

From: Cross Creason <crosscreason@hotmail.com>
Sent: Sunday, March 18, 2018 12:11 PM
To: LARA WEISIGER; Janet Kern; Frank Matarrese; Trish Spencer
Subject: Ballot language, Item 6-G, March 20 Council meeting (File# 2018-4870)

Dear City Attorney, City Clerk and Councilmembers

I. Introduction

The phrase “in response to changing conditions and concerns” should be stricken from the proposed ballot question language under consideration in Item 6-G at the March 20 Council meeting (File# 2018-4870). As used in the proposed ballot question, the phrase signals to voters the council's view of how they should vote, thus violating California law requiring impartiality in ballot language. McDonough v. Superior Court (2012) 204 Cal.App.4th 1169, 1174.

The entire proposed ballot question, with the phrase in question highlighted, is:

City of Alameda Initiative Measure: Shall the Charter be amended by incorporating the City’s Rent Review, Rent Stabilization and Limitations on Evictions law, with the following modifications: (a) preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead, and (b) eliminate the December 31, 2019 sunset clause?

This proposed ballot question clearly suggests that the initiative measure would result in government that is not responsive to changing conditions or the concerns of its constituents. Of course, few would want a government that is not responsive to constituent “concerns” or “changing conditions”, undefined though those concepts may be. Phrasing the ballot that way, however, fails the impartiality test. Substituting other vague, but negatively charged terms would also fail the impartiality test. One example of that would be to phrase the ballot question to signal favor for the initiative, by asking whether the City should “preclude the Council from acting alone in response to [special interests or political pressure] to repeal or amend the law”.

All of the above would be perfectly reasonable as *argument* for and against the initiative. It fails as the required impartial ballot question language.

Finally, there might be justification for using the phrase “in response to changing conditions and concerns” if it described a legally significant element of current law that would be changed by the initiative measure, or if it were operative language from the current initiative measure. But it serves neither purpose and there no apparent *impartial* reason to use the phrase

as it is used in the proposed ballot question.

II. The phrase “in response to changing conditions and concerns” is not legally significant

The phrase “in response to changing conditions and concerns” has its origin in Section 4 of Measure L1, which generally provides that the City Council has the power to amend Ordinance 3148 notwithstanding its ratification by popular vote:

SECTION 4. Future Amendment or Repeal of the Ordinance.

The City Council of the City of Alameda may amend or repeal the provisions of this City Council-sponsored measure *in response to changing conditions and concerns*, without a future vote of the people to amend or repeal such provisions.

If the phrase “in response to changing conditions and concerns” were a legally significant and binding limitation on the basic power of the Council to amend Ordinance 3148, it might serve a valid purpose of describing existing law in the ballot question for the current initiative measure. However, an examination of the phrase itself, as well as the relevant enactment history of Measure L1 shows that Section 4 was not intended to, and did not, place any limits on the authority it grants to the City Council to repeal or amend Ordinance 3148. Any amendment of a previously enacted ordinance, *by definition*, reflects the “changing... concerns” of *someone*, even if it is effectuated by the change of only a single vote out of five on the City Council. If simply exercising a legislative power satisfies a supposed limitation on that power, it is not a legally enforceable limitation at all.

Nor does anything in the enactment history of L1 indicate the phrase “in response to changing conditions and concerns” was meant to limit the Council’s power to amend Ordinance 3148. The City Attorney’s impartial analysis of Measure L1 stated only that, “To maintain flexibility to address changing conditions, the Measure provides that Alameda voters delegate authority to the City Council to modify or repeal the Measure.” That suggests a purpose for, rather than any enforceable limitation on, the voters’ delegation of authority to the City Council to modify or repeal Ordinance 3148. Likewise, the phrase “(e) permits the City Council to amend the ordinance to address changing concerns and conditions” in the Measure L1 ballot question is not suggestive of any limitation on the Council’s power to amend or repeal created by Section 4 of L1.

It is true that a ballot measure enacting an ordinance may place limits on the city council’s power to amend that ordinance (or it may withhold such authority entirely). Proposition 103 Enforcement Project v. Charles Quackenbush (1998) 64 Cal.App.4th 1473, 1483–1484. “Such a limitation upon the power of the Legislature must be strictly construed, but it also must be given the effect the voters intended it to have.” Amwest Surety Ins. Co. v. Wilson (1995) 11 Cal.4th 1243, 1255–1256. However, as demonstrated above – and even foregoing the required strict construction – there is simply no indication in the language of L1, Sec. 4, or its enactment

history, that voters intended any meaningful, legally enforceable limitation on their delegation of authority to the City Council to amend or repeal Ordinance 3148, over and above the limitations imposed by constitutional law, preemptive state law, and the Charter. Cf. Amwest, 11 Cal.4th at 1249 [“The provisions of this act **shall not be amended** by the Legislature **except to further its purposes** by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electorate.”]

In sum, because the phrase “in response to changing conditions and concerns” does not describe a legally significant element of existing law, its use in the ballot question for the current initiative measure cannot be justified on the basis that it is merely part of an impartial description of existing law subject to change by the measure.

III. Cases endorsing use of verbatim recitals of, or language closely tracking, the language in the underlying ballot measure do not support the proposed ballot question

Yes on 25, Citizens For An On-Time Budget v. Superior Court (2010) 189 Cal.App.4th 1445, upheld ballot language that “closely track[ed] the actual language of the measure”. “The electorate can hardly be deceived by this essentially verbatim recital of the straightforward text of the measure itself.” Lungren v. Superior Court (1996) 48 Cal.App.4th 435, 441. Although the phrase “in response to changing conditions and concerns” is a partial quotation of existing law, Yes on 25 and Lungren do not support its use in the ballot question for the current initiative measure. First, that phrase derives from Section 4 of Measure L1 on the 2016 ballot. The current initiative measure would not place it in or remove it from the City Charter. Yes on 25 and Lungren’s endorsements of use of language from the underlying ballot measure in the title and ballot question, therefore, are not directly applicable.

Second, those cases went no further than to endorse recital of the “operative language” of the underlying measure in the ballot question. Lungren, supra, at p. 443 [“By essentially repeating *the operative language* of Proposition 209, the Attorney General has complied with the mandate that he provide the electorate with “a true and impartial statement of the purpose of the measure....” (Elec.Code, §§ 9051, 9052.)”] (emphasis supplied). Yes on 25, supra, 189 Cal.App.4th at 1453 [same, quoting Lungren]. As explained above in Section II, the phrase “in response to changing conditions and concerns” is *non-operative* and cannot benefit from the presumptions set out in Lungren and Yes on 25, *especially* when the non-operative language is not derived from the ballot measure in question, but a different measure entirely.

IV. The proposed ballot question is not impartial

“The constitutional guarantees of equal protection and freedom of speech as applied to public elections “mean, in practical effect, that the wording on a ballot or the structure of the ballot cannot favor a particular partisan position.” Huntington Beach City Council v. Superior Court (2002) 94 Cal.App.4th 1417, 1433; McDonough v. Superior Court, supra, 204 Cal.App.4th at 1174–1175. The ballot title, for example, “must not be false, misleading, or

partial to one side.... [¶] ... We understand ‘partial’ to mean [that] the council's language signals to voters the council's view of how they should vote, or casts a favorable light on one side of the [issue] while disparaging the opposing view.” Martinez v. Superior Court (2006) 142 Cal.App.4th 1245, 1248. See Elections Code § 9051 [ballot title and summary must be “a true and impartial statement of the purpose of the measure in such language that the ballot title and summary shall neither be an argument, nor be likely to create prejudice, for or against the proposed measure.”].

If adopted, the clause “(a) preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead” would signal the Council’s disfavor for how the initiative measure would change existing law. The obvious focus is on how the measure might prevent the Council from doing something “positive” – i.e. responding to changing conditions and constituent concerns – without also mentioning how it might prevent the Council from doing something “negative”, such as bending to special interests or political pressure. To be impartial, the ballot language should either identify the full range of ways to characterize City Council legislative motivations – not just the good, or just the bad -- that would be checked by the proposed Charter amendment, or leave Council motivations out of the ballot question and, instead, stick with the simple *legal* effect of the initiative measure.

The proposed language also compares the City Council’s power to respond to changing conditions and concerns under existing law, on the one hand, with so-called “voter approval *instead*” (emphasis supplied) on the other. This is yet another form of argument (comparing Council authority favorably to action by the people) woven into what is supposed to be impartial language. The language strongly suggests that limiting the authority of the Council to act alone to repeal or amend the law “preclude[s]” or impairs responsiveness to “changing conditions and concerns”, as compared with direct amendment or repeal by the people through the ballot (either a petition initiative or an initiative sponsored and placed on the ballot by the Council**). That is a perfectly reasonable *argument* and it seems almost natural that a city council would advance it in support of its own authority. But the *argument* that the people’s exercise of their constitutional initiative power is equally or more responsive to changing conditions or the people’s true concerns is *also* reasonable; especially so from the perspective of those who might characterize the significant City Council amendments shortly after passage of Measure L1 at the polls, as overturning the people’s decision. In any event, neither *argument* belongs in the required impartial ballot question.

(** The proposed ballot language is somewhat confusing with respect to its contrast between precluded Council action and “voter approval instead”. A potential inference one might draw from that contrast is that the initiative measure would strip all Council authority in this area. That would be incorrect. As mentioned above, under the initiative measure, the Council would retain its very significant power to bypass the initiative petition process and to place amendments or repeal of the law directly on the ballot by a simple majority vote of the Council)

A few others have made well-written statements concerning the proposed ballot language that address the overall proposed ballot question. Here, I address only clause “(a)” in the proposed question. To the extent the Council insists on placing language concerning this point – rather than the substantive law to be enacted -- in the ballot question, I would suggest a few impartial phrasings that focus on the legal effect of the initiative measure, such as, “(a) require that amendments or repeal of the law obtain the voters’ approval” or “(a) require voter approval of amendments or repeal of the law”.

V. Conclusion

Based on the foregoing, and also what has been written by others on this subject, I think that it is likely that a writ petition directed by the initiative’s proponents at the proposed ballot question language on the March 20 agenda would be at least partially successful. Hopefully, all can agree to more neutral ballot language, as opposed to the risk of the City incurring the expense and uncertainty involved with throwing the problem to the courts.

Thank you for your consideration,

Cross

March 5, 2018

VIA EMAIL ONLY

Janet C. Kern, Esq.
City Attorney, City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

RE: Charter Amendment Ballot Question
City Council File Number 2018-4870
Alameda City Council's March 6, 2018 Meeting; Agenda Item 6-E

Good evening Mayor Spencer and members of the City Council:

Tonight the Council will be considering a proposal to amend the wording of the ballot question for the Rent Stabilization measure which is scheduled to appear on the City's November 6, 2018 ballot. We have significant legal concerns that the proposed amended ballot question would confuse and mislead voters and violate the law's impartiality requirements applicable to the presentation of ballot questions to the voters.

The proposed amended ballot question being considered at tonight's Council meeting is legally problematic.

First, the proposed amended question deprives the City's voters of an accurate description of the measure. Second, the proposed amended question impermissibly tends to create bias or prejudice against the measure and thus misuses civic resources for partisan political purposes.

There are important aspects of the measure that City Staff proposes to omit from the question, but which are integral to the voters' understanding of the measure. Specifically, by deleting the phrases: (1) "limits residential rent increases to once annually"; (2) "requires a process for review of residential rent increases above 5%"; (3) "restricts reasons for evictions;" and (4) "requires landlords pay relocation fees when terminating certain tenancies," the Council would be eviscerating what is currently an appropriate and legal description of the measure.

6-E Submission
03-06-2018

By deleting these four important aspects of the measure, and instead focusing only on the modifications: (1) to “preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead”; and (2) to “eliminate the December 31, 2019 sunset clause,” the City is putting its proverbial “thumb on the scale” against the measure, in violation of the most fundamental notions of due process and fair play.

Indeed, it appears that the amended question represents a direct effort to sabotage the measure in the eyes of the voters. Such selective and biased wording of a ballot question violates the California Elections Code, as well as applicable case law.

Accordingly, demand is hereby made that the City Council not follow Staff’s recommendation with regard to the ballot question and instead either leave the question as is, or word the question as follows:

City of Alameda Ballot Measure: Shall the Charter be amended by incorporating the City’s Rent Review, Rent Stabilization and Limitations on Evictions law (Ordinance 3148), which (a) limits residential rent increases to once annually, (b) requires a process for review of residential rent increases above 5%, (c) restricts reasons for evictions, and (d) requires landlords to pay relocation fees when terminating certain tenancies, and by eliminating the City Council’s authority to amend the law and eliminating the 12/31/19 sunset date?

We note that this wording more closely mirrors your circulating title and summary and more accurately sets forth the question to the voters than the prior or proposed versions of the ballot question.

We ask that the Council do the right thing on behalf of Alameda voters.

Alamedans in Charge
Lisa Fowler, Treasurer
March 6, 2018

LARA WEISIGER

From: Marie Kane <mariekane94502@gmail.com>
Sent: Tuesday, March 06, 2018 5:23 PM
To: Trish Spencer; Marilyn Ezzy Ashcraft; Frank Matarrese; LARA WEISIGER; Janet Kern; City Manager
Subject: Wording in Charter Amendment Ballot Measure

Dear Mayor, Council Members, City Attorney, City Manager and City Clerk,

Two issues: 1. It is important that you take note and care in the wording of the ballot language so it is not prejudicial in one way or another. The phrase "in response to changing conditions and concerns" does not seem appropriate wording for the legal explanation of the ballot question. In fact it seems to be very prejudicial.

If the Council has the goal to achieve a shortened, simplified and neutral ballot question, it should eliminate that phrase and present the question in a less confusing manner, such as "preclude the City Council from amending the law and any changes to require voter approval." Perhaps the City Attorney should weigh in on this.

2. It was shocking to read the Alameda Journal and discover that the two council members were present at a closed session meeting to choose who was going to investigate their behavior. Why was that conflict of interest ignored by the Council? Perhaps the City Attorney should also weigh in on this?

Thank you,

Marie Kane
510-410-6058

THE SUTTON LAW FIRM

March 5, 2018

VIA EMAIL ONLY

Janet C. Kern, Esq.
City Attorney, City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

RE: Charter Amendment Ballot Question
City Council File Number 2018-4870
Alameda City Council's March 6, 2018 Meeting; Agenda Item 6-D

Dear Ms. Kern:

This office represents the proponents of "The Alameda Rent Stabilization Act," formally entitled "A Proposed City of Alameda Charter Amendment Making the 'City of Alameda Rent Review, Rent Stabilization and Limitations on Evictions Ordinance' a Part of the Alameda City Charter" (the "measure"), which is scheduled to appear on the City's November 6, 2018 ballot.

We understand that at the City Council's March 6, 2018 meeting, the Council will be considering a proposal to amend the wording of the ballot question for the measure. We have significant legal concerns that the proposed amended ballot question would confuse and mislead voters and violate the law's impartiality requirements applicable to the presentation of ballot questions to the voters.

The ballot question adopted on October 17, 2017, via Council Resolution No. 15319, reads as follows:

City of Alameda Ballot Measure: Shall the Charter be amended by incorporating Ordinance 3148, which (a) limits residential rent increases to once annually, (b) requires a process for review of residential rent increases above 5%, (c) restricts reasons for evictions, and (d) requires landlords to pay relocation fees when terminating certain tenancies, and by amending Ordinance 3148 to eliminate the sunset date of December 31, 2019, and the City Council's authority to amend Ordinance 3148 in response to changing conditions and concerns?

The proposed amended ballot question being considered at tomorrow's Council meeting reads as follows:

City of Alameda Initiative Measure: Shall the Charter be amended by incorporating the City's Rent Review, Rent Stabilization and Limitations on Evictions law, with the following modifications: (a) preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead, and (b) eliminate the December 31, 2019 sunset clause?

Although one aspect of the proposed amended question -- the inclusion of the underlying law's name (the Rent Review, Rent Stabilization, and Limitations on Evictions law), as opposed to its Ordinance number (3148) -- is appropriate and measured, other aspects are legally problematic.

First, the proposed amended question deprives the City's voters of an accurate description of the measure. Second, the proposed amended question impermissibly tends to create bias or prejudice against the measure and thus misuses civic resources for partisan political purposes.

There are important aspects of the measure that City Staff proposes to omit from the question, but which are integral to the voters' understanding of the measure. Specifically, by deleting the phrases: (1) "limits residential rent increases to once annually"; (2) "requires a process for review of residential rent increases above 5%"; (3) "restricts reasons for evictions;" and (4) "requires landlords pay relocation fees when terminating certain tenancies," the Council would be eviscerating what is currently an appropriate and legal description of the measure.

By deleting these four important aspects of the measure, and instead focusing only on the modifications: (1) to "preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead"; and (2) to "eliminate the December 31, 2019 sunset clause," the City is putting its proverbial "thumb on the scale" against the measure, in violation of the most fundamental notions of due process and fair play.

Indeed, it appears that the amended question represents a direct effort to sabotage the measure in the eyes of the voters. Such selective and biased wording of a ballot question violates the California Elections Code, as well as applicable case law.

Janet C. Kern, Esq.

March 5, 2018

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(See, e.g., California Elections Code 303; McDonough v. Superior Court (2012) 204 Cal.App.4th 1169; and Citizens for Responsible Gov't v. City of Albany (1997) 56 Cal.App.4th 1199.)

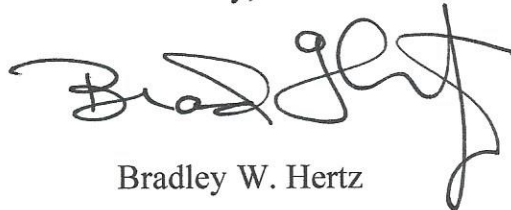
Accordingly, demand is hereby made that the City Council not follow Staff's recommendation with regard to the ballot question and instead either leave the question as is, or word the question as follows:

City of Alameda Ballot Measure: Shall the Charter be amended by incorporating the City's Rent Review, Rent Stabilization and Limitations on Evictions law (Ordinance 3148), which (a) limits residential rent increases to once annually, (b) requires a process for review of residential rent increases above 5%, (c) restricts reasons for evictions, and (d) requires landlords to pay relocation fees when terminating certain tenancies, and by eliminating the City Council's authority to amend the law and eliminating the 12/31/19 sunset date?

We note that this wording more closely mirrors your circulating title and summary and more accurately sets forth the question to the voters than the prior or proposed versions of the ballot question.

We look forward to the City's response regarding this important issue and to the Council doing the right thing at its meeting tomorrow evening. If we may provide additional information, please contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bradley W. Hertz', with a stylized, flowing script.

Bradley W. Hertz

BWH/slf

1931.01

cc: Mayor Trish Herrera Spencer
Vice Mayor Malia Vella
Councilmember Marilyn Ezzy Ashcraft
Councilmember Frank Matarrese
Councilmember Jim Oddie
City Clerk Lara D. Weisiger

LARA WEISIGER

From: Jill Keimach
Sent: Friday, March 02, 2018 2:54 PM
To: LARA WEISIGER; Janet Kern
Subject: FW: Clarity of language in the upcoming ballot initiative

FYI

From: Gabrielle Dolphin [mailto:gdolphin@mail.cho.org]
Sent: Thursday, March 01, 2018 3:24 PM
To: Jill Keimach <JKeimach@alamedaca.gov>
Cc: Frank Matarrese <FMatarrese@alamedaca.gov>; Jim Oddie <JOddie@alamedaca.gov>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; Trish Spencer <TSpencer@alamedaca.gov>
Subject: Clarity of language in the upcoming ballot initiative

Hi and good day Mayor, City Council members and City Manager,

As a delegate to the Democratic Party, one whose purpose is to help folks re-engage and trust both political institutions and process, I forward to you some suggestions for possible rewording of the upcoming "Alamedans In Charge" initiative. There may be a "city management" language I'm not privy to, but I can say that as written, and as engaged as I am, I'm not clear on what this means or the implications for down the road.

If I'm not clear, I'm pretty sure those not as engaged in the political process or who still feel the burn from last election's morass, could be equally confused. We want to avoid that morass in November 2018. I highlighted the areas I feel clarify the matter for me - word change ever so slight. If my "re-interpretation" loses the legal meaning, or if I am going over a certain "word count" for a ballot measure that's my ignorance of "language" and my apologies for taking your time.

Warmest wishes!

Gaby

City of Alameda Initiative Measure: Shall the Charter be amended by incorporating the City's Rent Review, Rent Stabilization and Limitations on Evictions law, with the following modifications: (a) preclude City Council from amending the law in response to changing conditions and concerns, and require voter approval instead, and (b) eliminate the December 31, 2019 sunset clause?

City of Alameda Initiative Measure: Shall the Charter be amended by **combining the City's Rent Review, Rent Stabilization and Limitations on Evictions law, but with the following modifications: (a) **no amendments shall be made to the law by City Council in response to changing conditions and/or concerns, rather any change will require voter approval** and (b) **eliminate the December 31, 2019 sunset clause (on the Charter amendment? the current law?)****

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