

# MEMO

## Legal Department

### Item No. 16

**To:** Mayor & City Council

**From:** Mark O. Lambert, City Attorney

**Date:** March 1, 2019

**Subject:** Procedural issue re: vote on Howell application for Property Sale Hardship Exception.

There was a procedural error in the handling of the vote on the Property Sale Hardship Exception request by Robert Howell, which the Council considered at the last Council meeting, on Tuesday, February 26, 2019.

First a vote to deny the application was made, which was defeated on a 3-3 vote.

Then a vote to approve the application was made. The Council vote was 3-3. Thinking it was a Motion, and relying on incorrect advice from me in that regard, the Mayor voted in favor, thereby breaking the tie.

The problem is, the vote should have been handled as a Resolution. The Mayor can break a tie on a Motion, but has cannot cast a vote on a Resolution.

The Council needs to revisit this situation. The fact is that it should have been a Resolution, which was consistent with how other such matters have been handled in the past. The Council has always approved quasi-judicial matters by Resolution. A Resolution would also result in a formal document from the City to the property owner, which doesn't happen in the case of a motion (except for, perhaps, a copy of the minutes).

A roll call vote was taken, which is the proper type of vote for a Resolution. A Motion is typically a voice vote.

I don't think it's as easy as just saying let's do a new vote. The vote took place, and I think we have to acknowledge that. The vote was, in reality, a Resolution, and the vote was taken by roll call, like we do with Resolutions. The solution to this procedural problem is to recognize that a vote was taken, it was a Resolution, not a Motion, and therefore the Mayor's vote doesn't count, which means it was a 3-3 vote, and the Resolution to approve the exception failed.

My advice is that we acknowledge at the Tuesday, March 5, 2019 Council meeting that the vote took place, and that as it stands now, the Howells' application for the exception was not granted because of the tie (3-3) vote. If the Council feels that they should vote again on the matter, a council member on the prevailing side (a "no" vote in this case) can move to reconsider the vote. If the motion to reconsider passes, a new vote can be taken on the application.

The Howells have been notified of the procedural issue with this vote, and are being provided a copy of this memo.

In the future, we will take steps to identify in advance, on matters like this, whether the action is a Resolution or Motion, and make sure that is noted in the Council Action Form or on the Agenda.

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