



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: AB 195 CLARIFICATION

DATE: May 31, 2019

Approved

Date

5/31/2019

RECOMMENDATION

Clarify the City's position on Elections Code Section 13119/AB 195 to advocate for reform—and not the elimination—of disclosure provisions that subject local governments to unnecessary and unwarranted litigation for the passage of bond measures.

DISCUSSION

After many months of planning, fundraising, neighborhood meetings, and door-knocking, we succeeded in winning approval of 71 percent of our voters for Measure T in November 2018, with ballot language that provided:

"To: Upgrade 911 communications, police, fire, and paramedics facilities to improve emergency and disaster response; Repair deteriorating bridges vulnerable to earthquakes; Repave streets and potholes in the worst condition; Prevent flooding and water quality contamination; Repair critical infrastructure; Shall San José issue \$650,000,000 in general obligation bonds with an average levy of 11¢ per \$1,000 of assessed value, averaging \$34,208,000 annually until repaid, requiring community oversight and annual audits."

The final sentence of that measure contains language required by Elections Code Section 13119, as amended in 2017 by AB 195 (Obernolte), a state mandate for disclosure of the annual cost of bond measures to taxpayers. Specifically, the law requires that "the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied."

It is incontrovertible that voters should be told how much a bond measure will cost them, and if properly implemented, AB 195 can help to ensure that. The problem is that if AB 195's requirements are read too literally, the law will subject San José to specious litigation with inevitable changes in interest rates, bond durations, or other variables that will affect the ultimate cost to San José property owners. In other words, despite good faith efforts by City finance experts to provide the best estimate of the cost to taxpayers, changes in macroeconomic factors will invariably move that estimate off the mark.

Only attorneys who make their living suing municipalities will win, and our taxpayers will lose. Even Assemblymember Obernolte's own staff admitted that her boss' legislation had problems in implementation, as quoted by CalMatters' Dan Walters in an April 5, 2018 column:

"Unfortunately, we have realized that it is near to impossible to comply with the requirements of AB 195 for general obligation (GO) bonds," Obernolte's chief of staff, Teresa Trujillo, said in an email. "GO bond taxes can vary widely from year to year and property to property. While it is possible to estimate the rate and duration of the property tax that will be needed to pay off all of the bonds authorized by a bond measure, it is near impossible to include this information in the ballot label."

The difficulty in the measure could be readily remedied, it would seem, with some qualifying language: providing a good faith "safe harbor" to cities that comply fully with the intent of the legislation, or perhaps inserting words such as "reasonable estimate" as qualifying terminology would do the trick. That legislative fix should be sufficiently uncontroversial.

Yet, the City has walked unwittingly into a political maelstrom. In the 2018 election, for example, according to columnist Walters, many of the 40 school districts that put bond measures on the ballot in 2018 did not comply with AB195.¹ Columnist Daniel Borenstein has cited several Bay Area jurisdictions—primarily school districts—as blatant proponents of obfuscation to voters about the cost of their proposed measures.² Both Walters and Borenstein took aim at the City of San José recently for our efforts to change the law, believing that the City of San José seeks to undermine the transparency sought by the statute's proponents.

It is unfortunate that San José has been caught in these political crosshairs, and unfairly in my view. Unlike other jurisdictions, San José complied fully with AB 195 in its ballot language for both Measures V and T in November. In the City's approved 2019 matrix of legislative priorities, the staff states the City's position as: "Support efforts to reduce voter confusion on bond measure ballot statements by amending Elections Code Section 13119 [AB 195 (Obernolte, 2018)]...." There is no direction by Council to advocate to eliminate the statute's requirements, although the City did seek a temporary statewide exemption in 2018 until better language could be settled upon.

When the City's legislative positions came before the Council for discussion on March 26th, I twice stated from the dais that I wanted to "reform" the AB 195 requirements to ensure that cities could reasonably comply, but never urged their elimination. As quoted by Walters in his column, I expressly urged:

"AB 195, while well-intentioned, is about providing disclosure to voters so there is trust that the government entity will use money the way it is intended to be used, and voters will know what they're paying for," Liccardo said during a city

¹ <https://www.mercurynews.com/2018/04/05/walters-walters-40-measures-on-june-ballot-omit-required-disclosures-or-violate-state-law/>

² <https://www.eastbaytimes.com/2016/05/19/borenstein-bay-area-schools-withhold-key-tax-information-from-ballot/>

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council meeting. "The problem is, implicit in AB 195, a mechanism that will ensure that no agency can maintain that trust because we're required to state a cost to the bonds that, in most cases, will be wrong, and is only an estimate and can only be an estimate, because of changing durations for the bond, as well as interest rates."

There is a very real cost to taxpayers of the inadequacy of the current statutory language, if a litigious group chooses to file a claim upon the issuance of the first tranche of Measure T bonds in August of this year, or in any subsequent tranche. Simply, we need reform.