

CITY OF OAKLAND

OFFICE OF THE CITY ATTORNEY

LEGAL OPINION

**TO: PRESIDENT KERNIGHAN
AND MEMBERS OF THE OAKLAND CITY COUNCIL**

**FROM: BARBARA J. PARKER
CITY ATTORNEY**

DATE: DECEMBER 27, 2013

**RE: WHAT IS THE PROCEDURE FOR THE CITY COUNCIL'S COLISEUM
JPA BOARD REPRESENTATIVES TO CAST VOTES ON BEHALF OF
THE CITY?**

I. INTRODUCTION

The City of Oakland ("City") and the County of Alameda ("County") jointly own the Oakland-Alameda County Coliseum ("Coliseum") real property. The City and County formed a Joint Powers Authority ("JPA") to manage operations at the Coliseum. The Coliseum JPA Board includes two Councilmembers appointed by the City Council to serve as the City's representatives.

On November 26, 2013, the Coliseum JPA Board passed a motion approving the extension of the License Agreements for the Oakland Athletics and the Oakland Raiders. The City's representatives voted in favor of the motion. On December 10, 2013 the City Council passed a resolution approving the agreements. Several Councilmembers have asked us to inform the Council of the procedure for the City Council's representatives on the JPA Board to cast votes.

II. QUESTION

What is the procedure for the City Council's representatives on the JPA Board to cast votes on matters before the Coliseum JPA Board?

III. SUMMARY CONCLUSION

Councilmembers, the Mayor and/or City officials who represent the City on any board, agency, authority, joint powers authority, commission, etc., shall receive prior authorization from a majority of the City Council before they cast a vote on behalf of the City on any matter of particular controversy or that could have a significant economic or policy impact on the City.

There are two exceptions to the requirement that City Councilmembers, the Mayor and City officials who represent the City as delegates obtain prior authorization from the Council before they vote:

(1) if the delegate is unable to obtain Council authorization because time is of the essence, the delegate shall obtain authorization from the appropriate Council committee and report the delegate’s action to the Council at the next regular Council meeting; and

(2) if the delegate determines that it is not in the City’s best interest to cast the vote the Council directed because of changed circumstances or new information that was not available when the Council authorized action, the delegate may cast a vote that was not authorized by the Council, however the delegate must attempt to carry out the Council’s general direction and report back to the full Council the action and the basis for changing his/her vote.

In addition to securing prior authorization to cast votes, the City’s representatives shall provide the City Council and/or the appropriate Council committee regular informational reports regarding the issues, activities and agenda of the body on which the representative serves.

IV. ANALYSIS

A. The Council’s Rules of Procedure Resolution Requires that Councilmembers who Represent the City Council on the Coliseum JPA Board Receive Prior Authorization from a Majority of the City Council before They Cast Significant Votes

The Council’s Rules of Procedure Resolution No. 82580¹ establishes voting procedures for Councilmembers, the Mayor and City officials who represent the City as a

¹City Charter section 210 mandates that the Council adopt Rules of Procedure by resolution.

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delegate or alternate before any board, agency, authority, joint powers authority, commission delegates and alternates to City boards, commissions, etc.

Rule 25, entitled **Voting by Delegates and Alternates to Boards, Commissions and Other Bodies**, provides:

City Councilmembers, the Mayor or City officials who represent the City as a delegate or alternate before any board, agency, authority, joint powers authority, commission, etc. shall receive City Council authorization from a majority of the Council prior to casting vote(s) on behalf of the City, on any matter which could have a significant economic or policy impact on the City, or on any matter of particular controversy. Should time be of the essence, resulting in the representative’s inability to obtain prior City Council authorization, the representative shall obtain approval from the appropriate City Council committee (e.g., the committee which has subject matter jurisdiction over the issue in question). Thereafter, the representative shall report back to the full Council, at the next regularly scheduled meeting of the Council, the action taken.

In the event that a representative determines that casting a vote as directed by the Council would not be in the best interest of the City because of changed circumstances or new information that was not available at the time authorization was granted, the representative may change his/her vote(s). The representative shall, however, attempt to carry forth the general intent of the Council when casting a changed vote. Thereafter, the representative shall report back to the full Council, the action taken and the basis upon which the vote was changed.

Representatives shall provide the City Council and/or the appropriate Council committee with regular informational reports regarding the issues, activities and agenda of the body on which the representative serves. (Emphasis added.)

To summarize, the procedure for Council’s representatives on the JPA board to cast votes is as follows:

- (1) representatives shall receive prior authorization from a majority of the City Council before they cast a vote on behalf of the City on any matter of particular controversy or that could have a significant economic or policy impact on the City; except that

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- (2) if the delegate is unable to obtain Council authorization because time is of the essence, the delegate shall obtain authorization from the appropriate Council committee and report the delegate’s action to the Council at the next regular Council meeting; and
- (3) if the delegate determines that it is not in the City’s best interest to cast the vote the Council directed because of changed circumstances or new information that was not available when the Council authorized action, the delegate may cast a vote that was not authorized by the Council, however the delegate must attempt to carry out the Council’s general direction and report back to the full Council the action and the basis for changing his/her vote.

In addition, the Council’s representatives on the Coliseum JPA Board shall provide the City Council and/or the appropriate Council committee regular informational reports regarding the issues, activities and agenda of the Coliseum JPA Board.

Delegates are empowered by the Council to represent the Council’s voice on boards, commissions and other political bodies. Delegates are not authorized to serve as independent political actors in these contexts. As representatives of the Council, delegates’ authority is limited to conveying Council’s wishes, and not furthering delegates’ individual policy objectives. Without prior authorization, delegates cannot cast significant votes because they lack the authority to speak on behalf of the City in that capacity.

Delegates may exercise some discretion in voting when facts change or new information indicates that the previously authorized vote is no longer in the best interest of the City. However, such discretion presupposes that the delegate obtained authorization to vote in the first place. Further, any discretionary vote must approximate the general intent of the Council. If the delegate has not received authorization, he/she has no basis to determine the general intent of the Council on the matter and would simply be voting his/her individual policy preferences.

Consequently, a delegate vote without prior authorization of a majority of the Council where there is no evidence of time constraints and no approval from the relevant Council committee is improper and not permitted under the Council Rules of Procedure.

V. CONCLUSION

City Councilmembers, the Mayor and City officials who represent the City as delegates or alternates on the Coliseum JPA Board or any other board, agency, authority, joint powers authority, commission, etc., must obtain prior authorization from a majority of the City Council before they cast votes on behalf of the City on any matter that could have a significant economic or policy impact on the City and any matter of particular controversy. (See Rule 25 of the Council’s Rules of Procedure Resolution No. 82580.) If time is of the essence such that Council approval cannot be obtained, delegates must obtain prior authorization from the relevant Council committee. Delegates have limited authority to represent the City and may cast only votes that convey the will of the City Council in regard to the particular matter. Any vote (of the type described in the Council’s Rules of Procedure Resolution) that is cast by a delegate without prior approval is improper, as it exceeds the authority granted to the delegate by the Council and violates the Council’s Rules of Procedure. Any discretionary votes that are permitted due to changed circumstances are expressly conditioned on the existence of prior approval for the original vote. Such discretionary votes must approximate the general intent the Council expressed in the originally authorized vote.

Of equal importance is the requirement that the aforementioned delegates provide the Council and/or the appropriate Council committee regular informational reports regarding the issues, activities and agenda of the body on which the representative serves.

Very truly yours,



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