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MEMORANDUM OF LAW

DATE: November 5, 2003

TO: Citizen Equal Opportunity Commissioners

FROM: City Attorney

SUBJECT: Voting Procedures at Citizen Equal Opportunity Committee Meetings

INTRODUCTION

During the October 3, 2003 regular meeting of the Citizen Equal Opportunity Commission [CEOC], the commissioners requested an opinion from our Office on the votes required to approve two agenda items. This memorandum addresses those issues.

QUESTIONS PRESENTED

1. What affirmative vote was required at the October 3 meeting to approve the minutes of the prior CEOC meeting?
2. What affirmative vote was required at the October 3 meeting to approve the proposed amendment to the CEOC by-laws?

SHORT ANSWERS

1. The 4-0 vote at the October 3 CEOC meeting was sufficient to approve the minutes. A motion to approve the minutes must be passed by more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions,¹ at a regular or properly called meeting at which a quorum is present. If this rule is applied to the October 3 CEOC meeting, a minimum of three votes would have been required to pass the motion to approve the minutes.
2. Article XVIII of the CEOC Bylaws provides that an amendment must be passed by two-thirds of "the members." Therefore, a minimum of eight affirmative votes was required to pass an amendment to the Bylaws and the commissioners' 7-0 vote at the October 3

¹ A "blank" is a written vote submitted without the proper indication of the vote. It is equivalent to an abstention.

meeting failed to pass the proposed amendment.

BACKGROUND

Charter section 93 provides that the City Council may by ordinance create and establish advisory boards. Section 93 does not, however, specify the procedural rules to be applied by any advisory board. The City Council established the CEOC by the passage of San Diego Municipal Code [SDMC] section 26.16, which provides, among other things, that CEOC shall consist of eleven members and the members “shall adopt such rules, regulations and organizational structures for the conduct of its business as it may deem necessary.”²

The first voting question relates to the approval of meeting minutes. The Chair of the CEOC solicited a motion to approve the minutes from the last CEOC meeting. When the Chair’s solicitation was made, a quorum comprising six of the eleven appointed commissioners was present. Of those six, only four had attended the last meeting. Therefore, the two commissioners who had not attended the last meeting abstained. A motion was made and seconded to approve the minutes. All four commissioners who had been present at the last meeting unanimously voted to approve the minutes. The Chair then requested guidance from our office on whether there were sufficient votes to pass the approval motion.

The second voting question relates to the approval of an amendment to the CEOC Bylaws. The October 3 agenda contained a proposed revision to the Bylaws. After consideration of this item, the Chair solicited a motion to approve the proposed amendment. At the time of the solicitation, seven commissioners were present. A motion to approve was brought and seconded. All seven commissioners voted unanimously to approve. One of the commissioners then asked our Office about the vote required to pass an amendment to the Bylaws.

ANALYSIS

- I. Unless otherwise specified by the Bylaws, a motion to approve the minutes must be passed by more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present.**
- A. Minutes may be adopted by a majority vote of those members present and voting provided a quorum is present.**

The CEOC adopted its rules of procedure in a document entitled Governing the Business and Procedures of the Citizen’s Equal Opportunity Commission, Bylaws.³ Article XVI of the Bylaws provides that, “[u]nless otherwise provided in these Rules, the procedures for meetings shall be governed by Robert’s Rules of Order [Robert’s Rules].” Article XVII of the Bylaws

² Note that the Permanent Rules created by Council only apply to the Standing Committees created by Council via the SDMC. *See, e.g.*, SDMC § 22.0101, Rules 10 and 11.

³ At the time of this writing, we do not have any record of when or by what vote the Bylaws were approved. Therefore, this memorandum assumes that the Bylaws were properly passed.

provides that, “[i]f there is a conflict between these rules and any ordinance, charter section, or statute, the applicable ordinance, charter section, or statute shall prevail.” Because the SDMC confers authority on the CEOC to adopt its own rules, we believe that the first question raised by this memorandum must be determined, if applicable, by Robert’s Rules.

According to Robert’s Rules, a motion to approve minutes must be passed by a “majority” vote. *See* Item 45 of Table of Rules Relating to Motions, attached as Exhibit A. The word “majority” means more than half. *See* Robert’s Rule No. 44, attached as Exhibit B. When the term “majority ” is used without qualification as in this case, it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present.⁴ *Id.* At the October 3 CEOC meeting, which was a regular or properly called meeting, a quorum was present and four of the commissioners were legally entitled to vote. More than half of the four votes means that a minimum of three affirmative votes was necessary to pass the motion. Because four of the commissioners voted affirmatively, the motion passed.

B. A Floating Minority May not be a desirable procedural rule.

As the commissioners will undoubtedly note from this analysis of a seemingly simple procedural matter, adopting the “majority” rule without further qualification basically allows a floating minority of the commissioners to pass an ordinary motion. Robert’s Rule No. 44 elaborates on the possible variations of a majority vote, if further specified, to avoid the floating minority result. For example, San Diego Charter section 15 requires the affirmative vote of all of the Council members (not just those present) to take any action. Thus, even if only a quorum of five Council members is present, five votes are necessary to take action. If the CEOC desires to require a fixed affirmative vote to approve the minutes, then the CEOC could specify by an amendment to the Bylaws that minutes must be approved by a majority vote of the entire CEOC body (e.g., six affirmative votes).

II. The CEOC Bylaws must be amended by a two thirds vote of all of the appointed members.

The analysis of what affirmative vote is required to pass an amendment to the Bylaws is similar to that of the motion to approve minutes in that the CEOC may adopt its own voting rules in the CEOC Bylaws or defer to Robert’s Rules. In this case, however, the CEOC has adopted a rule for the amendment of the CEOC Bylaws. Article XVIII of the Bylaws specifies that, “[the Bylaws] may be amended only by a two-thirds vote of the members,” which means eight members would have been required to pass an amendment to the Bylaws and the commissioners’ 7-0 vote failed to pass the proposed amendment.

If the commissioners now believe that a two-thirds vote of all of the members is undesirable because of the difficulty in getting two-thirds of the commissioners to attend a regularly called meeting, then the commissioners may amend Article XVIII of the Bylaws to modify this requirement, e.g., the substitution of “the members” with “the members present and

⁴ The quorum refers to the number of such members present, not to the number actually voting on a particular question. *See* Roberts Rule No. 40.

voting.” This approach was taken in Article XIII of the Bylaws, which requires that “two-thirds of the members of the CEOC present at the meeting” affirmatively vote to consider an emergency item.

CONCLUSION

The CEOC may adopt its own voting rules in the Bylaws or adopt Robert’s Rules. According to Robert’s Rules, minutes must be approved by a majority vote. A majority vote means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum is present. If this rule is applied to the October 3 CEOC meeting, then the commissioners’ 4-0 vote passed the motion to approve the last meeting’s minutes.

The CEOC has adopted a voting requirement in Article XVIII for amendment of the CEOC Bylaws. Article XVIII of the Bylaws specifies that, “[the Bylaws] may be amended only by a two-thirds vote of the members,” which would require an affirmative vote by eight commissioners. Therefore, the commissioners’ 7-0 vote at the October 3 CEOC meeting failed to pass the proposed amendment to the Bylaws.

CASEY GWINN, City Attorney

By

Susan Y. Cola
Deputy City Attorney

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Attachments
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