

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: June 22, 2004

TO: The Committee on Rules, Finance and Intergovernmental Relations

FROM: City Attorney

SUBJECT: Analysis of John Stump's Ballot Proposals

On June 4, 2004, the City Clerk provided to Bill Baber, the Rules Committee Consultant, three ballot proposals that had been submitted by John Stump pursuant to Council Policy 000-21. This Council Policy allows members of the public to submit ballot proposals for review by the Rules Committee, which may reject the proposal or approve it for consideration by the full City Council.

The City Attorney's Office has been asked to provide a legal analysis of Mr. Stump's proposals. The three proposals may be summarized as follows:

Proposal One: This proposal is entitled "Proposed Quality Affordable Housing Amendment." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park zoological exhibits, but would instead be used for the "maintenance in City of quality affordable housing." The proposed language would also amend section 77a's second paragraph, which currently permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits. As amended, the second paragraph of proposed section 77a would allow the City Council to enter into contracts relating to the maintenance of quality affordable housing.

Proposal Two: This proposal is entitled "Alternative Quality Affordable Housing Amendment." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park zoological exhibits, but would instead be used for the "maintenance in City of quality affordable housing." The proposed language would also delete section 77a's second paragraph, which permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits.

Proposal Three: This proposal is entitled "Second Ballot Proposition for Maintenance." If passed, this proposition would amend San Diego Charter section 77a to the extent that revenues collected pursuant to section 77a would no longer be used for the maintenance of Balboa Park

Rules Committee

June 22, 2004

Page 2

zoological exhibits, but would instead be used for “maintenance.” The proposed language does not identify any particular types of “maintenance.” The proposed language would also delete section 77a’s second paragraph, which permits the City Council to enter into contracts relating to the maintenance of Balboa Park zoological exhibits.

The revenues at issue in Charter section 77a are obtained by that section’s levy of “not less than two cents (\$0.02) on each one hundred dollars (\$100.00) of assessed valuation of the real and personal property within the City.” The language in section 77a went into effect in 1941, well before the 1978 passage of Proposition 13, which amended the California Constitution to substantially limit the collection of taxes based on the assessed value of real property. Article XIII A of the California Constitution states, in part, at section 1(a): “The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.” At that time, Article XIII A contained an exception in section 1(b): “The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges *on any indebtedness approved by the voters prior to the time this section becomes effective.*” (emphasis added) Because Charter section 77a created an indebtedness approved by the voters prior to 1978, its imposition of an ad valorem tax was “grandfathered” into permissible coexistence with the limitations of Proposition 13. 1984 Op. City Att’y 55.

Under the California Constitution, property tax rates may not exceed 1 percent of the property's market value and valuations may not grow by more than 2 percent per year unless the property is sold. The City’s voters may no longer approve, even by Charter amendment, a property tax that exceeds these limitations.

All of Mr. Stump’s proposals seek to raise the property tax rate. Although his proposals do little more than replace “the zoo” with “affordable housing,” these are significant differences. The City’s voters did not approve a property tax earmarked for affordable housing in 1941, so any new property tax that does earmark for such purposes is not entitled to the “grandfathered” status currently enjoyed by section 77a. Eliminating the property tax for zoo purposes does not create an opportunity for a new property tax to take its place. For these reasons, Mr. Stump’s proposals would impose a property tax that is unlawful under the California Constitution.

CASEY GWINN, City Attorney

By

Richard A. Duvernay
Deputy City Attorney

RAD:jab

L:\DUVERNAY\MEMOS\2004\StumpAnalysis.doc