

September 4, 1987

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
IN THE MATTER OF THE DESIGNATION OF CITY COUNCIL ACTION
ON BALLOT ARGUMENTS; WOLFSHEIMER V. ABDELNOUR,
SUPERIOR COURT CASE NO. 589470

Arising from Item S404 on the Council Docket of August 3, 1987, a question was posed concerning the proper designation of City Council action when the City Council has voted to support or oppose a ballot matter. As this involves a fundamental mode of municipal action, we shall frame our answer both in the general and the specific.

The legislative authority and process of the City Council flow from the San Diego City Charter. Section 11. is explicit in vesting the legislative power in the City Council.

SEC. 11. LEGISLATIVE POWER.

All legislative powers of the City shall be vested, subject to the terms of this Charter and of the Constitution of the State of California, in the Council, except such legislative powers as are reserved to the people by the Charter and the Constitution of the State.

To properly exercise the legislative power, specific procedures are outlined for both the number and manner of votes required for legislative action.

SECTION 15. QUORUM.

A majority of the members elected to the Council shall constitute a quorum to do business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

Except as otherwise provided herein the affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote; except that a vote to adjourn, or regarding the attendance of absent members, may be adopted by a majority of the members present. No member shall be excused from

voting except on matters involving the consideration of his own official conduct or in which his own personal interests are involved.

Emphasis added.

SECTION 16. INTRODUCTION AND PASSAGE OF ORDINANCES AND RESOLUTIONS.

Ordinances shall be introduced in the Council only in written or printed form. All ordinances, except annual appropriation ordinances and ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title. Ordinances making the annual tax levy, the annual appropriation ordinance, any ordinance calling or relating to elections, ordinances recommended by the City Manager or other independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance, ordinances establishing or changing the grade of a public highway, and emergency ordinances as defined by Section 17 of this Charter, may be passed by the Council on the day of their introduction. Other ordinances, however, shall be passed only after twelve (12) calendar days have elapsed between the day of their introduction and the day of their final passage. Each ordinance shall be read in full prior to the final passage of such ordinance, unless such reading shall be dispensed with by a vote of not less than a majority of the members elected to the Council, and not then unless there shall have been available for the consideration of each member of the Council and the public prior to the day of its final

passage a written or printed copy of said ordinance. The yeas and nays shall be taken upon the passage of all ordinances and entered upon the journal of the proceedings of the Council. The yeas and nays shall be taken and entered upon the passage of all resolutions receiving a split vote, or upon the request of

two or more members of the Council....

Emphasis added.

As provided for in Charter section 14, the City Council has further refined its own procedures by adopting in ordinance form its Permanent Rules of The Council (San Diego Municipal Code section 22.0101) which incorporate Robert's Rules of Order Newly Revised. Obviously, the Rules follow the Charter mandates and a review of all these provisions leads to the clear conclusion that legislative action in all matters is by majority vote and the majority vote is the action and voice of the Council.

Having established the general form of all municipal action is the majority vote properly recorded, we turn to whether this form of action admits of any exception when the action is on ballot arguments.

The California Elections Code specifically names the "legislative body" as a proper party to file ballot arguments.

5013. Written arguments.

The legislative body, or any member or members of the legislative body authorized by that body, or any individual voter who is eligible to vote on the measure, or bona fide association of citizens, or any combination of voters and associations, may file a written argument for or against any city measure. No argument shall exceed 300 words in length....

Emphasis added.

California Elections Code, section 5013

Following thereafter, Elections Code section 5016 repeats the phrase "legislative body" in assigning precedence to arguments authorized by such bodies over other groups or citizens. Yet the Elections Code is silent as to the precise manner of the designation of the "legislative body" and no decisional or case law was located which would assist in this determination.

Wolfsheimer v. Abdelnour, Superior Court Case No. 589470 seeks by means of a writ of mandate that the designation be stated as "Eight members of the City Council" or the appropriate number as voted. A historical review of past ballot arguments has shown designations by both individual councilmembers and Mayor and City Council. Since the phrase "legislative body" is used in the Elections Code, we believe the Council by majority vote has the authority to frame their designation in either fashion.

The attached resolution has been requested by Councilmember Wolfsheimer to ascertain the Council's desire and is on your September 8th docket. Should you simply include the numerical

count, the instant litigation would be mooted; should the latter approach be desired, obviously we will defend that action as a permissible designation of "legislative body."

Respectfully submitted,

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City Attorney

JWW:TB:js(x043.1)

Attachment

RC-87-36