

February 28, 2018

Members, Ballot Simplification Committee
Department of Elections
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 48
San Francisco, CA 94102

VIA PDF E-MAIL

Re: Request for Reconsideration of Approved Digest for “Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products” Measure

Dear Members of the Ballot Simplification Committee:

Thank you for your efforts to provide fair and impartial simplification language to be included in the digest for the referendum on the City’s ordinance prohibiting the sale of flavored tobacco products, including menthol cigarettes.

On behalf of Let’s Be Real San Francisco, I write to share our **strong concerns** regarding the changes that were made to the “A ‘YES’ Vote Means” and “A ‘NO’ Vote Means” sections of the digest. Not only are these changes inconsistent with the longstanding practice of the Ballot Simplification Committee (“Committee”), they are also not fair and impartial summaries of the voters’ choices regarding this issue.

Consequently, we respectfully request that the Committee reconsider its changes to these sections and revert the language to the form originally proposed by the draft digest.

First, in several digests of referenda prepared by the Committee over the years, including one as recently as 2013, the Committee has consistently adopted formulaic language for the “A ‘YES’ Vote Means” and “A ‘NO’ Vote Means” sections. The format for this language is as follows:

“A ‘YES’ VOTE MEANS: If you vote ‘yes,’ you want the Ordinance [insert nature of ordinance] to take effect.

“A ‘NO’ VOTE MEANS: If you vote ‘no,’ you do not want the Ordinance [insert nature of ordinance] to take effect.”

The Committee approved the foregoing format for referenda on the ballot in 2013, 1991, and 1989, and the City Attorney’s Office suggested continuing this practice in the draft digest it prepared for this measure.

The foregoing format is simple, fair, and impartial because it tracks closely with what is actually being asked of a voter in a referendum—that is, the format explains to voters that they are voting on whether *a specific ordinance with specific language* should take effect, rather than being asked to decide on a broad policy concept. The impartial language provided by this format leaves little room for the Committee to add its own interpretations. Because the above structure has been acceptable to the Committee numerous times over the past three decades, we see no reason why the Committee should deviate from its own standard in this instance.

We also take particular exception to the approved digest’s phrasing of the “A ‘NO’ Vote Means” section (i.e., “If you vote ‘no,’ you **want to allow** the sale of flavored tobacco products in San Francisco”). This phrasing imposes a judgment on the voters’ motivations for voting “No.” In fact, there are a multitude of reasons why a voter would vote “No” on this measure besides “wanting to allow” flavored tobacco to be sold in San Francisco (for example, voters could be opposed to government prohibitions on adult choices, have concerns about the manner in which the ordinance was passed, or want to protect small businesses, to name just a few). The Committee should take great caution to avoid making blanket assumptions regarding voters’ motives, as such assumptions have no place in the Committee’s digests.

A few examples may help elucidate our concerns with the approved digest’s language in the “A ‘NO’ Vote Means” section. First, if a voter wants to ban the sale of flavored tobacco products generally but objects to an ordinance that bans shisha or menthol, then the digest’s description of a “Yes” vote and a “No” vote are both factually in error and misleading to that voter because the descriptions do not refer to the ordinance. Likewise, if a voter opposes a ban on flavored vaping products in particular, then again the digest’s description of a “Yes” vote and a “No” vote are both factually in error and misleading to that voter because the descriptions do not refer to the specific ordinance. Many if not most voters will consider various products individually when considering their vote, and that is a critical reason for referring to what the specific ordinance does, as opposed to referencing a general concept that is not on the ballot.

Additionally, the approved digest’s phrasing of the “A ‘NO’ Vote Means” section misleadingly implies that in voting “No” voters would be taking an affirmative step to authorize the sale of flavored tobacco products, when in fact they would be preserving the status quo. In other words, the approved digest’s language here confuses the fact that the sale of flavored tobacco products is *already allowed* in San Francisco. Reverting the language to its prior version in the draft digest would greatly help to remedy this confusion.

For your consideration, attached are a redline of our proposed changes to the approved digest as well as excerpts from the prior Voter Information Pamphlets referenced above.

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

Sincerely,



Joel Aurora
Asst. Counsel & Asst. Treasurer
Let's Be Real San Francisco

Enclosure

Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products*

Digest by the Ballot Simplification Committee

Status: Approved digest
On: Tuesday, February 27, 2018
Members: Packard, Anderson, Patterson

Deadline to Request Reconsideration: 4 p.m. on Wednesday, February 28

The Way It Is Now: In 2017, the Board of Supervisors adopted an Ordinance prohibiting the sale in San Francisco of flavored tobacco products, including menthol cigarettes and candy-flavored tobacco products.

A referendum was filed requiring that the Ordinance be submitted to the voters. The Ordinance will not go into effect unless a majority of voters approve.

The Proposal: Proposition ____ is a Referendum to approve the Ordinance passed by the Board of Supervisors prohibiting the sale of flavored tobacco products in San Francisco.

A "YES" Vote Means: If you vote "yes," you want the Ordinance prohibiting the sale of flavored tobacco products in San Francisco to take effect. ~~to prohibit the sale of flavored tobacco products in San Francisco.~~

A "NO" Vote Means: If you vote "no," you do not want the Ordinance prohibiting the sale of flavored tobacco products in San Francisco to take effect. ~~to allow the sale of flavored tobacco products in San Francisco.~~

**Working title, for identification only. The Director of Elections determines the title of each local ballot measure; measure titles are not considered during Ballot Simplification Committee meetings.*



C

8 Washington Street—Referendum

Shall the City ordinance increasing legal building height limits on an approximately half-acre portion of the 8 Washington Street Site along Drumm Street take effect?

YES ←  
NO ←  

Digest by the Ballot Simplification Committee

The Way It Is Now: The site proposed for development as 8 Washington Street is 3.2 acres bounded by the Embarcadero, Washington Street and Drumm Street (the Site). Approximately 80% of the Site is owned by Golden Gateway Center and used as walkways and a private tennis and swim facility. The remaining 20% is a public parking lot under the jurisdiction of the City and County of San Francisco's Port Commission.

In 2012 the Board of Supervisors (the Board) approved a development project for the Site involving construction of two mixed-use buildings containing 134 residential units, ground floor restaurants and retail, a private fitness and swim facility, a public park and open spaces, and underground public and private parking.

In approving the development project, the Board also adopted an Ordinance (the Ordinance) to increase the legal building heights on an approximately half-acre portion (16% of the Site). The existing height limit is 84 feet. The Ordinance would increase the height limit to 92 feet in one section along Drumm Street and 136 feet in another.

A referendum was filed requiring that the Ordinance be submitted to the voters. The Ordinance will not go into effect unless a majority of voters vote in favor of it.

The Proposal: Proposition C is a Referendum to approve an Ordinance passed by the Board of Supervisors. The Ordinance would increase the legal building height limits on an approximately half-acre portion of the Site along Drumm Street from 84 feet to 92 feet in one section and from 84 feet to 136 feet in another section.

A "YES" Vote Means: If you vote "yes," you want the Ordinance increasing legal building height limits on an approximately half-acre portion of the 8 Washington Street Site along Drumm Street to take effect.

A "NO" Vote Means: If you vote "no," you do not want the Ordinance increasing legal building height limits on an approximately half-acre portion of the 8 Washington Street Site along Drumm Street to take effect.

Controller's Statement on "C"

City Controller Ben Rosenfield has issued the following statement on the fiscal impact of Proposition C:

Should the proposed ordinance be approved by the voters, in my opinion, it would in and of itself, have no direct impact on the cost of government. However, approval of the ordinance would allow the 8 Washington Street project to be built as approved by the City. This project would result in new tax and fee revenues and other benefits to the City and to the Port of San Francisco.

Construction of the proposed project at 8 Washington Street would result in near-term tax revenues of approximately \$4 million which can be used by City for any public purpose, approximately \$11 million in fee payments to fund affordable housing and approximately \$4.8 million in fee payments to fund transit improvements. The Port of San Francisco would receive approximately \$3 million in near-term revenues from the sale of a seawall lot for the project, as well as a percentage of property sales. Estimated future revenues that would be generated by the project would vary depending on market conditions and other factors, but certainly the assessed value of the area would increase and result in significant additional property tax and sales tax revenues to the City and the

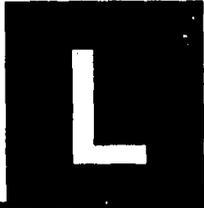
This measure requires 50%+1 affirmative votes to pass.

The above statement is an impartial analysis of this measure. Arguments for and against this measure immediately follow.

An excerpt of the text of this measure begins on page 109. The full text of this measure is available online at sfelections.org/PropC and in every public library. If you desire a copy of the full text of the measure to be mailed to you, please contact the Department of Elections at (415) 554-4375 and svote@sfgov.org and a copy will be mailed at no cost to you.

Some of the words used in the ballot digest are explained on page 27.

Phelan Avenue Use



PROPOSITION L

Shall the ordinance rezoning the Phelan Loop located at Ocean and Phelan streets across from City College from "P" (Public Use District) to "NC-2" (Small Scale Neighborhood Commercial District) be adopted?

YES 
NO 

Analysis

by Ballot Simplification Committee

THE WAY IT IS NOW: The City owns about 30 acres of property on Phelan Avenue across from City College. The Balboa Reservoirs cover about 28 acres of this property. The "Phelan Loop," at the corner of Phelan and Ocean, occupies about another 2 acres. There is a bookstore and a turn-around for Muni buses on the Phelan Loop.

The City is negotiating to have built on the Phelan Loop: 120 units of affordable housing for seniors, about 9300 square feet of commercial space, 3250 square feet of office space, a Muni drivers' rest stop, and parking for 57 cars.

The Phelan Loop is currently zoned "P" (Public Use District). This means that it can be used only for public purposes. The Phelan Loop must be rezoned before the proposed development could be allowed. The Planning Commission has approved the proposed development but only if the Phelan Loop is rezoned.

The Board of Supervisors passed and the

Mayor signed an ordinance to rezone the Phelan Loop to "NC-2" (Small Scale Neighborhood Commercial District). Before that ordinance took effect, a referendum petition was filed, requiring that the ordinance be submitted to the voters. The ordinance will not go into effect unless and until a majority of voters approves.

THE PROPOSAL: Proposition L would approve the ordinance to rezone the Phelan Loop from "P" (Public Use District) to "NC-2" (Small Scale Neighborhood Commercial District). The proposed development would be permitted if the Phelan Loop is rezoned "NC-2."

A "YES" VOTE MEANS: If you vote yes, you want the ordinance changing the zoning of the Phelan Loop from "P" to "NC-2" to go into effect.

A "NO" VOTE MEANS: If you vote no, you want the ordinance changing the zoning of the Phelan Loop from "P" to "NC-2" to be rejected.

Controller's Statement on "L"

City Controller Edward Harrington has issued the following statement on the fiscal impact of Proposition L:

If the proposed measure is approved, in my opinion, it should not affect the cost of government.

How "L" Got on the Ballot

On August 2, 1991 the Registrar of Voters certified that the initiative petition calling for Proposition L to be placed on the ballot had qualified for the ballot.

18,798 valid signatures were required to place an initiative ordinance on the ballot. A random check of the signatures submitted on July 12, 1991 by the proponents of the initiative petition showed that 23,420 of the signatures submitted were valid, 4,622 more than the required number of signatures.

ARGUMENTS FOR AND AGAINST THIS MEASURE AND ITS FULL TEXT IMMEDIATELY FOLLOW THIS PAGE.

Domestic Partners

PROPOSITION S

Shall the ordinance establishing Domestic Partnerships be adopted?

YES 86
NO 87



Analysis

by Ballot Simplification Committee

THE WAY IT IS NOW: The Board of Supervisors passed and the Mayor signed Ordinance No. 216-89 which establishes Domestic Partnerships. Before the ordinance took effect a referendum petition was filed. The referendum petition requires that the ordinance be submitted to the voters. The ordinance does not go into effect unless and until a majority of voters vote in favor of it.

THE PROPOSITION: Ordinance No. 216-89 allows unmarried couples to formally establish their relationship as a "Domestic Partnership." They may establish their relationship by either (a) filing a Statement of Domestic Partnership with the County Clerk or, (b) signing such a Statement and having it notarized and witnessed and deposited with the witness. Domestic Partners are defined as two unmarried, unrelated people over

the age of 18 who live together and agree to be jointly responsible for their basic living expenses such as food and housing.

Also, under the ordinance, the City may not use marital status in making a decision unless it uses Domestic Partnership status in the same way. The ordinance requires hospitals and other health care facilities to allow a patient's domestic partner the same visiting rights allowed a patient's spouse. The ordinance also allows a citizen to sue anyone who violates the ordinance.

A "YES" VOTE MEANS: If you vote yes, you want the ordinance establishing Domestic Partners to go into effect.

A "NO" VOTE MEANS: If you vote no, you want the ordinance establishing Domestic Partners to be rejected.

Controller's Statement on "S"

City Controller Samuel D. Yockey has issued the following statement on the fiscal impact of Proposition S:

"Should the proposed Ordinance be approved, in my opinion, it would not, in and of itself, affect the cost of government. However, costs could increase as a result of subsequent actions by City boards and commissions in an amount presently indeterminate and possibly substantial".

How "S" Got on the Ballot

On July 14, the Registrar of Voters certified that the referendum petition calling for Proposition S to be placed on the ballot had qualified for the ballot.

18,800* signatures were required to place a referendum petition on the ballot.

A random check of the signatures submitted on July 5 by the proponents of the referendum petition showed that 21,723 of the signatures submitted were valid; 2,923 more than the required number of signatures.

*This number is equal to 10% of the people who voted for Mayor in 1987.