for the Town of Loomis.

24 3. Defendant Walt Scherer is now holding office as a member of the Loomis Town  
Council, having been most recently sworn into office on December 14, 2010.

25 4. Defendant Miguel Ucovich is now holding office as a member of the Loomis Town  
26 Council, having been most recently sworn into office on December 14, 2010.

27 5. In 2009, a group of local citizens successfully obtained signatures to place a measure  
28 before the Town's voters that would limit any council member to two consecutive terms of office,

1 after which the member would need to wait eight years before being eligible to run again.

2 6. The measure's sponsors sought to have the measure placed on a special election ballot  
3 to take place in June of 2010. However, the County of Placer Registrar of Voters opined that the  
4 matter was not proper for the June ballot and the Town Council ultimately agreed to place this  
5 measure on the November general election ballot. The measure was given the title "Measure A."

6 7. As it appeared on the ballot, Measure A stated, "Shall the proposed ordinance entitled  
7 'An Initiative of the Loomis Town Citizens Enacting Term Limits' which provides: (1) five  
8 council members serve 4-year terms; (2) terms shall be staggered; (3) no member can serve more  
9 than two consecutive 4-year terms; (4) a member who has served two terms prior to August 1,  
10 2010 must sit out eight years; and (5) current members can complete their terms, be adopted?"

11 8. Measure A received a majority of votes in the November election.

12 9. The first meeting of the Loomis Town Council which occurred after the final tally of  
13 votes was received from the Placer County Registrar of Voters took place on December 14, 2101.  
14 At that meeting, the Town Council declared Measure A as having passed.

15 10. As of August 1, 2010, Both Defendants Scherer and Ucovich were serving terms of  
16 office which would end on December 14, 2010, and both had previously served more than two  
17 consecutive terms.

18 11. Despite the risk that Measure A might pass, both stood for re-election in the  
19 November 2010 general election. Both received sufficient votes to be reelected.

20 12. Both Defendants were sworn into office for another four year term on December 14,  
21 2010.

22 13. If the August 1, 2010, cut-off date is valid, Defendant Walt Scherer is currently  
23 ineligible to hold office as a member of the Loomis Town Council.

24 14. If the August 1, 2010, cut-off date is valid, Defendant Miguel Ucovich is currently  
25 ineligible to hold office as a member of the Loomis Town Council.

26 WHEREFORE, People of the State of California, by and through Relator Perry Beck  
27 hereby pray judgment as follows:

28 a. That this court order that Walt Scherer be declared ineligible to hold office as a  
29 council member of the Loomis Town Council, and that he be ordered removed from office;

b. That Miguel Ucovich be declared ineligible to hold office as a council member  
30 of the Loomis Town Council, and that he be ordered removed from office;

c. For reasonable cost of suit hearing incurred;

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d. For such further relief as the court may deem just and proper.

DATED: January \_\_, 2010

Respectfully submitted,

KAMALA HARRIS, Attorney General of the STATE  
of CALIFORNIA

By: \_\_\_\_\_  
Deputy Attorney General

And,

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: \_\_\_\_\_  
J. Scott Smith  
Attorneys for Relator

1573188.2

**VERIFICATION**

I, Perry Beck, do hereby declare under penalty of perjury in the laws of the State of California that I am the town manager for the Town of Loomis and the allegations set forth in the foregoing complaint are both true and correct.

DATED: January 21, 2010

By:   
Perry Beck

1565879.1



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### **VERIFIED STATEMENT OF FACTS**

I Perry Beck do hereby declare as follows:

1. The Town of Loomis is a municipal corporation existing within the State of California, and operates as a “general law city” as it does not have a city charter. It is governed by a five member Town Council, with each member being elected to a four year term of office, each of which begins on the second Tuesday in December and ends on the second Tuesday in December four years later.
2. Relator Perry Beck is the Town Manager for the Town of Loomis.
3. Defendant Walt Scherer is now holding office as a member of the Loomis Town Council, having been recently sworn into office on December 14, 2010.
4. Defendant Miguel Ucovich is now holding office as a member of the Loomis Town Council, having been recently sworn into office on December 14, 2010.
5. In 2009, a group of local citizens successfully obtained signatures to place a measure before the Town voters that would limit any council member to two consecutive terms of office, after which the member would need to wait eight years before being eligible to run again.
6. The measure’s sponsors sought to have the measure placed on a special election ballot to take place in June of 2010. However, the County of Placer Registrar of Voters opined that the matter was not proper for the June ballot and the Town Council ultimately agreed to place this measure on the November general election ballot. The measure was given the title “Measure A.”
7. As it appeared on the ballot, Measure A stated as follows:  
“Shall the proposed ordinance entitled ‘An Initiative of the Loomis Town Citizens Enacting Term Limits’ which provides: (1) five council members serve 4-year terms; (2) terms shall be staggered; (3) no member can serve more than two consecutive 4-year terms; (4) a member

who has served two terms prior to August 1, 2010 must sit out eight years; and (5) current members can complete their terms, be adopted?"

8. Measure A, received a majority of votes in the November election.

9. The first meeting of the Loomis Town Council which occurred after the final tally of votes was received from the Placer County Registrar of Voters took place on December 14<sup>th</sup>, 2101. At that meeting, the Town Council declared Measure A as having passed.

10. As of August 1, 2010, Both Defendants Scherer and Ucovich were serving terms of office which would end on December 14, 2010, and both had served more than two consecutive terms.

11. Despite the risk that Measure A might pass, which would render both Defendants ineligible for further office, both stood for re-election in the November 2010 general election. Both received sufficient votes to be reelected.

12. Both Defendants were sworn into office for another four year term on December 14, 2010.

I declare under penalty of perjury under the laws of the State of California that the foregoing is both true and correct.

Date: 1/21/11



Perry Beck.

1573191.2

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5 Attorneys for Town of Loomis

6  
7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF PLACER**  
9

10 THE PEOPLE of THE STATE OF  
CALIFORNIA, ex rel. PERRY BECK in his  
11 capacity as Town Manager for the TOWN OF  
LOOMIS, a Municipal Corporation,

12 Plaintiff,

13 v.

14 WALT SCHERER and MIGUEL UCOVICH,

15 Defendants.  
16

CASE NO.

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF QUO  
WARRANTO**

17 **I. INTRODUCTION**

18 In this matter, the town manager for the Town of Loomis seeks a determination of whether  
19 two recently reelected members of the Town Council are entitled to hold office in light of a term  
20 limit initiative passed by the Town's voters in the November 2010 general election. Specifically,  
21 under the new provision, any person who, as of August 1<sup>st</sup> 2010 had served more than two terms  
22 on the Town Council was disqualified from sitting on the council for a period of eight years,  
23 except any person who was currently serving a term of office when the measure passed would be  
24 allowed to complete that term. In the same election, two members of the Town Council who had  
25 served more than two terms as of August 1<sup>st</sup> won reelection campaigns and were sworn into office  
26 on December 14, 2010.  
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1           Their reelection raises two issues which can only be addressed through a quo warranto  
2 action. The primary issue is determining a candidate's eligibility as of August 1<sup>st</sup> 2010 is  
3 preempted by Government Code section 36502 subdivision (b), which prohibits the retroactive  
4 application of local term limit measures. If application of the August 1<sup>st</sup> date does not violate  
5 section 36502, a second issue arises as to whether the Defendants can nonetheless remain in office  
6 because, due to a quirk in the Elections Code, the term limit ordinance did not formally take effect  
7 until 10 days after they were sworn into the new terms.

8           On both issues, there are fair arguments to support the base proposition that both council  
9 members are ineligible to hold office. With respect to application of section 36502, the new term  
10 limit is not being applied retroactively because it only applies to prevent new terms of office from  
11 commencing after the measure was passed. The August 1 date is only the yardstick against which  
12 eligibility is being measured for future terms of office. Thus, the measure is not reaching back in  
13 time to render a person ineligible to currently hold office who was eligible before the measure was  
14 passed. Second, the text of the measure placed before the voters reveals that the voter intent was  
15 to allow for the completion of the terms of offices that existed at the time the voters enacted the  
16 measure, not to allow for a whole new four year term to start due to little known quirk in the  
17 effective date of local measures.

## 18           **II. BACKGROUND**

19           The Town of Loomis is a small municipal corporation existing in Placer County  
20 California. (Statement of Facts, hereinafter "SOF" ¶ 1.) It does not have a charter so is operated  
21 as a general law city. (SOF ¶ 1.) It is governed by a five member Town Council, with each  
22 member being elected to a four year term of office. (SOF ¶ 1.) Elections for the Town Council  
23 seats are held alternatively every two years. (SOF ¶ 2.) Defendants Walt Scherer and Miguel  
24 Ucovich are members of the Town Council who have served multiple terms of office. (SOF ¶¶  
25 3,4, and 10).

26           In 2009, a group of local citizens successfully obtained signatures to place a measure  
27 before the Town's voters that would limit any council member to two consecutive terms of office,  
28 after which the member would need to wait eight years before being eligible to run again. (SOF ¶

1 5.) Initially, it was the hope of the measure's sponsors to have the matter placed on a special  
2 election ballot to take place in June of 2010. (SOF ¶ 6.) However, the County of Placer Registrar  
3 of Voters opined that the matter was not proper for the June ballot and the Town Council  
4 ultimately agreed to place this measure on the November general election ballot. (SOF ¶ 6.) The  
5 measure was given the title "Measure A." As it appeared on the ballot, Measure A stated as  
6 follows:

7 Shall the proposed ordinance entitled "An Initiative of the Loomis Town Citizens  
8 Enacting Term Limits" which provides: (1) five council members serve 4-year  
9 terms; (2) terms shall be staggered; (3) no member can serve more than two  
10 consecutive 4-year terms; (4) a member who has served two terms prior to  
11 August 1, 2010 must sit out eight years; and (5) current members can complete  
12 their terms, be adopted? (SOF ¶ 7.)

13 Measure A passed in the November general election. (SOF ¶ 8.) The Placer County Registrar  
14 of Voters submitted the final vote tally to the Town and the Town Council voted to accept the vote at  
15 its next regular meeting, which took place on December 14<sup>th</sup>, 2010. (SOF ¶ 9.)

16 During the November election both Defendants Scherer and Ucovich stood for reelection.  
17 (SOF ¶ 11.) Both Mr. Scherer and Mr. Ucovich had served more than two terms as of August 1<sup>st</sup>,  
18 2010. (SOF ¶ 10.) Both won their reelection campaigns. (SOF ¶ 11.) Each council members' term of  
19 office formally ends on the second Tuesday in December of each year, which coincides with the  
20 regular December meeting of the Town Council. (SOF ¶ 1.) Therefore, those who have won their  
21 election campaigns for Town Council are typically sworn in at the December meeting. In 2010, the  
22 December meeting occurred on December 14<sup>th</sup>, which is the same meeting at which the Town Council  
23 formally accepted the results for Measure A. (SOF ¶ 12.) Despite the apparent conflict with Measure  
24 A, both Mr. Scherer and Mr. Ucovich were sworn into office at the December 14<sup>th</sup> meeting. (SOF ¶  
25 12.)

26 Therefore, in order to defend the new measure passed by the Town's voters, Perry Beck, the  
27 town manager, seeks the Attorney General's assistance in prosecuting this action to determine if Mr.  
28

1 Scherer and Mr. Ucovich are lawfully entitled to hold their offices.<sup>1</sup>

2 **III. DISCUSSION**

3 **A. Code of Civil Procedure Section 808 is The Exclusive Means to Test The Right of**  
4 **A Person To Hold Office.**

5 Quo warranto actions are governed by Code of Civil Procedure section 808. Under this statute,  
6 the Attorney General acting in the name of the people of the State of California, may prosecute an  
7 action against “any person who usurps, intrudes into or unlawfully holds or exercises any public  
8 office.” (Code Civ. Proc § 808.) The Attorney General may authorize a private relator to prosecute the  
9 action in her stead, except that the Attorney General maintains the right to control the proceedings  
10 throughout their course. (*Nicolopoulos v. City Lawndale* (2001) 91 Cal.App.4<sup>th</sup> 1221, 1228-1229.)<sup>2</sup> An  
11 action in quo warranto is the exclusive remedy to test the validity of a current officeholder’s right to  
12 remain in office. (*Klose v. Superior Court* (1950) 96 Cal.App.2d 913, 917.) Accordingly, the only  
13 mechanism through which the validity of rights of either Mr. Ucovich or Mr. Scherer to hold office  
14 can be finally resolved is this quo warranto action.

15 **B. Term Limits Serve An Important Governmental Interest.**

16 Any analysis of the merits of this matter must be made in the context of the judicially  
17 recognized interests served by term limits laws such as Measure A. Term limits act as a check against  
18 the long term entrenchment of legislators which allow them to “obtain excessive power which, in turn,  
19 may discourage other qualified candidates from running for office or may provide the incumbent with

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21 <sup>1</sup> The Town Manager fully recognizes that the Attorney General may find that Mr. Ucovich and  
22 Mr. Scherer are entitled to hold their current offices because they were sworn in prior to the  
23 effective date of Measure A. If such is the case, an opinion from the Attorney General  
24 explaining whether the August 1, 2010 provision of Measure A violates Government Code §

25 36502 would still be of invaluable assistance to the City in proceeding forward, as more fully  
26 explained in the cover letter accompanying this action.  
27 <sup>2</sup> In is also recognized that under Code of Civil Procedure § 811, the Town could pursue its own  
28 quo warranto action without seeking leave of the Attorney General. However, that would require  
the action be brought by the Town Council itself, and since the Town Council Members are each  
personally affected by the outcome of the action, it would be improper for them to prosecute such  
an action as a constituent body. It is therefore left to the town manager to bring the action, and he  
must do so through the Attorney General.

1 an unfair advantage in winning reelection.” (*Bates v. Jones* (9<sup>th</sup> Cir. 1997)(en banc) 131 F.3d 843,  
2 847.) The Supreme Court observed that while term limits restrict the ability of voters to vote for  
3 whom they wish, “such limits may provide for the infusion of fresh ideas and new perspectives, and  
4 may decrease the likelihood that representatives will lose touch with their constituents.” (*U.S.*  
5 *Term Limits v. Thornton* (1995) 514 U.S. 779, 837.) Our state Supreme Court has recognized that,  
6 “restriction upon the succession of incumbents serves a rational public policy and that, while  
7 restrictions may deny qualified men an opportunity to serve, as a general rule the over-all health of  
8 the body politic is enhanced by limitations on continuous tenure.” (*Legislature v. Eu* (1991) 54  
9 Cal.3d 492, 520, quoting, *State ex rel. Maloney v. McCarthy* (1976) 159 W.Va. 513, 223 S.E.2d  
10 607, 611.) Therefore, in examining statutory questions presented below, any ambiguities in either  
11 the state or local provisions should be interpreted to the extent possible to allow for Measure A to  
12 fully serve these important goals.

13 **C. The Intent of the Voters in Passing Measure A Was to Prevent Those Long Term**  
14 **Incumbents Who Were Serving on the Town Council At the Time of the Election From**  
15 **Serving Additional Terms.**

16 It is clear from both the text of Measure A itself and its history that it was the intent of the  
17 voters that the Measure would prohibit those council members who had served more than two  
18 consecutive terms at the time of the election from serving an additional consecutive term once the  
19 measure was passed. We see this first in the text of the measure as it was presented to the voters.  
20 The ballot statement unambiguously states that the measure would prohibit anyone from serving  
21 an additional term who had, by August 1<sup>st</sup> 2010, already served more than two consecutive term,  
22 and the only exception was that “current members can complete their terms.” No voter reading this  
23 statement would contemplate that an incumbent who had already served more than two terms would be  
24 allowed to serve another term. Thus one would expect that under the text of the enactment itself it  
25 would be clear that both Mr. Ucovich and Mr. Scherer would be prohibited from being sworn in for a  
26 new four year term.

27 However, a problem arises because under Elections Code section 9217, a local measure “shall  
28 be considered as adopted upon the date that the vote is declared by the legislative body, and shall

1 go into effect 10 days after that date.” Because the Measure was placed on the November ballot  
2 at the request of the County Registrar of Voters, the earliest the Town Council could declare the  
3 vote was its December 14<sup>th</sup>, 2010 meeting. Thus, assuming section 9217 applies, it was deemed  
4 adopted on that date, but did not formerly go into effect until ten days after both Defendants were  
5 sworn into office.

6 However, this should not affect the applicability of Measure A to the candidacies of Mr.  
7 Scherer and Mr. Ucovich. The measure can, and should be interpreted as barring anyone from  
8 holding office who was ineligible on the date the measure was adopted. In interpreting ballot  
9 measure, any ambiguity is to be resolved by determining “how the voters understood the ballot  
10 measure and what they intended in enacting it.” (*In re Tobacco II Cases* (2009) 46 Cal.3d 298,  
11 315.) The clear intent was to limit the long term incumbents to finishing out the terms of office at  
12 the time the measure was being voted upon, and preventing them from starting new terms. Under  
13 Elections Code § 9217, the measure was adopted on December 14, 2010. Thus, both Mr. Scherer  
14 and Mr. Ucovich were rendered ineligible to commence new terms of office on that date. Under  
15 this reading, the ordinance disqualifies both Defendants from office. The only issue is whether  
16 this disqualification runs afoul of Government Code section 36502.

17 **D. Government Code Section 36502 Should Not Be Interpreted To Invalidate Any**  
18 **Portion of Measure A.**

19 Government Code 36502 subdivision (b) provides as follows:

20 Notwithstanding any other provision of law, the city council of a  
21 general law or charter city may adopt or the residents of the city may propose,  
22 by initiative, a proposal to limit or repeal a limit on the number of terms a  
23 member of the city council may serve on the city council, or the number of  
24 terms an elected mayor may serve. Any proposal to limit the number of terms  
25 a member of the city council may serve on the city council, or the number of  
26 terms an elected mayor may serve, shall apply prospectively only and shall  
27 not become operative unless it is submitted to the electors of the city at a  
28 regularly scheduled election and a majority of the votes cast on the question  
favor the adoption of the proposal.

26 The critical question here is what is meant by the phrase “shall apply prospectively only.”  
27 Does it mean that the only terms of office beginning after the measure is adopted can count against  
28 a person in calculating whether the limit on terms has been met; or does it simply mean that a term

1 limits measure cannot be used to disqualify an office holder from finishing out an existing term.  
2 Under the latter view, past terms of office can count against an office holder in determining his or  
3 her eligibility to begin a new term after the measure passed. This reading would render both Mr.  
4 Ucovich and Mr. Scherer ineligible to hold office.

5 Like any other statute, section 36502 must be interpreted in a manner that is consistent  
6 with the plain commonsense meaning of the statutory language. (*Kavanaugh v. West Sonoma*  
7 *Union High School District* (2003) 29 Cal.4<sup>th</sup> 911, 919.) “[I]n the absence of specifically defined  
8 meaning, a court looks to the plain meaning of a word as understood by the ordinary person,  
9 which would typically be a dictionary definition.” (*Hammond v. Argan* (1999) 76 Cal.App.4<sup>th</sup>  
10 1181, 1189.) The word “prospective” is defined, in relevant part to mean “concerned with or  
11 applying to the future.” (New Oxford American Dictionary, 2001 Edition.) Blacks Law dictionary  
12 defines a “prospective law” as one “applicable only to cases arising after its enactment.” (Blacks  
13 Law Dictionary, 6<sup>th</sup> Edition, 1990.) Utilizing this definition, the language “shall apply  
14 prospectively only” should be interpreted as meaning that the statute can only apply to cases; ie  
15 disputes about the legitimacy of a person’s right to hold office” which arise after its enactment.  
16 Thus, the statute should not be read any further than protecting existing office holder’s ability to  
17 finish their terms of office. This prevents a term limit measure from being used as a back-door  
18 way to effectively recall an elected official, while at the same time affording the local electorate  
19 the greatest flexibility possible in formulating a term limit scheme. Under this reading, the  
20 prohibition on anyone who served two or more consecutive terms as of August 1<sup>st</sup> 2010 from  
21 serving additional consecutive terms is valid.

#### 22 **IV. CONCLUSION**

23 In this matter, both Defendants have served more than two consecutive terms as of August  
24 1<sup>st</sup> 2010. The intent of the voters of the Town of Loomis was to prohibit them from sitting for any  
25 additional terms of office after their then existing terms ended. If the intent of the voters is to be  
26 upheld, then both should be ordered removed from office.

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1 DATED: January \_\_, 2010

Respectfully submitted,

2 MEYERS, NAVE, RIBACK, SILVER & WILSON

3  
4 By: \_\_\_\_\_

5 J. Scott Smith

6 Attorneys for Town of Loomis

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