

Request for Reconsideration of the Adopted Digest Language of the Taser Ballot Measure

3/2/2018

Dear Chair Packard and Committee Members:

We, members of the “No” campaign, want to thank the Committee for their work grappling with a difficult and highly technical ballot measure, and for considering our feedback. We think the Committee’s work yesterday made the draft digest a clearer reflection of the measure. Unfortunately, there are several points where we feel the adopted digest language either omits important changes that the legislation sets forth in its text, or obscures, rather than clarifies, the changes this measure would make. We ask that you please consider our request for reconsideration of certain components of the digest approved at Thursday’s meeting.

I. The Way It Is Now

Tasers are weapons that discharge electrical currents into an individual.

The description of Tasers as “. . . weapons that discharge electrical currents into an individual . . .” omits a crucial feature about how these weapons work, that an average voter may not intuit. A more accurate description might read: “. . . weapons that fire barbs which pierce the skin of an individual, allowing the user to discharge electrical currents into that individual.”

The Committee properly dropped the “causing incapacitation” language from the end of the description, but we are still concerned that the anodyne description fails to inform voters that they are being asked to vote on a policy that will govern weapons that can potentially kill. For the sake of clarity, the digest should, at the very least, note that these weapons are classified as “less-lethal,” a designation set forth in the text of the proposed measure itself. (Section 2A.84-2, subs. 1-2, Section 2A.84-2, subd. 1.)

We submit as an alternative:

Tasers are less-lethal weapons that fire barbs which pierce the skin of an individual, allowing the user to discharge electrical currents into that individual

. . . used following sudden cardiac arrest.

Because the ballot summary is intended to be as clear as possible, with a target of an 8th grade reading level, we submit as an alternative:

. . . used following a heart attack.

San Francisco police officers do not currently use tasers.

This passage is redundant, unnecessary and potentially confusing. The digest begins by explaining, “. . .the Commission authorized the Police Department to use tasers starting December 2018. The Commission is developing a policy to guide the use of tasers.” The obvious corollary is that now, pre-December 2018, police officers do not use tasers. This language is not only unnecessary, it is potentially confusing, as it tends to indicate that this measure will change the “the way it is now.” In other words, it indicates that police officers do not currently use tasers, but if this measure were to pass they would. As discussed, the Commission vote means police will eventually use tasers, this measure simply changes how taser policy and funding work.

We submit that the Committee should delete this unnecessary sentence.

Any voter-approved policy on the use of tasers cannot be changed by the Commission or the Police Department

This statement is factually inaccurate. It is not the case that “any” voter-approved policy on the use of tasers cannot be changed by the Commission or Police Department; one could easily imagine a ballot measure that set forth a policy on the use of tasers but also stated that the Commission or Police Department retained full authority to change/amend/restrict that policy. We appreciate the Committee’s attempt to clarify that the main thrust of this measure is to set a taser policy that cannot be changed by the Commission or Police Department, but this concept is better expressed in the “The Proposal” section.

We submit that this sentence should be removed from the “The Way It Is Now” section and in its stead a sentence inserted into “The Proposal” section which reads:

Proposition __ would remove the ability of the Commission or the Police Department to change this taser policy.

II. The Proposal

Proposition ___ sets policy for when officers can use tasers. Tasers may be used when a person is actively resisting, assaulting or exhibiting any action likely to result in serious bodily injury or death of another person, themselves or a police officer.

Because this is the crux of what this measure does, we think the addition of this sentence vastly improved the digest language. However, as discussed during the meeting, “active resistance” is a legal term of art whose meaning will not be apparent to the average voter. At the meeting, Deputy City Attorney White suggested that it was unnecessary to define the term because its definition was not included in the legislation itself. With respect, that seems to be an arbitrary distinction, as “Automated External Defibrillators” are also not defined in the legislation, and yet they are defined in the “The Way It Is Now” section. We submit that is at least as important, frankly more important, to make clear to the average voter the meaning of “actively resisting” as it is to make clear the definition of a defibrillator.

We submit that the Committee should add the definition of “Active Resistance” from San Francisco Police Department General Order 5.01 to the “The Way It Is Now” section:

Active Resistance is defined by the Police Department as physically evasive movements to defeat an officer’s attempt at control including bracing, tensing, running away, verbally or physically signaling an intention to avoid or prevent being taken into or retained in custody.

The Police Department must request funding for the purchase of tasers and defibrillators 45 days after this measure is enacted.

This amended statement is incomplete and thus misleading. It is true that the Police Department must request the first funds 45 days after the measure is enacted. However, this measure does more than that. Following the first request for funding, this measure requires the City, in each proposed and enacted budget thereafter to include: “a specific line-item for funds appropriated for the purpose of implementing and maintaining the CED program authorized by this ordinance.” (Sec. 2A.84-4, subd. (d).)The way the digest language now reads, it appears as if this would be a one-time cost, rather than an ongoing expense.

We submit that the Committee should add an additional sentence:

The City must include in every future budget a line-item for funds for the purpose of maintaining the taser program.

A "YES" Vote Means: If you vote "yes," you want to set a policy for the use of tasers and authorize the purchase of tasers for each police officer by the Police Department, subject to specific conditions.

This language is an improvement on the original draft, but it remains misleading. As this Committee noted, the way it is now, the Police Department is already authorized to use Tasers, as soon as December of this year. Practically speaking, that means the Police Department will be able to purchase Tasers. This measure sets forth a budgetary process for Tasers, but it does not change the fact that the Police Department's ultimate ability to purchase tasers remains within the ambit of the City's budget authority. The way the language reads now, the average voter is being told this measure would make an *affirmative change* by authorizing the purchase of tasers.

In addition, the final "subject to specific conditions" is redundant. The "specific conditions" listed in Section 2A.84-4, subsection (b) are policy changes that this measure would enshrine into law, no different than the policy changes set forth in subsection (a).

We submit as an alternative:

A 'YES' Vote Means: you want to set a policy for the use of tasers as described above.

A "NO" Vote Means: If you vote "no," you do not want to adopt this measure.

If this Committee were to adopt the more direct language we suggest for the "YES" vote section, the current "NO" vote language would suffice. If not, the current language does not make clear to the average voter that a "no" vote on this measure is not a "no" vote on tasers. Given the current "YES" vote language tells the average voter that such a vote would "authorize the purchase of tasers for each police officer by the Police Department," the clear implication is that a "no" vote would result in no such authorization.

We submit as an alternative:

A 'NO' Vote Means: if you vote "no," you do not want to adopt this policy for the use of tasers

Thank you for your consideration of our proposed changes. We look forward to discussing these comments with you at the reconsideration hearing.

Sincerely,

Alexander Post

-Alexander Post