



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL
FROM: Heidi A. Quinn, Assistant City Attorney
MEETING DATE: June 7, 2017
SUBJECT: Board and Commission Policies Regarding Quorum, Motions and Voting
CEQA: Categorically Exempt per Section 15308

RECOMMENDATION

Receive memorandum distributed to members of the Planning Commission and the Architectural Review Board summarizing current rules regarding quorum, motions and voting.

DISCUSSION

The City Attorney's office prepared a memorandum for distribution to the Planning Commission and the Architectural Review Board that summarizes key provisions of the Board and Commission Member Handbook and the Council Policy governing Boards, Commissions and Committees.

FISCAL IMPACT

None.

ALTERNATIVES

1. Take no action.
2. Place item on a future agenda for possible rule modification.

ATTACHMENTS

- May 1, 2017 Memorandum

RESPECTFULLY SUBMITTED:

Heidi A. Quinn

Heidi A. Quinn
ASSISTANT CITY ATTORNEY

REVIEWED BY:

Ben Harvey

Ben Harvey
CITY MANAGER



CITY OF PACIFIC GROVE

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To: City of Pacific Grove Architectural Review Board

From: City Attorney's Office

Date: May 1, 2017

Re: *Summary of Board Rules Regarding Quorum, Motions and Voting*

City Board and Commission (Commission) meetings are governed by the *Board and Commission Member Handbook* (Handbook) and the Council Policy governing Boards, Commissions, and Committees.¹ The Commission uses simplified rules of parliamentary procedure to conduct meetings, rather than Robert's Rules of Order.² Some key provisions regarding quorum, motions and voting are summarized below.

Quorum

A quorum consists of a majority of the Commission's voting member positions.³ For example, on a 7-member Commission, the quorum is 4. A vacancy reduces the number of voting member positions per the Pacific Grove Municipal Code (PGMC).⁴ For example, if a 7-member Commission has 2 vacancies, it has 5 voting member positions and the quorum is 3. However, conflict of interest and disqualification does not impact the number of voting member positions. If 2 members of a 7-member Commission are disqualified, the number of voting members remains 7, and quorum is 4. There can be no meeting unless a quorum is present.⁵

Motions

Motion to Continue

The Commission may vote to continue items to a subsequent meeting for the following reasons:⁶

- The Commission requires additional information during the meeting;
- New information or issues come to light during the meeting that need further study; or

¹ Council Policy 000-5.

² Handbook, Tab 6, p. 1.

³ *Id.*, p. 2.

⁴ *Id.*; PGMC §§ 3.02.070, 3.04.080.

⁵ Handbook, Tab 6, p. 2.

⁶ *Id.*, p. 9.

- Other reasons the Commission deems “appropriate and substantial.”

A motion to continue requires a majority vote for approval.

The Commission may continue a submitted application when:

- The applicant cannot appear at the meeting and has requested that the item be continued;
- The application is revised by the applicant during the meeting; or
- The Commission requests that the application be revised.⁷

In this case, the continuance is normally undertaken with the applicant’s concurrence, and generally requires a supermajority vote – 5 of the 7 members of a fully-constituted Commission.

Motion to Reconsider

A motion to reconsider *any action taken* by the Commission may be made during the meeting, at an adjourned meeting, or at the next meeting of the Commission following the meeting at which the action was taken. The Code requires the affirmative vote of a majority of the Commission members for reconsideration of any action by the Commission. The motion must be made by a member who voted on the *prevailing side*, but may be seconded by any member. For example, a person voting in the majority of a 4-3 vote for a motion to approve or deny an item (prevailing side) may make a motion to reconsider. If there is tie vote (3-3 and 1 absence), or if the motion fails (3 in favor, 2 against, 2 absent), then a motion to reconsider is not available as it only applies to actions taken by the Commission.

A motion to reconsider requires a second, is debatable, and is not amendable. If the motion to reconsider fails, it may not itself be reconsidered. Reconsideration may not be moved more than once on the same motion. If the motion to reconsider passes, the original matter is back before the Commission. The matter may be discussed, debated, and amended as if it were on the floor for the first time.

No member is prevented from making a motion to rescind such *action* at a subsequent meeting of the Commission, provided the agenda for that meeting includes the proposed action to rescind.⁸

Nondebatable Motions

When the following motions are made and seconded, the Chair must immediately call for a vote of the Commission without debate on the motion. All motions require a majority vote:

- A motion to adjourn. This motion requires the body to immediately adjourn to its next regularly scheduled meeting. This effectively ends the meeting.
- A motion to recess. This motion requires the body to immediately take a recess for the time set by the Chair.
- A motion to fix the time to adjourn. This motion requires the body to adjourn the meeting at the specific time set in the motion.
- A motion to table. This motion places the matter on “hold” and ends discussion of the item. The motion may state a specific time or date when the item shall return on the agenda, but it need not.

Voting

⁷ Handbook, Tab 6, p. 9.

⁸ *Id.*, Tab 7, p. 4.

Majority Voting Requirement

The Code requires the affirmative vote of a majority of the total members of the Commission (excluding any non-voting members), on any item, for any action by the Commission, unless otherwise provided.⁹ For example, the majority of a fully-constituted Commission is 4. In a 7-member body, a vote of 4-3 passes the motion. If there are 2 vacancies, and the total members are 5, then a majority is 3 members. Therefore, unless a super-majority is required, a simple majority vote determines whether each motion passes or is defeated. Silence constitutes an affirmative vote.¹⁰ Proxy votes for absent members are not allowed.

A tie vote means the motion fails. If one member is absent and the vote is 3-3, the motion still fails. Tie votes may be reconsidered on motion by any member of the Commission voting aye or nay during the original vote. Before a motion is made on the next item on the agenda, any member of the Commission may make a motion to continue the matter to another date.¹¹ Any continuance for this purpose suspends the running of any time in which action of the Commission is required by law.

In certain circumstances, the Commission must take action. For example, a permit application must ultimately be approved or denied despite a failure to garner a majority vote. There are four options:¹²

- Continue the item. This is normally undertaken only with the concurrence of the applicant, and generally requires a super majority vote.
- “Technically” deny the application. Approval of a project requires a majority vote; therefore, anything less than the required majority is considered a denial. One option under “technical denial” is to allow any applicant or other party to appeal the matter on the grounds that the matter was “deemed denied.”
- Deny the application without prejudice. This option may require at least one member of the body to switch his or her vote, to vote to deny for procedural reasons only. Such reasons should be stated in the motion, so the record is clear. It allows the applicant to: 1) appeal to the next higher body; or 2) resubmit the same project or a modified project reflecting Commission or City input, without paying fees, or waiting a minimum number of months, etc.
- Forward the matter to the next higher body for a *de novo* hearing. This is similar to an appeal, but since it is an action of the body (and therefore takes a majority vote) requires no fees or other action by the applicant.

Disqualification from Voting; Recusal

A Commission member shall disqualify him/herself from deliberation and voting on any matter before the Commission, prior to the Commission’s consideration of the matter, when there is a conflict of interest.¹³ A member may also choose not to participate due to personal bias or the appearance of impropriety. Upon the Chair’s announcement of an item, the member must state that he/she is disqualifying him/herself due to a conflict of interest, state the nature of the conflict (e.g., financial), and leave the voting area until the completion of that item.

⁹ PGMC §§ 3.02.070 and 3.04.080 provide, “An affirmative vote of a majority of the appointed members of the board, committee, or commission shall be required for any action by the board, committee, or commission.” Some actions require a super majority vote.

¹⁰ Handbook, Tab 6, p. 8.

¹¹ *Id.*, pp. 8-9.

¹² *Id.*, p. 10.

¹³ *Id.*, p. 8.

If the number of members recusing themselves due to a conflict of interest disrupts the quorum, the “rule of necessity” allows the random selection of the fewest number of conflicted members to vote as is needed to enable a quorum to participate and reach a decision. For example, if 4 Commission members are conflicted, the Commission may select one of the conflicted members to vote so as to have a quorum.

Abstentions

Abstentions are discouraged. A member should abstain from voting only due to lack of participation in an evidentiary proceeding before the Commission and his or her inability to review the record. In that instance, the member will be recorded as absent for that item.¹⁴

A member present for consideration of a motion who opposes the motion must vote against it. In the event of an abstention the abstainer in effect “consents” that a majority of the quorum of the members present may act for him or her.¹⁵ Thus, a member who abstains (for any reason other than lack of opportunity to review the record) is deemed to acquiesce in the action taken by the majority of members who voted. For example, on a 7-member board, if the vote is 3 in favor, 2 against, with 1 absence and 1 abstention, the motion is approved, since a quorum was present and a majority of the total membership is judged to have voted in favor. A 3-3 vote with one abstention means the motion fails as there is no majority.

Members who are silent during a voice vote shall have their vote recorded as an affirmative vote, except when individual members have stated in advance that they will not be voting.

Recording Action Taken

Upon the completion of the vote, the Chair must announce the result of the vote and what action (if any) the Commission has taken. In announcing the result, the Chair must indicate the names of the members, if any, who voted in the minority on the motion or abstained.¹⁶ For example, “The motion passes by a vote of 5-2, with Smith and Jones dissenting” or “The motion passes by a vote of 3-2-1, with Smith and Jones dissenting, and Able absent.” Members may change their votes before the next item on the agenda is called.¹⁷

¹⁴ Handbook, Tab 6, p. 8.

¹⁵ *Id.*, p. 8.

¹⁶ Gov. Code § 54953 was amended to add section (c)(2):“The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.”

¹⁷ *Id.*, p. 9.