



# ***Atascadero City Council***

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## ***Staff Report - City Manager's Office***

### **Ordinance Amending Title 2, Chapter 1, Section 2-1.15 of the Atascadero Municipal Code, Pertaining to Voluntary Abstentions**

*(This Ordinance, if adopted, would clarify the interpretation of an abstention vote.)*

#### **RECOMMENDATION:**

Council introduce for first reading, by title only, the Draft Ordinance amending Title 2, Chapter 1, Section 2-1.15 of the Atascadero Municipal Code pertaining to voluntary abstentions.

#### **DISCUSSION:**

Atascadero Municipal Code section 2-1.15 presently provides:

"Unless a Councilmember states that he or she is not voting because of a conflict of interest, his or her silence shall be recorded as an affirmative vote."

Section 2-1.15 could be susceptible to legal challenge due to the lack of a reasonable basis supporting the rule. As such, we recommend that the City consider amending the provision to make it more consistent with the Affirmative Majority Rule.

The "traditional rule" in California, which follows Roberts Rules of Order, treats voluntary abstentions as non-votes. A second, and the recommended, alternative which we have labeled the "Affirmative Majority Rule," would preserve the primary advantage of the City's existing regulation in terms of preventing a "stalemate" vote. This rule counts voluntary abstentions as an affirmative vote only where such vote is needed in order for the legislative body to take action. Otherwise, the traditional rule would apply. The third alternative is to follow the "common law rule," which provides that voluntary abstentions are considered to be acquiescence to the majority vote and are therefore recorded as a concurrence with the majority. Section 2-1.15, which provides that voluntary abstentions

are always counted as affirmative votes, does not fall squarely within any of these three rules.

Consistent with their authorization under state law to adopt procedural rules, some local legislative bodies have enacted what may be deemed an “Affirmative Majority Rule.” Such rule essentially provides that rather than not being counted, or always being counted with the majority, an abstention may be counted with the majority or to create a majority for the purposes of taking action where without the vote the agency would otherwise not be able to conduct business.

Such a local abstention rule was considered in *Dry Creek Valley Assn., Inc. v. Board of Supervisors* (1977) 67 Cal.App.3d 839. There the court upheld a local rule of the Sonoma County Board of Supervisors that provided that if one less than the necessary number of “aye” votes had been cast, then an abstention would constitute concurrence with the “aye” votes.

The adoption of an ordinance similar to the one in the *Dry Creek* case would be useful in situations where an abstention makes the difference in whether or not the City Council can take action on a matter. Such an ordinance would likely be upheld because of its similarity to the local rule in the *Dry Creek* case, and the fact that Government Code section 36813 authorizes the City Council to adopt local rules concerning City Council proceedings. Consequently, we recommend that the City amend ordinance 2-1.15 in conformance with the Affirmative Majority Rule.

**FISCAL IMPACT:**

None.

**ALTERNATIVE:**

Take no action.

**ATTACHMENTS:**

Draft Ordinance