

MEMORANDUM OF LAW

DATE: November 21, 1988

TO: Charles J. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Council Vote/Physical Presence of Councilmember
Required?

This is in response to your memorandum of April 28, 1988 addressed to Curtis Fitzpatrick asking about Council votes. I apologize for the delay; however, I understand that the basic question was answered orally by City Attorney John Witt in open session during a Council meeting in May. This memorandum confirms that advice.

You query whether a Councilmember must be physically present in Council chambers to vote or whether the Councilmember may cast a vote from locations removed from the meeting where audio coverage is provided (i.e., council offices where "squawk boxes" carry the meeting). You state that neither the Municipal Code nor Robert's Rules appear to answer the question.

You are correct that Council Rules appearing in Section 22.0101 of the San Diego Municipal Code do not address the question. The Municipal Code governing Council meeting procedures is supplemented on parliamentary issues by the current edition of Robert's Rules of Order (Newly Revised). The question is addressed in substantial part in Section 44 of Chapter XIII on "Voting." This section reads in pertinent part as follows: "Absentee Voting. It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a legal meeting." (emphasis added)

As interpreted in the May 1988 Council meeting by John Witt, this language means that Councilmembers must be on the Council floor within hearing distance to vote. A priori, a Councilmember may not vote from his or her office, even though within hearing distance of a meeting by means of a "squawk box."

If you have further questions, please feel free to call.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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ML-88-99