

Victor Jones

COUNTY OF SAN MATEO
INTER-DEPARTMENTAL CORRESPONDENCE

DATE June 3, 1982

TO: Board of Supervisors

FROM: David L. Nichols, County Manager *DNL*

SUBJECT: East Palo Alto Municipal Council Policy Issues

On May 18 you asked for a report on five policy issues that relate to the Municipal Council of East Palo Alto. Each of those issues is discussed below:

1. Quorum and Voting Requirements. In order for an action to be approved by the Municipal Council, should three affirmative votes be required or should Roberts Rules of Order be followed which would permit two affirmative votes to rule if only three members representing a quorum were in attendance? Major local government agencies require three affirmative votes for all actions. This includes cities, counties, and school districts. Since the Municipal Council is a part of the county government and is also modeled after city government operations, I believe three votes should be required. (See memorandum from District Attorney's Office on this issue.)

2. Timing of Municipal Council Elections. Supervisor Schumacher raised the point that if the incorporation election for East Palo Alto occurred in the November general election, that would result in the election of the candidates for the new city council as well as the election of two positions on the Municipal Council. This would have been a confusing situation and a change should have been considered if that took place. However, the incorporation election will not be held during the November general election. Consequently, I recommend that the election for the two seats on the Municipal Council be held in November which would eliminate the need for extending the term of office of the incumbents of those two positions.
3. The Length of Term for the Municipal Council. Future terms of the Municipal Council could be lengthened or shortened in order for subsequent elections to be held in November of an odd year rather than during the even year general election. In the future, many city elections will be held in the odd year but county officials will be elected during even-year elections. I recommend that the four-year terms continue and that the elections for seats on the Municipal Council be held during the even year elections since they are county government positions.
4. Selection of the Administrative Officer. The Administrative Officer of the Municipal Council is a county position and as such should be appointed by the Board of Supervisors after consulting with the Municipal Council. The ordinance should clarify that the position is not a department head. If it were a department head, the appointment would be made by the County Manager in accordance with the county charter.
5. Holding More Than One Office Simultaneously. The District Attorney's Office has indicated that it is incompatible for a member of the Municipal Council to hold an additional elected office of a different public agency if the two agencies make policy decisions affecting the same issues. (See memorandum from District Attorney's Office.)

gf
enclosure

COUNTY OF SAN MATEO

INTER-DEPARTMENTAL CORRESPONDENCE

DATE June 3, 1982

TO: David Nichols, County Manager

FROM: District Attorney

SUBJECT: Voting Requirement; Incompatibility of Office

You have asked us two questions concerning the above-referenced matters. Your questions and our responses are contained in the body of this letter.

You have asked for the statutory requirement that there must be three affirmative votes for action by the Board of Supervisors, rather than a majority of those supervisors present. Section 25005 of the Government Code provides that "a majority of the members of the Board [of Supervisors] constitutes a quorum for the transaction of business. No act of the Board shall be valid or binding unless a majority of all the members concur therein." [Emphasis added] [See 58 Ops.Atty.Gen. 706]. Similar requirements are imposed on city councils [Government Code Section 36936] and the governing boards of school districts. [Education Code Section 35164].

Additionally, you have asked whether the doctrine of incompatibility of office would prevent a member of the East Palo Alto Municipal Council from holding an incompatible second office. Under the traditional common law rule, a public officer who is appointed or elected to another public office and enters upon the duties of the second office, automatically vacates the first office if the two are incompatible [55 Ops. Atty.Gen. 94]. Because of the unique nature of the East Palo Alto Municipal Council it is unclear whether the rule of incompatibility of office applies to municipal council members.

It would be appropriate for the Board of Supervisors to amend the resolution establishing the East Palo Alto Municipal Council to include a provision precluding a council member from holding a second elected or appointed position which the Board regards as incompatible with council membership. The resolution could provide that a council member may not hold any elected or appointed public office which exercises jurisdiction or authority over all or any part of the territory served by the East Palo Alto Municipal Council.

David Nichols, County Manager
June 3, 1982
Page -2-

Re: Voting Requirement; Incompatibility of Office

If you have any further questions concerning this matter,
please do not hesitate to contact us.

Sincerely,

KEITH C. SORENSON, District Attorney

By Michael L. Vinson
MICHAEL L. VINSON, Deputy

KCS/MLV:s1