

The interaction between tie votes, the Mayor's authority, and what happens when a tie is not broken has been addressed by the Oakland Office of the City Attorney over the decades.

The core legal consensus under both John Russo (City Attorney 2000–2011) and Barbara Parker (City Attorney 2011–2023) is dictated by the Oakland City Charter. The definitive legal posture on what happens during a tie vote when the Mayor declines to (or cannot) break it is broken down below:

1. The Core Legal Mechanism: If the Mayor Declines, the Item Fails Under both John Russo and Barbara Parker, the legal opinions of the City Attorney have consistently maintained a bedrock principle of municipal law:

A tie vote means there is no majority affirmative vote, and therefore, the motion or legislation fails.

- The Affirmative Five-Vote Rule: The Oakland City Charter requires an affirmative vote of at least five Councilmembers to pass any ordinance or resolution.
- The Nature of the Mayor's Vote: Under Charter Section 200 (and updated Section 305), the Mayor is not a member of the City Council, but "shall have a vote on the Council if the Councilmembers are evenly divided."

PAGE(2)

- **No Compulsion to Vote:** The City Attorney's office has consistently affirmed that the Charter grants a right to the Mayor to break a tie, but it does not physically or legally compel the Mayor to cast a vote. If a tie occurs (e.g., 4-4) and the Mayor chooses not to vote, declines to vote, or is absent, the item fails because it lacks the required 5 affirmative votes. 2. John Russo's Era (2003 Opinion) In 2003, City Attorney John Russo issued an impactful formal Public Legal Opinion regarding the Mayor's tie-breaking powers.

- **Context:** The City Council attempted to amend its Rules of Procedure (Rule 25/29) to state that if a 4-4 tie occurred, the item would automatically be continued to the next meeting unless the Mayor was physically present in the room, heard the public testimony, and chose to break it right then and there.
- **Russo's Direct Ruling:** Russo ruled that the City Council could not use its procedural rules to limit or strip the Mayor of their Charter-granted right to break a tie.

- **The Mechanics of a Tie:**

Russo's opinion reinforced that when Councilmembers split evenly, the item is effectively frozen without a majority. If the Mayor does not step in to provide the 5th vote (whether immediately or at a continued meeting specifically scheduled for the Mayor to vote), the item cannot legally pass.

Barbara Parker's Era & The "Abstention Loophole" (Up to 2022)

Under Barbara Parker, the office routinely dealt with tactical maneuvers by the City Council regarding tie votes, which ultimately led to a major Charter change in late 2022.

- The "Abstention Loophole" Legacy: Prior to November 2022, if the Council was split 4-3 with one member abstaining, it was legally not an "even division" (a tie). Because it wasn't a technical 4-4 tie, the Mayor had no legal authority to step in and break it under the old Charter language. Yet, because 4 votes is less than 5, the item still failed.

- Measure X (November 2022): To address these procedural gaps, the City Council placed Measure X on the November 2022 ballot, which voters approved.
- The 2022 Reform: Measure X explicitly closed this loophole.

It amended the Charter to state that for the purposes of determining a tie, abstentions and unauthorized absences count as a "No" vote.

- The Mayor's Choice Remains: Even with Measure X changing how a tie is mathematically triggered (turning a 4-3-1 abstention into a 4-4 tie), the underlying rule remains the same: The Mayor is given the opportunity to break the tie, but if the Mayor declines or fails to do so, the measure officially dies due to a lack of 5 affirmative votes. Summary of the Legal Reality

Under Roberts Rule: Is there such a legal statute A substitute much for Reconsideration to supersede a Main Motion?

In parliamentary procedure, there is no single statute or motion that serves as an exact "substitute" to supersede a Main Motion. Instead, if a member wants to change, kill, or reverse an ongoing Main Motion, they must use specific, distinct motions, such as an Amendment (Substitution), Postpone Indefinitely, or a Motion to Reconsider.

The appropriate action depends on your goal:

1. To Change the Main Motion Currently on the Floor

If you like the general idea of the pending Main Motion but want to completely change its wording or propose a different course of action on the same topic, you can make a Motion to Substitute.

- What it does: It is a primary amendment that proposes replacing the original Main Motion with an entirely new, alternate text or resolution.**
- How it supersedes: If the assembly passes the motion to substitute, the new text becomes the pending Main**

PAGE(2)

Motion. The group must then vote on whether to adopt this new, substituted version.

2. To Kill the Main Motion Without Voting On It

If the Main Motion is on the floor and you want to dispose of it without risking a direct "Yes" or "No" vote on the core issue, you can use a Motion to Postpone Indefinitely.

- What it does: Despite its name, this motion effectively "kills" the Main Motion for the duration of the current session.
- How it supersedes: It takes precedence over the Main Motion, and if adopted, the Main Motion is removed from consideration entirely.

3. To Re-vote on a Main Motion That Already Passed or Failed

If the assembly has *already* taken a final vote on a Main Motion, you cannot amend or substitute it. You must use a Motion to Reconsider or a Motion to Rescind.

- Motion to Reconsider: Can only be made at the same meeting (or the next meeting, depending on the bylaws) and must be made by a member who voted on the winning side of the original vote. If it passes, the original Main Motion is brought back to the floor exactly as it was just before the initial vote.
- Motion to Rescind / Amend Something Previously Adopted: Used if it is a past meeting or the timeframe for reconsideration has expired. This actually cancels or changes the previously passed action.



PAGE(3)



Cornell University

- Summary of Common Motions - Weber State University

paragraphs; or substitute entire paragraph(s) or the entire text of the motion and insert another. (Ch. VI, §12). When an entire m...



|

There is NO Parliamentary Procedure that refers to “Substitute Motion for RECONSIDERATION” under Roberts Rule!

There is no motion called a “Substitute Motion for Reconsideration” in *Robert’s Rules of Order Newly Revised (RONR)*.

The concepts of a Substitute Motion and a Motion to Reconsider are entirely separate, serve different purposes, and cannot be combined into a single parliamentary action.

Why They Cannot Be Combined

- A Substitute Motion is a form of an amendment used to alter the text of a motion that is currently being debated (pending before the assembly).
- A Motion to Reconsider is used to bring back a motion that has already been voted on and finalized (no longer pending).

Because a motion cannot be actively under debate and already finalized at the exact same time, you cannot apply a substitute motion to a reconsideration. If a member wishes to change a motion after a vote to reconsider has passed, they must first successfully carry the Motion to Reconsider to bring the original item back to the floor, and *only then* can they offer a Substitute Motion to replace its text.

To amend or modify the course of action for City of Oakland File #: 26-0267 regarding Matthew Bernard and Lynn Warner's property (APN 48H-7672-18), a council member must follow specific parliamentary steps. Because the original motion to impose the full \$915,135.40 fine resulted in a tie vote on April 14, 2026, and was subsequently approved at a later meeting, a member cannot simply "amend" a dead or already decided motion.