

July 31, 2015

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

**Re: Request for Reconsideration of Approved Digest
“Mission District Housing Moratorium” Initiative**

Dear Members of the Ballot Simplification Committee:

On behalf of San Franciscans for Real Housing Solutions, I would like to thank each of you for your thoughtful consideration of the ballot digest at yesterday’s meetings. We think that the Ballot Simplification Committee (“BSC”) did a commendable job of grappling with some highly technical questions and balancing the issues involved. In particular, we appreciate your refusal to accept the proponents’ efforts to push “loaded” language into the digest, such as claims that only “luxury” housing will be affected, that this 18-30 month moratorium is merely a “pause,” etc.

That notwithstanding, we respectfully submit this request for reconsideration in hopes that our comments and suggestions will assist the BSC in finalizing the digest.

1. **As presently drafted, the Digest’s description of the “Neighborhood Stabilization Plan” risks misleading voters into believing that the Plan is required to become law.**

We understand the Committee’s desire to describe the proposed Neighborhood Stabilization Plan, as it is a matter included in the text of the initiative. That said, we believe that the description, as presently framed in the final paragraph of “The Proposal” section, will give readers the false impression that the Plan, once developed, will necessarily result in the imposition of the affordable housing benchmarks discussed.

That is not the case. As the Committee appears to have recognized at yesterday’s hearing, these benchmarks are merely aspirational. The proposed measure directs the City to develop the

Ballot Simplification Committee
Request for Reconsideration
“Mission District Housing Moratorium”
July 31, 2015
Page 2 of 9

Neighborhood Stabilization Plan, but beyond that it is only necessary that they “*propose* for adoption appropriate legislation, policies, programs, funding and zoning controls” to pursue the goals set forth by the measure. See Mission District Housing Moratorium, § 2(e), p. 11 (emphasis added).

Nothing in the proposed measure would compel the Board of Supervisors to *adopt* the various proposals contained in the Plan, or enact them into law.¹ We believe that it is important of the voters to understand this fact as they weigh the important question of whether to trade a “bird in the hand”—1,500 new units that are already approved, including hundreds of affordable housing units—for “two in the bush”—a process that *may* result, in 18 to 30 months, in new desirable policies that lead to additional affordable housing (even more months down the road), or which may result in nothing more than valuable time lost.

We would therefore propose that the Committee add the following sentence to the end of the last paragraph of “The Proposal” section:

“Nothing in the measure requires the Board of Supervisors to enact the proposed ‘Neighborhood Stabilization Plan’ into law.”

Along the same lines we would propose substituting the word “propose” in the “Yes Vote” section for the word “develop,” to read:

A “YES” Vote Means: If you vote “yes,” you want to suspend the issuance of City permits on certain types of housing and business development projects in the Mission District for at least 18 months. You also want the City to ~~develop~~ propose

¹ Nor could it do so. An initiative measure can directly amend a City’s and/or County’s land use policies, but it cannot direct the city council/board of supervisors to do so in the future. See *Marblehead v. City of San Clemente*, 226 Cal. App. 3d 1504, 1510 (1991).

a Neighborhood Stabilization Plan for the Mission District by January 31, 2017.

2. **The word “halt” or “stop” should be substituted for “suspend,” or the reference to imposition of a “moratorium” should be restored, because “suspend” is misleading as well.**

At yesterday’s meeting, the Committee removed several different references to the fact that the proposed measure would impose a “moratorium” on the issuance of building permits, changing the digest so that in both the first paragraph of “The Proposal” section and the “Yes Vote” section, the adopted digest indicates that Proposition __ would “*suspend* the issuance of City permits on certain types of housing and business development projects...” (Emphasis added.)

Using the word “suspend” in this context implies that the already-approved projects that will be affected will merely be able to pick up where they left off in 18 months. Merriam-Webster defines “suspend” as “to cause to stop temporarily” or “to set aside or make temporarily inoperative.”²

In fact, however, if the desires of the measure’s proponents are achieved, most of those projects will be barred permanently, because new zoning controls and policies could be enacted, with which the existing projects are no longer consistent. Those changes, were they to be adopted by the Board, would prevent the already-approved projects from *ever* being built.

In light of this fact, we believe that it is far more appropriate to inform the voters that Proposition __ would “halt” or “stop” the issuance of City permits on certain types of housing and business development projects. Indeed, the Ordinance itself expressly states that “[t]his Ordinance is

² “Suspend.” *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 30 July 2015. <<http://www.merriam-webster.com/dictionary/suspend>>.

intended to temporarily *halt* market-rate development....” See Mission District Housing Moratorium, § 1(a), p. 2 (emphasis added).

Alternatively, we believe that returning to the initially proposed language—informing voters that the measure would “impose a moratorium” would be appropriate. As Brook Turner mentioned yesterday, the voters who were asked to sign the petition that placed this measure on the ballot were told that they were signing a petition to vote on a “MISSION DISTRICT HOUSING MORATORIUM.” Moreover, a “suspension” of permit issuance adopted under California state law, like the one proposed here is customarily known as a “moratorium.” For example, the California Government Code itself refers to the measure that Supervisor Campos recently proposed under State law as “[l]imiting moratoriums on multifamily housing.” (Section 65582.1(l).) Health & Safety Code § 19829(f) does likewise.

3. **The Digest should make clear that already-approved projects will be affected.**

Relatedly, though the Committee has rejected proposals to inform the voters of the number of units that will be affected, we remain concerned that voters will be unaware that already-approved projects would be affected. We therefore propose that the Committee amend the first paragraph of “The Proposal” section as follows:

The Proposal: Proposition __ would suspend the issuance of City permits on certain types of housing and business development projects in the Mission District for 18 months, including for projects that have already received Planning Commission approval but have not obtained their building permits. San Francisco’s Mission District is a neighborhood roughly bounded to the west by Guerrero Street, to the south by Cesar Chavez Street, to the east by Potrero Avenue, and to the

north by U.S. Route 101. Other neighborhoods would not be subject to suspension.

4. The partial listing of “PDR Uses” is misleading and biased.

Finally, the original draft of the digest prepared by the City Attorney’s office stated that “Under City law, PDR uses include a variety of business-related uses such as industrial, automotive, storage, and wholesale.” At yesterday’s Committee meeting, the Committee revised this statement to include a number of additional uses that qualify as PDR, but it did so in a selective way that subtly (though we are sure unintentionally) reinforces the campaign arguments of the measure’s proponents.

As members of the Committee noted, Production, Distribution and Repair (PDR) uses include a whole host of different possible uses of property. Section 102 of the Planning Code defines PDR Use thus:

Production, Distribution, and Repair (PDR) Use. A grouping of uses that includes, but is not limited, to all Industrial and Agricultural Uses, Ambulance Services, Animal Hospital, Automotive Service Station, Automotive Repair, Automotive Wash, Arts Activities, Business Services, Cat Boarding, Catering Service, Commercial Storage, Kennel, Motor Vehicle Tow Service, Livery Stable, Parcel Delivery Service, Public Utilities Yard, Storage Yard, Trade Office, Trade Shop, Wholesale Sales, and Wholesale Storage.

The Committee chose, however, to list only seven specific examples of those uses: “furniture makers, recording studios, wholesale distributors, auto-repair shops, plumbing supply stores, art studios, and lumber yards.”

In the first place, as Ms. Unruh noted, listing some highly specific uses (as opposed to general categories) but not others of these uses

Ballot Simplification Committee
Request for Reconsideration
“Mission District Housing Moratorium”
July 31, 2015
Page 6 of 9

can be misleading itself, because it focuses the minds or readers—who may overlook or misunderstand that the list is to be illustrative—only on those listed uses. Why, if we’re picking and choosing examples, shouldn’t “Industrial and Agricultural Uses,” “Commercial Storage,” “Parcel Delivery Service,” or “Motor Vehicle Tow Service” be listed?

Second, we fail to see a difference between the Committee’s decision to inform voters that these specific types of uses will be affected by the measure, when it refused several requests to inform voters that 1,495 proposed housing units would be affected, as an improper statement of the expected “impact” of the measure.

Finally, and perhaps most importantly, of the seven specific examples given, two are uses defined as “Arts Activities” under Section 102 of the Planning Code, and a third (“furniture makers”) has a similar connotation. (When considering this term, few people will think larger-scale industrial operations, rather than artisan carpenters.) By choosing these specific examples, the Committee has inadvertently endorsed the proponents’ obviously poll-tested narrative—that the measure’s restrictions on converting PDR uses is meant to protect small artists, when, in fact, a far broader swatch of industrial uses will be affected. It is surely no coincidence that both the measure’s proponent, J.S. Weaver, and one of its supporters, the San Francisco Latino Democratic Club, have urged this focus on artists in their initial letters to the Committee.

State law makes it clear that this sort of endorsement of one side’s arguments—unintentional though it may have been—has no place in the impartial ballot materials prepared by the City, but is more appropriately reserved to the ballot arguments. *See Citizens for Responsible Government v. City of Albany*, 56 Cal. App. 4th 1199, 1227 (1997) (ballot materials improperly endorsed the message of the measure’s supporters).

In light of all these considerations, we believe it would be appropriate for the Committee, in describing “PDR Uses,” to return to the general language proposed by the City Attorney’s office, which was neither misleading nor biased.

5. **In the first bullet point, “new construction” should be listed before demolition, substantial renovation, and conversion, because new construction is the real target of the measure.**

Currently, the first bullet point in “the Proposal” section, discussing the types of developments that would be impacted by the proposed moratorium, states that it would affect “the demolition, substantial renovation, conversion, or new construction of any housing development containing five or more units.”

We believe that it would be appropriate to list “new construction” first in this list, because new construction is obviously the chief focus of this measure. Thus, the goal of the proposed “Neighborhood Stabilization Plan” is to “ensure that at least 33% of all *new housing* in the Mission Area Plan be affordable to low and moderate income households, and that at least 50% of all *new housing* be affordable to low, moderate and middle income households....” See Mission District Housing Moratorium, § 2(e)(1), p. 11 (emphasis added)

6. **The discussion of “affordable housing” in the sixth paragraph of “The Proposal” can and should be changed to make it clearer, less subjective, and less open to inconsistent interpretation by voters.**

Right now, the sixth paragraph of “The Proposal” section reads, “These prohibitions would not apply to the issuance of permits for housing developments where all units are defined as affordable to low- and moderate-income households.” We recognize that the Committee struggled with this paragraph, recognizing that what voters perceive to be “affordable,” “low-income” and “moderate-income” are all in the eye of the beholder.

With that in mind, we believe that a clearer description is possible. We would propose that the paragraph be amended to read:

“These prohibitions would not apply to the issuance of permits for housing developments where all units are ~~defined as affordable to low- and moderate-income households~~ subsidized, below market-rate-units.”

This revised paragraph accurately describes, in terms that will be far more specific and understandable to voters, what kinds of housing developments will continue to be permitted if the moratorium is imposed. As noted above, the measure itself stresses that its purpose is to “temporarily halt *market-rate development*,” see Mission District Housing Moratorium, § 2(e), p. 11 (emphasis added), and the Planning Commission’s analysis notes that housing units become “affordable,” as defined by the measure, when “a public agency owns a significant portion of units in a project site *or significantly subsidizes the project in some manner.*” See July 23, 2015, Letter from San Francisco Housing Dept. to Mr. John Arntz, p. 4 (emphasis added).

7. **The digest should add a sentence to clarify that *only projects that are entirely “affordable housing” projects can receive permits during the 18-30 months of the moratorium.***

Related to the previous point, we believe that an additional sentence should be incorporated at the end of the sixth paragraph of “The Proposal” to read: “Issuance of permits for all other types of housing will be prohibited.” This addition, combined with the rest of that paragraph, will clarify for voters that *only* “housing developments where all units are subsidized, below market-rate-units” will be permitted for the next 18-30 months.

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Ballot Simplification Committee
Request for Reconsideration
"Mission District Housing Moratorium"
July 31, 2015
Page 9 of 9

We appreciate your consideration of these comments, and we look forward to discussing them with you next Thursday.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher Skinnell". The signature is written in a cursive style with a large initial "C".

Chris Skinnell

Enclosure

Mission District Housing Moratorium*

Digest by the Ballot Simplification Committee

Status: Approved Digest

On: Thursday, July 30, 2015

Members: Packard, Fasick, Fraps, Jorgensen, Unruh

Word count: (suggested 300-word limit)

Deadline to Request Reconsideration: 1:00 p.m. on Friday, July 31, 2015

The Way It Is Now: Persons seeking to build new housing, renovate or demolish existing housing, or change the use of a property in San Francisco must obtain permits from the City.

The Proposal: Proposition ___ would ~~suspend~~ ~~halt~~ the issuance of City permits on certain types of housing and business development projects in the Mission District for 18 months, ~~including for projects that have already received Planning Commission approval but have not obtained their building permits.~~ San Francisco's Mission District is a neighborhood roughly bounded to the west by Guerrero Street, to the south by Cesar Chavez Street, to the east by Potrero Avenue, and to the north by U.S. Route 101. Other neighborhoods would not be subject to suspension.

Proposition ___ also would authorize a possible extension of this suspension for an additional 12 months by a majority of the Board of Supervisors.

Proposition ___ would cover these types of developments:

- ~~the new construction, demolition, substantial renovation, or conversion, or new construction of any housing development containing five or more units; and~~
- the demolition, substantial renovation, conversion, or elimination of buildings used for Production, Distribution and Repair (PDR). Under City law, PDR uses include a variety of business-related uses such as ~~industrial, automotive, storage, and wholesale furniture makers, recording studios, wholesale distributors, auto repair shops, plumbing supply stores, art studios, and lumber yards.~~

These prohibitions would not apply to the issuance of permits for housing developments where all units are ~~subsidized, below market-rate units defined as affordable to low- and moderate-income households.~~ Issuance of permits for all other types of housing will be prohibited.

Proposition ___ would require the City to develop a Neighborhood Stabilization Plan by January 31, 2017. The goal of this plan would be to propose legislation, policies, programs, funding, and zoning controls to support affordable housing and small businesses in the Mission. At least 50% of all new housing should be affordable to low-, moderate-, and middle-income households, and those units would be available to residents of the Mission. ~~Nothing in the measure requires the Board of Supervisors to enact the proposed "Neighborhood Stabilization Plan" into law.~~

A "YES" Vote Means: If you vote "yes," you want to ~~suspend~~ ~~halt~~ the issuance of City permits on certain types of housing and business development projects in the Mission District for at least 18 months. You also

Commented [A1]: Stating that the measure would "stop" the issuance of City permits would also be appropriate, as would returning to the initially-proposed language: that the measure would "impose a moratorium" on the issuance of City permits. See Point #2 in accompanying letter.

Commented [A2]: See Point #3 in the accompanying letter.

Commented [A3]: See Point #5 in accompanying letter.

Commented [A4]: See Point #4 in accompanying letter.

Commented [A5]: See Point #6 in accompanying letter.

Commented [A6]: See Point #7 in accompanying letter.

Commented [A7]: See Point #1 in accompanying letter.

Commented [A8]: See Comment [A1] above, and Point #2 in accompanying letter.

want the City to ~~develop~~ propose a Neighborhood Stabilization Plan for the Mission District by January 31, 2017.

Commented [A9]: See Point #1 in accompanying letter.

A "NO" Vote Means: If you vote "no," you do not want to make these changes.