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Syn. No. 76-A
10/15/02

TO: SUPERVISOR YVONNE BRATHWAITE BURKE, Chair
SUPERVISOR GLORIA MOLINA
SUPERVISOR ZEV YAROSLAVSKY
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN
County Counsel

RE: **Voting Requirements for Regional Planning Commission**

On October 15, 2002, your Board requested the Regional Planning Commission to change its procedural rules so that actions taken by the Commission must be approved by a majority of its membership. In connection with that request, you have asked this office whether the Board has the ability to require the Regional Planning Commission to make such a rule change, and you also asked for a report on the Regional Planning Commission's procedural rules regarding voting.

Your Board is authorized to establish rules that govern the Regional Planning Commission's procedures. Such rules could include a requirement that Commission actions must be approved by a majority of the entire Commission.

As discussed below, the Regional Planning Commission has amended Section 6 of its Rules of Procedure to change its voting requirements in response to your Board's request.

Previously, the Commission's Rules of Procedure provided that approval of any motion, except a legislative recommendation, required the affirmative vote of a majority of those Commission members present and voting. Approval of a legislative recommendation, on the other hand, required the

affirmative vote of a majority of the Commission. Examples of legislative recommendations include adoption or amendment of a zoning ordinance, the general plan, or a specific plan.

The effect of these rules was that a legislative recommendation could not be approved unless three Commissioners voted in favor of it, as three members constitute a majority of the Commission membership. Since a quorum of the Commission consists of three members, other motions could be approved by a 2 to 1 vote when only three Commissioners were present at a meeting or if abstentions resulted in only three members participating in a vote.

The Regional Planning Commission follows the "Procedural Rules for County Commissions and Committees Based on Robert's Rules of Order (Abridged)," which is distributed by the Executive Office to all County commissions and committees when they are first established, as well as to newly appointed members of existing commissions and committees. In addition, the Regional Planning Commission has adopted its own supplemental Rules of Procedure. County Code Section 2.108.050 authorizes the Commission to adopt rules and regulations for the administration of its affairs.

The Procedural Rules for Commissions and Committees provides that "a majority vote, with certain exceptions . . . , is sufficient for the adoption of any motion that is in order." Robert's Rules of Order, Section 43, explains that when the term "majority vote" is used without qualification, as in the case of the basic requirement for approval of an action, it means more than half of the votes cast by persons legally entitled to vote, excluding abstentions (also referred to as those "present and voting"), at a meeting at which a quorum is present.

As described above, prior to its recent rules amendment, the Regional Planning Commission followed this rule, except for legislative recommendations, and the rule was reiterated in its own Rules of Procedure.¹ We are informed that this practice is the norm rather than the exception for County commissions and committees, most of which are guided by the Procedural Rules for Commissions and Committees disseminated by the Executive Office.

¹With regard to the different rule for legislative matters, Government Code section 65354 requires the affirmative vote of a majority of the Commission membership to approve legislative recommendations concerning the general plan; County Code Section 22.16.180 has the same requirement for recommendations to amend the Zoning Ordinance.

Likewise, many planning commissions, city councils, and other legislative bodies in California take action by a majority vote of those actually voting. In doing so, they follow the general rule that "in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body." (*F.T.C. v. Flotill Products* (1967) 389 U.S. 179.)

Your Board does not follow this rule because there is a contrary statutory provision that requires a county board of supervisors to act by a majority of its entire membership. (Government Code section 25005.) No such contrary statute exists for city councils, and the courts have held that the favorable vote of a majority of a quorum is necessary for a city council to adopt an ordinance or resolution. (*Kennedy v. City of Ukiah* (1977) 69 Cal.App.3d 545.)

State law does not prescribe a particular vote requirement for planning commission actions, but rather authorizes the Board of Supervisors to establish for its planning commission rules and procedures which do not conflict with state or federal laws. (Government Code section 65102.) Consistent with this authority, your Board could require the Regional Planning Commission to provide in its Rules of Procedure that motions must be approved by a majority of its total membership.

The Regional Planning Commission has already amended its Rules of Procedure to provide that approval or disapproval of any application for a land use approval (such as a conditional use permit, oak tree permit or other permit, variance, nonconforming use or structure review, tentative tract map or tentative parcel map), as well as any legislative recommendation, requires the affirmative vote of a majority of the Commission. The amended rules also provide that when such a motion fails to receive at least three votes either for or against the motion, and any Commission members are absent, the matter will be carried over to a subsequent meeting.² When all Commission members are present, an abstention shall constitute concurrence with the majority of those who vote on a land use application or legislative recommendation.

After considerable discussion, the Commission determined that other motions would continue to require approval by a majority of those Commissioners present and voting, because applying the new rule to such motions, which are procedural in nature, could impede the efficiency of the Commission and delay its substantive decision-making to the detriment of private applicants. Examples of such motions are: approval of minutes, approval of

²An abstention is not considered to be an absence.

agenda or changes to agenda, continuance of agenda items, instruction to staff to place matters on future agenda, scheduling special meetings and field trips, reopening a hearing that has been closed, requests for reports or materials from staff, and the annual election of the chair and vice-chair.

The Commission concluded that the amendment it approved was fully responsive to your Board's request, and it also directed the Department of Regional Planning to survey the voting of the Commission in the coming months and report back with its findings. A copy of the amended Rules of Procedure is attached.

LWP:JAF:cnz

Attachment

c: David E. Janssen
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer
Board of Supervisors

James E. Hartl, Director
Department of Regional Planning