

To: Members of the City Council
From: Members of the Ballot Title Subcommittee
Date: July 20, 2004
Re: Ballot Titles

The City Attorney and the City Council's temporary ballot title subcommittee met informally and via e-mail to improve the ballot language for the three citizen initiative ballot measures.

The goal was two-fold. First, to ensure that the language was clear, concise, and accurate. Second, to ensure that the most significant portions of the initiatives were prominent in the description.

The following three titles appear to meet that criteria. The marijuana and prostitution initiatives were unanimous. However, there has been some on-going discussion about the Tree Ordinance. The version included in here appears to meet the concerns of all subcommittee members, but there has not been an affirmative vote of all Members on that one.

**MEDICAL MARIJUANA INITIATIVE ORDINANCE-BALLOT
TITLE**

Shall the City's ordinances be amended to require the City to issue a permit to medical marijuana dispensaries as a matter of right and without a public hearing, eliminate limits on the amounts of medical marijuana possessed by patients or caregivers; and establish a peer review group for medical marijuana collectives?

Financial Implications: Possible increase in law enforcement costs and possible zoning related cost savings from change in public hearing requirement for marijuana dispensary permits.

TREE INITIATIVE-BALLOT TITLE-

Shall an ordinance be adopted: 1) creating a 13-18 member Tree Board with up to two full-time staff, which is empowered to oversee the ordinance's prohibition on alteration, topping or removal of established nonhazardous public trees (except in very limited circumstances) establish City tree contractors licensing requirements, approve tree plantings; and 2) creating related regulations?

Financial Implications: Annual costs up to \$250,000, additional annual \$100,000 consultant costs in early years; possible increased liability.

ANGEL'S INTIATIVE - BALLOT TITLE

Shall an ordinance be adopted to 1) make enforcement of prostitution laws the lowest priority; 2) oppose state laws making prostitution a crime; and 3) require semi-annual reporting of prostitution-related Berkeley Police Department law enforcement activities?

Financial Implications: Possible increases in law enforcement costs as a result of potential increase in prostitution-related crime and increased reporting requirements.

TREE INITIATIVE - CITY ATTORNEYS' ANALYSIS- 499 WORDS

This ordinance would have several material effects described below.

1. It would regulate public trees which are ten years old or have a trunk diameter of six inches by prohibiting the topping or removal of such non-hazardous public trees or the cutting of a leader or major branch, except in the course of fighting fires, to prevent fire danger in the Berkeley Hills pursuant to a plan authorized by a new Berkeley Tree Board, or if the Council adopts an ordinance finding that the tree action was in the public interest and the Tree Board approves. This prohibition conflicts with the Fire Department's Fire Code enforcement authority as to public trees, PG & E's obligation to trim street trees with power lines running through them and may also violate the City Charter by delegating the City Council's legislative and administrative powers to a Tree Board without standards, and is likely unenforceable to that extent.
2. It would prohibit, subject to limited exceptions, additional coverage of open space in parks, squares or landscaping around City buildings with impervious material. This provision would prohibit new projects, such as most current park pathways, play structures, basketball and tennis courts and the Skate Park.
3. It would require the City to plant at least the same number of trees annually as were planted in 2003, through the year 2020 and require a tree census of every public tree.
4. It's provisions would be implemented by a Tree Board, of up to 18 members - nine city council appointees, four appointees of boards and commissions and five School District appointees, if the School District consents to be bound by the ordinance provisions. Since, under the Charter, only the Council has power to appoint members of advisory quasi-legislative bodies, it appears that granting appointment power to advisory commissions may conflict with the Council's charter powers and these appointments may be invalid.
5. The Tree Board is entitled to obtain up to two full-time staff, and other necessary resources from the City and may raise private funds for acquiring open space and planting trees. This provision is likely invalid to the extent it conflicts with the Council's budgetary charter powers.

6. The Tree Board has broad and unfettered power to establish licensing requirements for all persons engaged in work on public trees, adopt tree management rules, approve plantings, conduct inspections and create plans for public trees. Some of these powers may conflict with the Charter-reserved powers of the City Manager, who is entrusted with day-to-day operation of the City, and the City Council, which has the power to establish policy.

7. A “tree impact report” would be required for developments affecting public trees and the Tree Board could require an environmental impact report under state law when any public trees are affected, imposing additional costs on projects affecting public trees.

Financial Implications: Initial annual costs up to \$350,000 funded by corresponding reduction in park maintenance services. Possible increased liability from deferred maintenance or removal of trees.