

MEMORANDUM OF LAW

DATE: June 4, 1986

TO: Honorable Deputy Mayor and City Council
FROM: John W. Witt, City Attorney
SUBJECT: Status of agenda items failing to receive five affirmative votes

Twice in one recent legislative day the question was presented:

If a dispositive motion on an agenda item fails to receive five affirmative or negative votes, what is the disposition of the item? The answer is that, with one important exception, it will be continued to the next meeting as "unfinished business."

The problem arises from a clause found in Section 15 of our City Charter: "The affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote; . . ." Emphasis added. This rule differs from the Robert's Rules of Order provision on the same subject, which merely requires a majority of members present and voting on a particular matter for action to be taken on it. See Robert's Rules of Order Newly Revised, Sec. 1, p.3 (1970).

The question of what happens when a Council item receives less than five votes has come up rather frequently over the years. It rarely comes without confusion, however. Therefore, I thought it might be helpful to set down in writing what I believe to be my office's consistent position on the question.

As stated in the first paragraph of this memorandum, the rule is: When a motion dispositive of an agenda item fails to receive five affirmative or negative votes, the item is continued or "trailed" to successive meetings until it is adopted or rejected by five votes. The question arose most recently in your consideration of Item 207 on your June 2, 1986 docket and of Items 2 through 5 on

the Redevelopment Agency docket for the same date. As to the former, the vote was four to three in favor of a motion to approve the resolution which would have authorized the sale of some City-owned land. I advised you that the four-to-three vote meant the matter would be trailed to the next regular Council meeting, on June 9. The Deputy Mayor, as presiding officer, so ruled and that was the end of that.

The Redevelopment Agency items presented more difficulty, however. They constituted four resolutions concerning amendments to the Horton Plaza Theatre Budget and the construction agreements for the Lyceum Theater. At the last Redevelopment Agency meeting, the resolutions had received only four

affirmative votes from five members present. At the time, I correctly advised you that they would trail to the next meeting, but I believe I may have implied a wrong reason (that somehow the Redevelopment Agency's rules differ from the Council's on the subject and that the Deputy Mayor was free to trail the resolutions without reference to the Council's procedural rules). In the resulting confusion on June 2, to be on the safe side Councilman Gotch moved for reconsideration and both reconsideration and the four resolutions passed, six to one. Under the rule as I have stated it in this memorandum, however, reconsideration was not necessary because the resolutions were automatically trailed to the June 2 docket when they failed to get five votes. There is no difference between the way such a situation is handled when the City Council is in its own session and when it sits in some other capacity.

As I also mentioned in the first paragraph, there is an important exception to the general rule, however. When a matter comes to the Council on appeal of a decision by a lower City agency and the decision appealed would have been final if not appealed, the appellant must receive five affirmative votes to prevail on appeal. If he fails to get five votes, the appeal is denied and the decision of the lower agency is final. The most common types of matter of this nature are appeals from otherwise final decisions of the Planning Commission or the Board of Zoning Appeals.

Here is a concluding restatement of the rule and its exception:

When a motion dispositive of an agenda item (i.e. not a procedural motion such as a continuance or the like) fails to receive five or more affirmative or negative votes, the item is continued or trailed to successive meetings until it is adopted or rejected by five or more votes; Except when a matter comes to the Council on appeal of a decision of a lower agency and the decision appealed would have been final if not appealed, there must be five or more votes to grant the appeal or the appeal is denied and the decision of the lower agency is final.

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