

12. Adopt Ordinance No. NS-XXXX - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTION 2-105 OF THE SANTA ANA MUNICIPAL CODE TO PROHIBIT ABSTENTIONS UNLESS LEGALLY REQUIRED, TO REQUIRE UNAUTHORIZED ABSTENTIONS TO BE COUNTED AND RECORDED AS A VOTE WITH THE MAJORITY, AND TO DESCRIBE THE CONFLICT DISQUALIFICATION PROCESS

First reading at the March 1, 2022 City Council meeting and approved by a vote of 7-0.

Published in the Orange County Reporter on March 4, 2022.

Department(s):

Recommended Action: Place ordinance on second reading and adopt.



City Manager Office
www.santa-ana.org/cm
Item # 12

City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
March 15, 2022

TOPIC: Ordinance Concerning City Council Voting, Recusal for Conflicts, and Prohibiting Abstentions

AGENDA TITLE:

Adopt Ordinance No. NS-XXXX - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTION 2-105 OF THE SANTA ANA MUNICIPAL CODE TO PROHIBIT ABSTENTIONS UNLESS LEGALLY REQUIRED, TO REQUIRE UNAUTHORIZED ABSTENTIONS TO BE COUNTED AND RECORDED AS A VOTE WITH THE MAJORITY, AND TO DESCRIBE THE CONFLICT DISQUALIFICATION PROCESS

RECOMMENDED ACTION

Place ordinance on second reading and adopt.

DISCUSSION

At the March 1, 2022 meeting, the City Council approved the first reading of an ordinance concerning City Council voting, recusal for conflicts, and abstentions. Specifically, the ordinance accomplishes the following:

- Requires declaration of the result of votes taken.
- References, per the City Charter, that any agenda item requiring a vote shall be passed, adopted, or become effective unless it receives the affirmative vote of a majority of the full membership of the City Council.
- Provides that no member of the City Council shall be permitted to recuse themselves from voting on an item on the City Council meeting agenda unless:
 - (1) the councilmember is legally disqualified from voting due to a conflict of interest or other legal reason (such as common law conflict of interest or bias)
 - (2) the councilmember is awaiting advice from the Fair Political Practices Commission or the results of a pending investigation by the Fair Political Practices Commission
 - (3) from the dais the possibility of a conflict arising from a source identified at the meeting, and, based on advice from the City Attorney, recuses themselves out of an abundance of caution.

Ordinance Concerning City Council Voting, Recusal for Conflicts, and Prohibiting Abstentions

March 15, 2022

Page 2

- Prohibits participation in a vote if one has a conflict and provides that those with a conflict shall leave the dais during the consideration of the matter, provided, however, that if the matter is being considered on the Consent Calendar and has not been removed from Consent Calendar, the councilmember may remain on the dais and disclose the reason.
- Clarifies, consistent with state law, that a disqualified councilmember may speak on the matter as a private citizen.
- Provides that if a councilmember abstains on a vote in violation of the prohibition, the abstention shall be considered concurrence in the motion and the Clerk shall record the councilmember's abstention as a "yes" vote.
- States that a tie vote means no action has been taken and the item under consideration will not be placed upon a future agenda, unless by a majority vote of the City or based on new information or changes in circumstances, in which the City Manager places the item on a future agenda.

If adopted, the ordinance would take effect 30 days thereafter.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

1. Ordinance

Submitted By: Kristine Ridge, City Manager

Approved By: Kristine Ridge, City Manager

ORDINANCE NO. NS-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA AMENDING SECTION 2-105 OF THE SANTA ANA MUNICIPAL CODE TO PROHIBIT ABSTENTIONS UNLESS LEGALLY REQUIRED, TO REQUIRE UNAUTHORIZED ABSTENTIONS TO BE COUNTED AND RECORDED AS A VOTE WITH THE MAJORITY, AND TO DESCRIBE THE CONFLICT DISQUALIFICATION PROCESS

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

A. The City of Santa Ana seeks to ensure that the Mayor and Members of the City Council, elected to carry out the business of the City, act upon all agenda items presented for consideration.

B. The California Political Reform Act and regulations promulgated thereunder by the Fair Political Practices Commission require the Mayor and Councilmembers to disclose conflicts of interest, and new rules require disclosure when an elected official is absent for only a portion of a meeting where the member has a conflict on an agenda item.

C. If the Mayor or a Councilmember does not have a legally disqualifying conflict of interest, he or she should not be permitted to refrain from voting on an item requiring a vote.

D. Since 1952, the Santa Ana Municipal Code has stated in pertinent part that "no member of the council shall abstain from any vote unless disqualified." However, because there is no practical way to enforce this charter provision, the City Council desires to provide that an abstention will be counted and recorded as a "yes" vote.

Section 2. Pursuant to the California Environmental Quality Act ("CEQA") and the State CEQA Guidelines, the adoption of this ordinance is exempt from CEQA review pursuant to 14 California Code of Regulations section 15061(b)(3).

Section 3. Section 2-105 of Article II (City Council) of Chapter 2 (Administration) of the Santa Ana Municipal Code is hereby amended to read in its entirety as follows:

Sec. 2-105. - Voting by Members - Disqualifications and Abstentions.

It is the policy of the Santa Ana City Council that all members present at a City Council meeting fully participate in the discussion of a matter and shall vote for or against an ordinance, resolution, motion, or any other item requiring a vote, unless disqualified by conflict of interest or other legal reason as provided in this section.

(a) If the vote is a voice vote, the Mayor or Clerk of the Council shall declare the result and note for the record all yes votes and all no votes. The Council may also vote by roll call or electronic means visible to the public. Regardless of the manner of voting, the results reflecting all yes and no votes, and the members of the Council who cast them, shall be clearly set forth for the record. In accordance with Section 410 of the Santa Ana City Charter, except as otherwise provided elsewhere in the charter or by law, no ordinance, resolution or motion shall be passed, adopted, or become effective unless it receives the affirmative vote of a majority of the full membership of the City Council.

(b) No member of the Council shall be permitted to recuse himself or herself from voting on any item on the City Council agenda requiring a vote unless:

(1) The councilmember is legally disqualified from voting due to a conflict of interest (including a disqualification under the Political Reform Act or Government Code Section 1090 et seq.) or other legal reason (such as common law conflict of interest or bias); or

(2) The councilmember is awaiting advice from the Fair Political Practices Commission or the results of a pending investigation by the Fair Political Practices Commission; or

(3) The councilmember states ~~that he or she is awaiting further information or clarification and will recuse themselves from the dais the possibility of a conflict arising from a source identified at the meeting, and, based on advice from the City Attorney, recuses themselves~~ out of an abundance of caution.

(c) If a councilmember is disqualified from voting due to a conflict, the member shall not participate in the consideration of the matter, shall not be counted for the purpose of the quorum, and shall leave the dais during the consideration of the matter; provided, however, that if the matter is being considered on the consent calendar and has not been removed from the consent calendar, the councilmember may remain on the dais and disclose the reason for disqualification. A disqualified councilmember may speak on the matter as a private citizen, but only to the extent allowed by the Section 18702.5 of the Regulations of the Fair Political Practices Commission, or its successor sections.

(d) If a councilmember abstains on a vote in violation of this rule, the abstention shall be considered concurrence in the item being voted upon, and the City Clerk shall record that councilmember's abstention as a "yes" vote.

(e) A tie vote means that no action has been taken, and the item under consideration shall not be placed upon a future agenda, unless by a majority vote of the Council, city staff is directed to place the item on a future agenda, or based on new information or changes in circumstances, the City Manager places the item on a future agenda.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 5. This Ordinance shall become effective thirty (30) days after its adoption.

Section 6. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this _____ day of _____, 2022.

Vicente Sarmiento
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
John M. Funk
Sr. Assistant City Attorney

AYES: Councilmembers _____
NOES: Councilmembers _____
ABSTAIN: Councilmembers _____
NOT PRESENT: Councilmembers _____

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Daisy Gomez, Clerk of the Council, do hereby attest to and certify the attached Ordinance No. NS-_____ to be the original ordinance adopted by the City Council of the City of Santa Ana on _____, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: _____

Clerk of the Council
City of Santa Ana