

MEMORANDUM OF LAW

DATE: May 25, 1994

TO: Citizens' Equal Opportunity Commission

FROM: City Attorney

SUBJECT: Citizens' Equal Opportunity Commission Rules  
Regarding Quorums and Removals

At the April meeting of the Citizens' Equal Opportunity Commission ("CEOC"), several members voiced concerns about the inability of the CEOC to function properly due to frequent absences by some commission members which results in a lack of a quorum. Three questions have arisen as a result of these concerns. They are as follows:

- 1) are there procedures for reducing the number of members required for a quorum (when, for example, several members have resigned and every remaining member must attend the meeting for there to be a quorum);
- 2) are there procedures for removing a board member who misses more than three meetings; and
- 3) are there any procedures - or could procedures be developed - to require that board members notify the board chair or the Mayor and Council when they move out of the City after the appointment process.

This Memorandum of Law responds to the CEOC's questions.

I. Quorum Requirements

Traditionally, City boards and commissions have looked to City Council rules and Robert's Rules of Order for guidance on parliamentary issues. Deviations from the guidelines are permitted when statutory authority exists which allows a board to make its own rules.

The CEOC was established by ordinance number O-15902 on February 14, 1983, and amended to add two (2) additional members (bringing the number of commission members to the current eleven (11) members) by ordinance number O-16044 on September 26, 1983.

The current bylaw which requires six (6) members for a quorum is based upon the San Diego City Charter ("Charter") and Robert's Rules of Order. Robert's Rules of Order, Newly Revised, Section 3, at 20 (9th ed. 1990) indicates that "in a body having an enrolled membership composed only of persons who maintain their status as members in a prescribed manner-the quorum is a majority of the entire membership, by the common parliamentary law." At issue is how the term "entire membership" is defined. The Charter addresses legislative power in Article III. Specifically, Charter section 15 defines the make up and duties of a Council quorum and provides that: "A majority of the members elected to the Council shall constitute a quorum to do business . . . ." In a Memorandum of Law dated November 27, 1968, this office opined that "a majority of the members elected to the Council" means the number of Councilmembers named in the Charter and not the number of Councilmembers actually seated. The memorandum cites the case of *The City of San Francisco v. Hazen*, 5 Cal. 169, 171 (1855) as authority. That case stated:

The charter has provided the number of members in each Board; the second section provides that a majority of each Board shall constitute a quorum for the transaction of business. The number of members being eight, five would constitute a quorum; and by the fourth subdivision, a majority of all the members elected (which would be five) must vote in favor of every ordinance or resolution. If such is not the plain meaning of the section, and if the word "elected" is to be taken in its present sense as applying to members actually in office, it follows as a necessary consequence, that by resignation, or otherwise, the Board may be reduced to one member, and he would be as competent to act as a full Board.  
(Emphasis added.)

That case has not been overruled and continues to be the law. (See *Tidewater Southern Ry. Co. v. Jordan*, 163 Cal. 105 (1912); *McCraken v. City of San Francisco*, 16 Cal. 591 (1860). Additionally, there is some question regarding whether Council can delegate to a board or commission authority it does not have itself. However, there is no case law which specifically addresses this issue, so the question remains unanswered.

If the CEOC chooses to follow Council rules of Charter section 15 on the quorum issue, a quorum must remain at six (6) since the number of members named in the ordinance as appointed is eleven (11). The obvious benefit of this number is that a minority of members cannot make decisions for the entire CEOC. If, however, the CEOC is not bound to follow Council rules because its enabling ordinance gives it statutory authority to create its own bylaws the following rules would apply to the quorum issue. The ordinance is codified in the San Diego Municipal Code ("SDMC") sections 26.16 et seq. SDMC section 26.16(B) provides in pertinent part: "The Board shall adopt such rules, regulations and organizational structure for the conduct of its business as it may deem necessary." Under the ordinance, the bylaws could, therefore, be amended to provide that a quorum is a majority of the seated (those actually appointed) members.

## II. Removal Issues

Following the April discussion of attendance problems, the CEOC passed a motion at the May 3, 1994 meeting, removing Caroline Leyva-Stickles from the CEOC for nonattendance. This action goes beyond the powers granted to the CEOC. Charter section 43 addresses the issues of advisory boards and committees. Unlike the quorum provision, which binds the CEOC only in the absence of its own rules to the contrary, Charter section 43 may not be circumvented by CEOC actions. The City Charter is similar to the state or federal constitution in that all statutory powers flow from it. No statutory authority or ordinance may be passed which contradicts the provisions of the Charter just as no statutory authority may be passed which contradicts the constitution. Charter section 43 provides in subsection (c) that: "The Council may remove committee and board members by vote of a majority of the members of the Council." The CEOC is empowered to adopt bylaws setting attendance requirements for commissioners. If a commissioner then fails to comply with the bylaws, removal must take place through a formal request for Council action. The appropriate steps for the CEOC to take would be to vote on a motion on a recommendation to remove the offending commissioner, followed by a resolution to Council documenting the absences and requesting the removal of the commissioner.

## III. Residency Issues

Finally, you have asked if there are procedures which require a commissioner to notify the CEOC or Mayor and City Council if the commissioner moves out of the City, thereby becoming ineligible to retain his or her appointment to the CEOC.

Currently, there is no procedure for notification of residency status to either the CEOC or the Mayor and City Council

except at the preappointment stage. Should the CEOC decide to establish such a procedure, it would be appropriate to do so by an amendment to the bylaws. It should be noted, however, that Council Policy 000-13 merely recommends that appointees of boards and commissions be residents of the City. However, this is not a statutory or Charter requirement and the policy may be waived at Council's discretion. The language of the policy provides:

It is the intent of the Mayor and City Council that persons recommended as appointees to any City agency pursuant to this policy shall be residents of the City of San Diego. However, when a person with unique qualifications is available to serve, and who is a resident of San Diego County, but not the City of San Diego, then the Mayor and City Council may make a conscious exception.

Additionally, Charter section 42 provides: "The appointing authority in selecting appointees to commissions, boards, committees or panels shall take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community." (Emphasis added.)

Based upon this Charter language, an argument can be made that reflection of the entire community includes not only residents of the City, but individuals who own businesses in the City and individuals who work in the City. It would be inappropriate, therefore, for the CEOC to insist on residency as a criteria for all members.

Should the CEOC seek removal of a commissioner on the basis of residence, the formal procedure would be the same as that followed for removal due to absences. Pursuant to the Council Policy language, Council may, even after notice of a commissioner's nonresident status, make a determination that a nonresident commissioner may remain on the CEOC.

#### CONCLUSION

The CEOC may amend the quorum rules and it may also adopt attendance requirements. However, because the removal procedures are Charter mandated, they must remain as currently structured. Robert's Rules of Order provides that amendments to the bylaws must be approved by a two-thirds vote of the body. The CEOC bylaws have not been amended since they were initially written. Therefore, we suggest that a sub-committee be formed to review the bylaws and come back to the full commission with

recommendations for changes on these issues as well as any additional changes that may be deemed necessary.

If you have any further questions, please let me know.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

SAM:mrh:920(x043.2)

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