

VIA EMAIL

January 29, 2025

Salavador Melendez – Mayor
Georgina Tamayo – Mayor Pro Tem
Scarlet Peralta – City Council Member
Christopher Jimenez – City Clerk
Arnold Alvarez-Glassman – City Attorney
City of Montebello

Re: Quorum Necessary to Fill Council Vacancies

I was asked by several Montebello residents to address the necessary quorum, in light of the recall of Councilmember Jimenez and resignation of Councilmember Torres, of the Montebello council to appoint one or more new members to fill vacancies on the council. **The simple answer is a quorum of three (3) members is required to appoint councilmembers to fill vacancies in nearly all circumstances, just as it is required to take nearly any action.** In the event any one of the three remaining councilmembers is not present, there is no quorum and no appointment can be made.

As I explained in my previous letter of February 2, 2023, when the Montebello City Council was contemplating appointing two new members to fill perceived vacancies on its then-seven-member council, the decision in *Price v. Tennant Community Services District* (1987) 194 Cal.App.3d 493 is directly on point. In *Price*, the court considered whether a quorum (in that case three members of a five-seat board) was required to appoint new members to fill vacancies. The court determined that a quorum was required, and thus reversed the decision of the trial court.

As explained in *Price*, a quorum is a majority of the total size of a board – for the five-seat board in *Price*, just like the five-seat governing board of Montebello, that is three. (Also see Gov't Code 36810 [“A majority of the council constitutes a quorum for transaction of business.”]) Without three members present, non-ministerial acts cannot be performed by a five-member city council.

While a creative advocate – not an evenhanded judge – looking to justify

January 29, 2025

Page 2 of 2

appointments by less than a quorum of a city council, might point to *Nesbitt v. Boltz* (1939) 13 Cal.2d 677, that case does not support that position. As the court in *Price* explained, the *Nesbitt* decision addressed a very narrow unique situation – the peculiar statutory scheme of recall elections that existed at that time (but has since been replaced). Where, unlike in *Nesbitt*, the Government Code (or another statute) requires a quorum for action by a governing board, the *Nesbitt* decision is inapplicable. The Government Code requires a quorum for city council action, just like it required a quorum for a community services district to take action in *Price*. (See Gov't Code 36810).

Attempting to act without a quorum of three members present, would only serve to invite costly and inevitable litigation.

I hope this is helpful in aiding you to navigate the current circumstances. If I can be of further assistance, or you would like to discuss this matter, please feel free to call me at 310-457-0970.

Very truly yours,

Kevin Shankman

Kevin I. Shankman

Cc: William Cervera