

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

**GENE HAZZARD,
Petitioner**

v.

**CITY OF OAKLAND; CITY COUNCIL PRESIDENT KEVIN JENKINS; CITY
COUNCILMEMBER JANANI RAMACHANDRA; CITY ATTORNEY RYAN RICHARDSON AND
DOES 1-20 ,
Respondents.**

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PETITION FOR WRIT OF MANDATE AND DECLARATORY RELIEF**

I. INTRODUCTION

This Memorandum addresses whether Oakland City Council President Kevin Jenkins acted lawfully when he suspended Rule 29 of the Oakland City Councils Rules of Procedure following Mayor Barbara Lee's discretionary decision not to break a tie vote of the November 4, 2025 Special City Council meeting.

PAGE(2)

Petitioner challenges the unlawful *suspension* of Oakland City Council Rule 29 by Council President Kevins following Mayor Barbara Lee's *discretionary* decision not to break a 'tie' vote on November 4, 2025. Mayor Lee had reviewed the Agenda Report of October 9, 2025 forwarded to Mayor Lee from President Kevin Jenkins and Councilmember Ramachandra with their recommendation *Amending and Restating the Council Rules of Procedure*. [herein attached]

As shown below, once the Mayor- acting pursuant to the Oakland City Charter- declined to exercise her discretion to break the tie, the matter **failed** as a matter of law.

At that point, no parliamentary maneuver, rule suspension, or procedural devise could revive the failed item without violating the City Charter, the Councils own adopted Rules, the Brown Act, and settled principles of due process and legislative finality.

The suspension of Rule 29, under these circumstances was therefore **ultra vires, void, and subject to mandamus and declaratory relief.**

II. RELEVANT FACTUAL BACKGROUND

1. On November 4, 2025 , the Oakland City Council considered an agenda item that resulted in a tie vote among Council members
2. Under the Oakland City Charter the Mayor presides over the Council and is *vested* with *discretionary* authority to cast a tie breaking vote.
3. Mayor Barbara Lee expressly *declined* to exercise her discretion to break the *tie*.
4. As a result, the motion *failed*.
5. Despite the *failure* of the item, Council President Kevin Jenkins purported to suspend Rule 29, thereby attempting to:
.Reopen

PAGE(3)

.Reconsider, or

.Otherwise revive the *failed* legislative action

6. **NO** properly noticed motion for reconsideration was made, nor could one *lawfully be made given the posture of the vote and the Mayor's discretionary declination*

III. GOVERNING LAW

A. Oakland City Charter Controls Over Council Rules

***Municipal legislative bodies are creatures of the Charter
Where Charter provisions conflicts with a council rule, the
CHARTER CONTROLS.***

“A city council may not, by rule or resolution, alter powers or procedures fixed by its charter”.

Domar Electric, Inc. City of Los Angeles(1994) 9 Cal. 4th 161,171

The Oakland City Council Rules of Procedure- including Rule 29- exist only by delegation from the Charter and *may not be applied in a manner that defeat or circumvents charter-mandated outcomes.*

B. The Mayor's Tie- Breaking Authority is *Discretionary, Not Mandatory*

The Oakland City Charter grants the Mayor authority to break tie votes, but *does not compel the Mayor to do so.*

A *discretionary declination:*

. is a *final* exercise of executive judgment and

PAGE(4)

.Leaves the tie vote *undisturbed*, resulting in *failure* of the motion.

Once the Mayor declines, *no residual authority remains in the Council President or Council majority to override that choice.*

C. A Tie Vote is Not Broken Results in *Failure* as a Matter of law.

California law is clear:

“In the absence of a majority vote, a motion *fails*”

-*Santa Clara County Local Transportation Authority v. Gardino*(1995) 11 Cal. 4th 220

***A failed* motion:**

**CANNOT BE TREATED AS “*PENDING*”
CANNOT BE REVIVED BY RULE SUSPENSION, AND
CANNOT BE RE-VOTED UPON ABSENT OR PROPERLY NOTICED
RECONSIDERATION CONSISTENT WITH ADOPTED RULES AND
DUE PROCESS**

**IV. RULE 29 CANNOT BE SUSPENDED TO
OVERRIDE A *FAILED* VOTE**

A. Rule 29 is Procedural, *Not Substantive*

PAGE(5)

*Rule 29(suspension of rules) is designed to facilitate **orderly** procedure **not to :***

**Reverse outcomes,
Alter vote thresholds, or
Nullify Charter- based consequences**

**A procedural rule *cannot* be used to resurrect a legislative act
That has already *failed*.**

**“Rules of procedures *may not* be applied so as to deprive
members of the public of substantive rights.”**

- *McKee v. Bell-Carter Olive Co.(1946) 73 Cal.App. 2d 339*

B. Suspension of Rules Cannot Cure Jurisdictional Defects

Once the vote ***failed***:

The Council *lost* jurisdiction over the item in that meeting

Any further action was *void ab initio*

“An act taken in **excess of jurisdiction is void and subject to
collateral attack.”**

-*City of Los Angeles v. Superior Court (1959) 51 Cal. 2d. 423*

PAGE(6)

Suspending Rule 29 cannot confer *jurisdiction* that no longer exist.

V. THE ACTION VIOLATED THE BROWN ACT

The Brown Act(Gov. Code section 54950 et. seq)
Prohibits legislative bodies from:

. *Taking action on matters not properly notices , or*

. *Manipulating procedure to achieve outcomes not
Disclosed to the public*

*Reviving a **failed** item through rule **suspension**:*

. **Deprive the public of notice that the matter was still
alive.**

. **Constitutes action taken in violation of open-meeting
Requirements, and**

. **Is subject to nullification under Government Code
Section 54960.1**

VI. DUE PROCESS AND LEGISLATIVE FINALITY

PAGE(7)

Fundamental due process *requires*:

- . **Predictable procedures**
- . **Finality of votes, and**
- . **Protection against *arbitrary* governance**

*Allowing a Council President to override a **failed** vote after Mayor Lee's discretionary **declination** would:*

- . **Destroy legislative FINALITY**
- . **Chill dissenting votes, and**
- . **Concentrate *unlawful* power in the presiding officer.**

California courts have consistently rejected such outcomes.

VII. RELIEF WARRANTED

Because Council President Kevin Jenkins acted *without* authority the Court Should:

1. **Declare that the November 4, 2025 tie vote *failed* as a matter of law upon the Mayor's discretion;**

PAGE(8)

2. Declare that the *Suspension of Rule 29* under these circumstance was *unlawful* and void
3. Issue a writ of mandate compelling the City to:
 - . Rescind any action taken pursuant to the *unlawful* suspension; and
 - . Cease and Desist from similar conduct in the future
 - . Refrain from scheduling SPECIAL CITY COUNCIL MEETINGS that have more Than a *SINGLE SUBJECT MATTER* as was the case for the November 4, 2025 Special City Council Meeting which is in violation of section 208 of the City Charter and in violation of the November 9, 2017 CITY ATTORNEY'S LEGAL OPINION governing SINGLE SUBJECT AGENDA ITEMS for SPECIAL CITY COUNCIL MEETINGS
4. Grant such further relief as the Court deems just and proper.

VII, CONCLUSION

Mayor Barbara Lee's *discretionary* refusal to break a tie vote is *final and binding* Council President Kevin Jenkins attempt to *suspend* Rule 29 to undo that result was *ultra vires* violated the Oakland City Charter, the Brown Act, and Due Process, and must be set aside.

VERIFICATION

I Gene Hazzard declare:

I am the Petitioner in this action> I have read the foregoing Memorandum of Points and Authorities and know the contents thereof. The same isw true of my own knowledge except as to matters stated on information and belief, and as to matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this day _____ of _____ 2026, at Oakland, California
Gene Hazzard, Petitioner

EXHIBITS FOR WRIT OF MANDATE

RE: SUSPENSION OF RULE 29

FILE 26-0028

EXHIBIT [A] AGENDA REPORT OCTOBER 9, 2025

**SUBJECT : AMENDING AND RESTATING THE
COUNCIL RULES OF PROCEDURE FWD TO
MAYOR BARBARA LEE**

**EXHIBIT [B] 10/16/25 THE RULES AND LEGISLATION COMMITTEE
APPROVED TO CONTINUE ITEM...**

**EXHIBIT [C] 10/30/2025 THE RULES AND LEGISLATION
COMMITTEE APPROVED TO SEND THIS TO THE
11/4/2025 SPECIAL CITY COUNCIL AGENDA...**

**EXHIBIT [D] 11/4/2025 SPECIAL CITY COUNCIL MEETING. PER
THE MINUTES...**

**EXHIBIT [E] 12/2/2025 AT THE CITY COUNCIL MEETING, THE
MAYOR *DECLINED* TO BREAK THE TIE...**

**EXHIBIT[F] 12/16/2025 AT THE CITY COUNCIL MEETING, THIS
ITEM *PASSED* AS AMENDED WITH A VOTE OF
5 EYES: BROWN, HOUSTON, RAMACHANDRAN,
UNGER AND JENKINS; 3 NO's : FIFE, GALLO AND
WANG**

**EXHIBIT[G] 12/16/2025 RESOLUTION 91010 :
INTRODUCTED BY COUNCILMEMBER JANANI
RAMACHANDRAN AND COUNCILMEMBER KEVIN
JENKINS**