

CITY OF OAKLAND



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April 2, 2003

HONORABLE CITY COUNCIL
Oakland, California

**Subject: Recommendation Regarding Amendment to Rule 29 of
Council's Rules of Procedure, entitled Tie-breaking Votes
by Mayor, Resolution Passed on March 25, 2003**

President De La Fuente and Members of the City Council:

Introduction

At the March 25, 2003 meeting the Council adopted new Rules of Procedure for the conduct of its meetings and a Code of Conduct. With respect to tie votes, the Council's former Rules of Procedure provided in pertinent part: "In the event the members of the Council are evenly divided in their vote on an item (by motion, resolution or ordinance) the item will automatically be continued to its next regularly scheduled meeting solely for the purpose of allowing the Mayor to cast a vote."

The Rules of Procedure that were included in the agenda packet amended the rule regarding tie votes to reflect the legal advice this Office has given to the Council and the Mayor. The amendment added the following language: "provided that if the Mayor so chooses, he/she may cast a vote at the meeting at which the tie vote occurs." (Rule 29, entitled "Tie-Breaking Votes by Mayor.")

On the floor, the Council added language, which purports to allow the Mayor to vote at the meeting where the tie vote occurs, "only if s/he has been present at the meeting and has heard public testimony and Council discussion."

Question

The question is whether the language the Council added on the floor violates City Charter 200, which gives the Mayor the right to a vote on the Council when Councilmembers are evenly divided.

Short Answer

It is this Office's opinion that the amendment violates City Charter section 200 because it purports to deprive the Mayor of his/her Charter-granted voting right if he/she is not present for the discussion of the item. The City Charter imposes no such restrictions, limitations or conditions on the Mayor's right to a vote on the Council when there is a tie. Accordingly, if the Mayor appears at a meeting to break a tie vote, this Office will opine that the City Charter entitles him to cast a vote and that the Council's Rules of Procedure cannot override the City Charter's explicit language entitling the Mayor to a vote on the Council when the Council is evenly divided.

Discussion

The City Charter is the City's constitution; it is the supreme law of the City with respect to municipal affairs. California Constitution Article XI sections 3(a) and 5(a) provide: "The provisions of a charter are the law of the State and have the force and effect of legislative enactments." "City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." City Charter provisions are controlling in the absence of preemptory state law. *United Public Employees v. City and County of San Francisco*, 190 Cal.App.3d 419, 422 (1987).

A City Council ordinance "can no more change or limit the effect of a charter than a statute can modify or supersede a provision of the State Constitution." *Hubbard v. City of San Diego*, 55 Cal.App.3d 380, 392 (1976). Ordinances must be consistent with the City Charter; otherwise they are void. *Skaggs v. City of Los Angeles*, 43 Cal.2d 497, 501 (1954); *Howard Jarvis Taxpayer's Assn. v. City of Roseville*, 106 Cal.App.4th 1178, 1186 (2003). In order to change a City Charter, the people of the City must vote to change it. (California Constitution Article XI sections 3(a).) Certainly, if an ordinance cannot override the City Charter, a mere resolution must fall when it conflicts with the City's supreme law.

Section 200 of the City Charter specifies the circumstances in which the Mayor is entitled to cast a tie-breaking vote on matters before the City Council. It grants the Mayor the power to vote whenever the councilmembers are evenly divided.

ARTICLE II

Section 200. Composition of the Council. The Council shall consist of eight Councilmembers, nominated and elected as hereinafter provided. The Mayor shall not be a member of the Council, but he shall have a vote on the Council if the councilmembers are evenly divided.

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Section 210 of the City Charter requires that the Council establish rules of procedure for the conduct of Council meetings. The Council has complied with this requirement by adopting its Rules of Procedure Resolution. Rule 1 provides that the Council shall conduct its meetings in accordance with Roberts Rules of Order "except as modified by these rules." Rule 25 of the Council's Rules of Procedure provides:

Tie-Breaking Votes by Mayor – In the event that the members of the Council are evenly divided in their vote on an item (by motion, resolution or ordinance) the item will automatically be continued to its next regularly scheduled meeting solely for the purpose of allowing the Mayor to cast a vote; **provided that if the Mayor so chooses, he/she may cast a vote at the meeting at which the tie vote occurs if he/she has been present at the meeting and has heard public testimony and Council discussion.** The City Clerk shall provide the Mayor with all supporting documentation, reports and legislation relating to the item and a copy of the videotape of the discussion, if available. Council and public discussion is permitted on the item to be voted on by the Mayor; however, Council members cannot change their vote unless the item has been properly noticed for reconsideration. The Mayor must appear at the Council meeting to cast his vote. (emphasis added.)

The City Charter provides that the Mayor "shall have a vote on the Council if the Councilmembers are evenly divided." (City Charter section 200.) The Charter does not preclude the Mayor from voting at the meeting if he has not been present at the meeting and heard public testimony; in fact the City Charter places no restrictions on the Mayor's right to a vote "on the Council" when there is a tie vote. The amendment to Rule 25 which provides that the Mayor may cast a tie-breaking vote at the same meeting at which a tie vote occurs only if he/she has been present at the meeting and has heard public testimony and Council discussion, imposes requirements and restrictions that infringe upon the Mayor's Charter-granted power to cast tie breaking votes. The amendment is therefore inconsistent with the Charter and not legally enforceable. As we have discussed, the Charter takes precedence over a mere ordinance when the two are in conflict. An ordinance is a statute, a local law; clearly a resolution which does not have the force of law cannot stand if it conflicts with the City Charter.

Because the proposed amendment to the Council's Rules of Procedure inhibits the exercise of the Mayor's Charter granted appointment powers, it violates City Charter section 200 and is void and unenforceable.

Further, the amendment violates the Charter because, unlike the Charter, it would effectively deprive the Mayor of his voting right in the following circumstances: (1) the action in question is time sensitive and delay would be fatal; or (2) the Mayor is available to vote at the meeting where the tie vote occurs, but will not be available at the next meeting.

We recognize that an argument could be made that in ordinary circumstances the rule would not deprive the Mayor of his voting right, but simply provide procedures that he must follow to exercise his vote. However, we believe the amendment does violence

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to the electorate's express intent to give the Mayor the right to a vote on the Council when there is a tie vote. Second, the Mayor certainly could view the Council's proceedings on television with current technology and be fully apprised of the proceedings. Third, the City Charter explicitly states that the Mayor shall have a vote "on the Council". Councilmembers leave the dais and the chambers during the discussion of items and return to cast their votes. Nothing in the City Charter or other laws compels the Mayor or Councilmembers, for that matter, to remain in the chambers during the entire discussion of an item as a condition of exercising their Charter-granted voting rights.

For the foregoing reasons, it is our opinion that the Council should delete the amendment that was added on the floor.

Recommendation

We recommend that the Council pass a resolution deleting the amendment. We will present a request to the Rules Committee at its April 3, 2003 meeting to place such an amendment before the Council on April 15, 2003. If you have any questions, please contact Barbara Parker at extension 3815.

Respectfully submitted,

John A. Russo
City Attorney

Assigned Attorney
Barbara J. Parker

cc: Mayor Brown