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MEMORANDUM OF LAW

DATE: June 27, 2007

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Application of Reconsideration Procedures to an Action that Failed to Receive Five Affirmative Votes

INTRODUCTION

On September 26, 2006, the City Council considered a resolution to oppose the construction of the Proposed Foothill-South Toll Road through San Onofre State Beach. The vote was four to three against the resolution and it failed for lack of five affirmative votes. Recently, three Councilmembers, representing Districts 2, 4, and 6, have requested a similar resolution be docketed for consideration by the City Council. The question has arisen whether the docketing of this similar resolution (R-2007-984) is subject to the Council rules governing reconsideration of matters.

QUESTION PRESENTED

Must the City Council comply with the rules relating to reconsideration of matters, in hearing a resolution similar to one which previously failed to receive five affirmative or negative votes?

SHORT ANSWER

No. In general, the Council's rules on reconsideration do not apply to an item that did not receive at least five votes on the matter. In most cases, an item that fails to receive the necessary votes may be continued to the next meeting as unfinished business and until the necessary affirmative or negative votes are reached to resolve the matter.

ANALYSIS

The Council's Procedures for Reconsideration are Inapplicable to the Consideration of the Proposed Resolution.

The City Council has enacted procedures for handling motions for reconsideration within its permanent rules. *See* SDMC § 22.0101.5, rules 2.3 and 2.11. The procedures vary depending upon whether the motion for reconsideration is made on the same day that the matter was voted upon or at a later time. In particular, Rule 2.11.2 provides: "A motion for reconsideration made later than the same day the matter was voted upon must be processed and re-docketed by the Clerk under Special Orders of Business/Matters of Reconsideration." In general, the Council would vote on whether to reconsider the matter, and if such motion is approved, set a date to rehear the matter. Rule 2.11.1. The question here is whether these procedures apply to a matter that did not receive the required number of votes to take action on the item.

To "reconsider" a matter in parliamentary practice means "[t]o take up for renewed consideration, as a motion or a vote *previously acted on*." Webster's New International Dictionary 2080 (2nd ed. 1951) (emphasis added). A reconsideration motion enables "an assembly . . . to bring back for further consideration, a motion which has already been voted on. The purpose of reconsidering a vote is to permit *correction* of hasty, ill-advised, or erroneous *action*, or to take into account added information or a changed situation that has developed since the taking of the vote." Roberts Rules of Order Newly Revised § 37 (10th ed. 2000) (emphasis added). The effect of making a motion to reconsider is to suspend all action that depends on the vote under reconsideration. *Ibid*. In simpler language these rules inform us that motions for reconsideration seek to undo something that was actually *done*.

San Diego Charter section 15 provides that "the affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote." Charter section 270(c) also provides: "No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of five members of the Council, unless a greater number is otherwise required by the Charter or other superseding law." The Council took no action on the resolution before it on September 26, 2006 because five affirmative or negative votes were not cast regarding the matter. Accordingly, the Council's procedures for reconsideration do not apply in this situation.

We have reviewed the minutes of the Council for the resolution heard on September 26, 2006 (Docket Item No. 103) and conclude the Council took no action. The motion to adopt the resolution received three votes in its favor (Districts 1, 3, and 6). Four votes were against the resolution (Districts 2, 4, 7, and 8), with one member absent (District 5).¹ Because the September

¹ By memorandum, the absent representative from District 5 urged council members to take no action on the resolution.

26, 2006 resolution did not receive five votes, there is no decision for the Council to reconsider at this point.² Accordingly, we conclude the rules governing motions to reconsider matters are inapplicable to the proposed resolution, whether it mirrors the earlier matter or is completely new. Proposed resolution R-2007-984 may be placed on the docket for the City Council's consideration in accordance with ordinary Council procedures and without complying with procedures governing reconsideration.

CONCLUSION

When the City Council first considered a similar resolution opposing a Proposed Foothill-South Toll Road through San Onofre State Beach on September 26, 2007, no action was taken because it did not receive five votes. Because the Council took no action, the Council's procedures to reconsider do not apply to this situation. Accordingly, we conclude that the City Council may consider proposed resolution R-2007-984 by simply re-docketing the matter under the usual docking procedures.

MICHAEL J. AGUIRRE, City Attorney

By
City Attorney

JAK:CMB:jks
ML-2007-9
cc: Elizabeth Maland, City Clerk

² This office has previously recommended that agenda matters receiving less than five votes be continued to the next meeting as unfinished business and re-voted until the necessary affirmative or negative votes are reached to resolve the matter. However, this general rule does not apply to appeals of land use and environmental decisions where four votes may determine the outcome of an appeal (i.e., the decision of the lower agency would stand if the appellant in a land use appeal failed to receive five votes [See 1986 City Att'y MOL 393]; five affirmative votes are necessary to make certain environmental determinations). Finally, if a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within the time limits set forth in the Charter, the resolution or ordinance is deemed disapproved. See S.D. Charter §§ 285, 290(a)(2), and 290(b)(2)(B).