

The Brown Act does not apply to a subcommittee that is made up of less than a majority of directors, is an advisory committee **AND is not a standing committee**

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Once a quorum at a meeting has been established, the continued presence of a quorum is presumed to exist only until the chair or any other member notices that a quorum is no longer present. If the chair notices the absence of a quorum, he or she should declare this fact, at least before taking any vote or stating the question on any new motion. Any member noticing the apparent absence of a quorum can and should make a *Point of Order* to that effect whenever another person is not speaking. It is dangerous to allow the transaction of substantive business to continue in the absence of a quorum. Although a *Point of Order* relating to the absence of a quorum is generally not permitted to affect prior action, if there is clear and convincing proof no quorum was present when business was transacted, the presiding officer can rule that business invalid (subject to appeal). [[RONR](#) (11th ed.), pp. 348-49; see also pp. 12-13 of [RONRIB](#).]

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When the chair calls for a vote, abstentions are not called for since an abstention is meaningless. "To 'abstain' means not to vote at all." (**Robert's Rules**, 11th ed., p 45.) Unless there is good reason not to vote, all directors (including the **president**) should vote on all motions.

Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote. (**Robert's Rules**, 11th ed., p 407.) If the vote is called for and one of the directors fails or refuses to indicate "yes" or "no" the chair of the meeting deems the director to have voted "yes" and the silent director does not object, the vote is counted as a "yes" vote.

**Proper Abstentions.** Whenever a director believes he/she has a **conflict of interest**, the director should abstain from voting on the issue and make sure the abstention is noted in the minutes. (**Robert's Rules**, 11th ed., p 407.) The other reason a director might abstain is that he/she believes there was insufficient information for making a decision. Otherwise, directors should cast votes on all issues put before them. Failure to do so could be deemed a breach of their **fiduciary duties**.

**Impact of an Abstention.** People are frequently confused about the impact of an abstention because Robert's Rules and the law differ. Under Robert's Rules of Order, votes are normally taken as the number present and voting, which means that abstentions are not counted and do not matter. Following is an example:

*Present and Voting:* 10 present, 5 yes votes, 4 no votes, 1 abstention = motion passes as a majority of the votes cast are yes (9 votes cast, 5 yes, 4 no). The result is different under the Corporations Code. Unless a greater number is called for in the articles or bylaws, a matter is deemed "approved" by the board if at any meeting at which a quorum is present at least a majority of the required quorum of directors votes in favor of the action. (**Corp. Code §7211(a)8**.) Accordingly, an abstention may have the practical effect of a "no" vote

since a motion may fail for lack of sufficient "yes" votes. For example:

*Majority of Those Present:* if five directors are present (out of five) and there is a motion to close the pool each day at 8:00 p.m. (from the current 10:00 p.m.) and two directors vote "yes," two directors vote "no," and one abstains, the motion fails. The vote needed a majority of three "yes" votes to pass and it received only two.