



Fair Campaign Practices Commission
Open Government Commission

CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

MEETING AGENDA

February 16, 2023

6:00 p.m.

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Fair Campaign Practices Commission and Open Government Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Members of the public interested in attending will be able to observe and address the meeting using the following information:

Please use the following link to join the meeting: <https://us02web.zoom.us/j/88456418606>

Or Telephone: +1 669 900 6833

Meeting ID: 884 5641 8606

Secretary: Samuel Harvey

The Commission may act on any item on this agenda

1. Call to Order 6:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for January 19, 2023 FCPC-OGC Special Meeting

Fair Campaign Practices Commission (FCPC) Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.

6. Biennial adjustment of Berkeley Election Reform Act dollar amounts for cost of living pursuant to BMC section 2.12.545; discussion and possible action.
7. Report from subcommittee on contribution limits under Berkeley Municipal Code § 2.12.415; discussion and possible action.

Open Government Commission (OGC) Agenda

8. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
9. Letter to Council regarding commission meeting minutes posting requirements; discussion and possible action.
10. Use of Live Transcription for teleconferenced meetings; discussion and possible action.
11. Possible changes to public commenting practices for City Council meetings; discussion and possible action.

Joint FCPC-OGC Calendar

12. Election of FCPC-OGC Chair and Vice-Chair; discussion and possible action
13. Adjournment.

Communications

- Email from Kelly Hammargren

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD). Please refrain from wearing scented products to this meeting.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board,

commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

January 19, 2023

CONCURRENT SPECIAL MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting was conducted exclusively through teleconference and Zoom videoconference.

Secretary: Samuel Harvey

Members Present: Jessica Blome, Janis Ching, Pedro Hernandez, Patrick O'Donnell, Jedidiah Tsang, James, Hynes

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:15 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment**

One speaker.

4. **Approval of Minutes:**

a. November 17, 2022 FCPC-OGC Concurrent Regular Meeting

a. Public comment: none.

b. Commission discussion and action.

Motion to approve minutes (M/S/C: O'Donnell/Ching; Ayes: Blome, Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: Tsang; Absent: Bernstein.)

FCPC Agenda

5. **Reports**
 - a. Report from Chair
 - b. Report from Staff

6. **Amendments to BERA sections 2.12.415 and 2.12.545 to clarify method for cost of living adjustments for campaign contribution and public financing dollar amounts and to better coordinate adjustments with timing of relevant data availability**
 - a. Public comment: No speakers.
 - b. Commission discussion and action.

Motion to approve staff's recommendation for submission to the City Council (M/S/C: Ching/Tsang; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

7. **Report from contribution limits subcommittee under BMC § 2.12.415**
 - a. Public comment: No speakers.
 - b. Commission discussion.

OGC Agenda

8. **Reports**
 - a. Report from Chair.
 - b. Report from Staff.

9. **Commission meeting minutes posting requirements**
 - a. Public comment: One speaker.
 - b. Commission discussion.

10. **Use if Live Transcription for teleconferenced meetings**
 - a. Public comment: One speaker.
 - b. Commission discussion and action.

Motion to direct Commissioner Ching to draft amendment to City's Commissioner Handbook re use of Live Transcription for teleconferenced meetings M/S/C: Blome/O'Donnell; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

Joint FCPC-OGC Agenda

11. **Adoption of 2023 FCPC-OGC Joint Concurrent Meeting Schedule**

- a. Public comment: no speakers.
- b. Commission discussion and action

Motion to adopt calendar changing start time to 6:30 p.m. beginning with the March regular meeting M/S/C: Blome/O'Donnell; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

12. **Chair and Vice-Chair elections to be held at February meeting**

- a. Public comment: no speakers.
- b. Commission discussion.

13. **Adjournment**

Motion to adjourn M/S/C: O'Donnell/Ching; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

The meeting adjourned at 8:01 p.m.



City Clerk Department

February 16, 2023

To: Fair Campaign Practices Commission
 From: Mark Numainville, City Clerk
 Subject: Mandated Cost of Living Adjustments for Public Financing Program

Under the Fair Elections Act of 2016 (Public Financing), certain data points and dollar amounts are required to be adjusted by the Commission in January of each odd-numbered year (BMC 2.12.545). Due to the timing of CPI data release by the State, these adjustments were not able to be presented to the Commission in January.

The adjustment for the dollar amounts is based on the Consumer Price Index for the San Francisco Area. The formula established by the State Fair Political Practices Commission for adjusting contribution limits for state candidates is also used for adjusting the limits for Berkeley's Public Financing Program. The factors labeled "2016 Dollar Amounts" and "2016 Annual CPI" will remain constant when the formula is applied in all subsequent odd-numbered years because those reflect the original amounts in the ballot measure. The numerator will change to reflect the year in which the adjustment is calculated.

$$\begin{array}{r}
 \text{2016 Dollar Amounts} \times \frac{\text{2022 Annual CPI}}{\text{2016 Annual CPI}} = \text{2023 Dollar Amounts}
 \end{array}$$

The CPI numbers used are the December 2016 number (269.5) and the December 2022 number (331.22). The December number is used because the State Department of Finance does not calculate the standard CPI-U in January.

The chart in Attachment 1 shows all of the amounts that are subject to the inflator, the original amount, the new amount (raw and rounded), and the code reference. For the 2023 adjustments, we have added Auditor, School Board and Rent Board as they were added to the program in 2021.

At its inception in 2016, the Public Financing Program has had a contribution cap of \$50.00, with a matching contribution from the City of \$300.00, for a total of \$350.00 from a single donor. For the 2022 election cycle the amounts were raised to \$60 and \$360. For the January 2023 adjustments, there is no change to the contribution limit or matching amount based on the CPI inflator. Some of the other dollar amounts have changed as presented in Attachment 1.

Upon approval by the Commission, all manuals and materials related to Public Financing will be updated to reflect the new dollar amounts.

Item Subject to Inflator	Starting Amount (Dec 2016)	Inflator	Previous Amount (2021)	Adjusted Amount 2023	Rounding	Rounded Amount 2023	Amount Reference	Inflator Reference
Population	120,972	Census Update	121,353	124,321	Up to nearest whole number	124,321	Art. III, Sec.6.2 (2)(a)	Art. III, Sec.6.2 (3)
Admin Costs (four year cycle)	\$250,000	CPI - U	\$290,914.33	\$307,254.17	None	\$307,254.17	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Per Resident Allocation	\$4.00	CPI - U	\$4.65	\$4.92	None	\$4.92	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Cap in Fund Balance	\$2,000,000	CPI - U	\$2,327,314.64	\$2,458,033.40	None	\$2,458,033.40	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Qualified Contribution	\$50.00	CPI - U	\$60.00	\$61.45	Nearest \$10	\$60.00	2.12.167	2.12.545
Capital Asset Cap	\$500.00	CPI - U	\$580.00	\$614.51	Nearest \$10	\$610.00	2.12.530.B.2.c	2.12.545
Initial Qualified Contributions	\$10.00	CPI - U	\$10.00	\$12.29	Nearest \$10	\$10.00	2.12.500.A.3.	2.12.545
Initial Qualified Contributions - Total	\$500.00	CPI - U	\$580.00	\$614.51	Nearest \$10	\$610.00	2.12.500.A.3.	2.12.545
Matching funds limit - Mayor	\$120,000	CPI - U	\$140,000.00	\$147,482.00	Nearest \$1,000	\$147,000.00	2.12.505.B.	2.12.545
Matching funds limit - Council	\$40,000	CPI - U	\$47,000.00	\$49,160.67	Nearest \$1,000	\$49,000.00	2.12.505.B.	2.12.545
Matching funds limit - Auditor*	\$20,000	CPI - U	n/a	\$24,580.33	Nearest \$1,000	\$25,000.00	2.12.505.B.	2.12.545
Matching funds limit - Rent Board*	\$8,000	CPI - U	n/a	\$9,832.13	Nearest \$1,000	\$10,000.00	2.12.505.B.	2.12.545
Matching funds limit - School Board*	\$20,000	CPI - U	n/a	\$24,580.33	Nearest \$1,000	\$25,000.00	2.12.505.B.	2.12.545

* In 2022, the program was expanded to include Auditor, School Board Director, and Rent Stabilization Board Commissioner candidates.

2022			
Office Sought	Candidate	Total Expenditures	
Auditor	Jenny Wong*	\$	17,610.00
Rent Stabilization Board	Soli Albert*	\$	35,587.04
Rent Stabilization Board	Stefan Elgstrand*	\$	12,335.76
Rent Stabilization Board	Negeene Mosaed	\$	11,797.95
Rent Stabilization Board	Wendy Hood	\$	10,440.85
Rent Stabilization Board	Vanessa Marrero*	\$	10,228.00
Rent Stabilization Board	Ida Martinac*	\$	8,889.02
Rent Stabilization Board	Soulmaz Panahi	\$	5,046.51
Rent Stabilization Board	Bahman Ahmadi	\$	3,718.83
Rent Stabilization Board	Carole Marasovic	\$	3,324.54
Rent Stabilization Board	Nathan Mizell*	\$	2,088.17
Rent Stabilization Board	Pawel Moldenhawer	\$	563.33
School Board Trustee	Reichi Lee	\$	54,842.55
School Board Trustee	Jennifer Shanoski*	\$	36,979.00
School Board Trustee	Michael Chang*	\$	19,731.44
School Board Trustee	Ka'Dijah A. Brown*	\$	7,130.71
School Board Trustee	Mara Kolesas	\$	5,292.44
School Board Trustee	Tatiana Guerreiro Ramos	\$	4,844.19
School Board Trustee	Norma Harrison	\$	538
City Council District 1	Rashi Kesarwani*	\$	67,358.32
City Council District 1	Elisa Mikiten	\$	24,663.99
City Council District 1	Tamar Michai Freeman	\$	6,044.22
Council District 4	Kathryn Harrison*	\$	61,727.26
Council District 4	Gregory Magofna	\$	4,121.73
Council District 7	Rigel Robinson*	\$	30,487.61
Council District 7	Aidan Hill	\$	1,298.22
Council District 8	Mark Humbert*	\$	57,815.00
Council District 8	Mari Mendonca	\$	25,405.85
Council District 8	Mary-Lee Smith	\$	8,934.94
Council District 8	Jay Wu	\$	445.99
Council District 8	Peter DuMont	\$	
*Indicates winning candidate. Note: Amounts taken from most recent filed Form 460 for time periods ending in December, line item 10, "TOTAL EXPENDITURES MADE", Column B (calendar year to date), or expenditures made during the last reported period (Column A) if higher. If a candidate reported spending in 2023, that amount was added to the 2022 cumulative total.			

To: Honorable Mayor and Members of the City Council
Madame City Manager

From: Jim Hynes, Chair, Open Government Commission

Subject: Resolution Directing City Legislative Bodies to Enable Live Transcription When Meeting Via Videoconference and Teleconference

RECOMMENDATION

Add a sentence to the Commissioner's Manual Chapter V, Section B paragraph 2, stating, "Live transcription will be enabled for any meeting that is held via Teleconferencing or Videoconferencing."

FISCAL IMPACT OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

City Council meetings are already closed captioned and recorded, but Council Committee meetings are not. Live Transcription is available at no cost through Zoom Professional Accounts. As these meetings occur during working hours, members of the public may not be able to attend Committee meetings and would benefit from access to the

The Commissioner's Manual lays out the rules and procedures governing commission meetings and was adopted in 2019.

On March 10, 2020, the City Council ratified the proclamation of the Director of Emergency Services for a state of local emergency related to the COVID-19 pandemic. The emergency proclamation has been renewed several times by the Council, most recently on January 31, 2023, and remains in effect.

All City meetings currently continue to meet either online or in a hybrid format. No direction has been provided as to how teleconference and videoconference meetings are to be conducted, except for Resolution No. 69,681-N.S., adopted on January 19, 2021, authorizing temporary suspension of provisions of the Commissioners' Manual that require ad hoc subcommittees of City boards and commissions follow State open meeting procedures.

BACKGROUND

The Open Government Commission has been asked by the public to research the possibility of enabling live transcription on every City meeting conducted with a virtual component that does not already have live captioning.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Not applicable.

RATIONALE FOR RECOMMENDATION

The Resolution would enable members of the public to more easily access meetings of

the City Council, its committees, and its boards and commissions which, for any reason, hold public meetings via videoconference and teleconference. This is a free service already included in videoconferencing packages such as Zoom and only needs to be enabled once to apply to all meetings of a given body. While live transcription is a robot transcription and not as accurate as having a live captioner, it provides the public an opportunity to read what has been said, thus enhancing public participation at no additional cost.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Jim Hynes, Chair, Open Government Commission

**Commissioners Manual
Chapter V**

B. BASIC RULES AND PROCEDURES OF COMMISSION MEETINGS

With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public (Government Code Section 54953). No one can be required to give his or her name in order to attend or speak at a meeting.

Audio or videotaping of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes “a persistent disruption of the proceedings” (Government Code Section 54953.5(a)).

Teleconferencing by commissioners is not permitted for requests based on travel, vacation, work conflict or any other unforeseen situation. Teleconferencing by commissioners is only permitted when provided as a reasonable accommodation under the American with Disabilities Act (ADA) as determined by the Commission Secretary and Disability Services Program personnel. Teleconferencing is approved on a case-by-case basis and is dependent upon accommodation resources available at the meeting location. **Live transcription will be enabled for any meeting that is held via Teleconferencing or Videoconferencing.** Pursuant to the Brown Act, the address from which the commissioner is teleconferencing must be included on the relevant meeting agenda and the meeting agenda must be posted at the teleconferencing location.

Harvey, Samuel

From: Ching/Battles <battles.ca@sonic.net>
Sent: Tuesday, January 10, 2023 7:48 PM
To: Berkeley Mayor's Office; Hahn, Sophie; Wengraf, Susan
Cc: Harvey, Samuel; Jim Hynes
Subject: Changes to public comment at City Council Meetings
Attachments: Reforms to Public Comment Procedures.docx

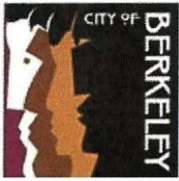
WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Agenda Committee Members Mayor Arreguin, Councilmembers Hahn and Wengraf,

I am writing in my capacity as Commissioner on the Open Government Commission (OGC) to ask for information on the attached item proposed by former Councilmember Droste. I understand the Agenda Committee is looking into this proposal, but it looks like it has been pulled from the Jan 17th City Council agenda. As you know, the OGC is very interested in any resolution that would change public participation in our city government. I'm wondering if you are considering putting it forward at a later date. If so, I respectfully request that you let us know that date and send us the latest version of this proposed resolution so that our commission can discuss it at our next meeting. I have included our Commission Secretary on this message so that discussion of the document, whether it be the version attached here or a revised version, can be added to our January 19th agenda.

Thank you and hope your year is off to a good start,

Janis Ching
Open Government Commissioner



Lori Droste
Councilmember, District 8

Action Calendar
January 17, 2023

To: Honorable Mayor Jesse Arreguin and Members of the City Council

From: Council member Lori Droste

Subject: Reforms to Public Comment Procedures at meetings of the Berkeley City Council

Recommendation

Adopt a Resolution revising the City Council Rules of Procedure and Order: Section IV. Conduct of the Meeting and Appendix C Temporary Rules for The Conduct of City Council Meetings Through Video Conference During The Covid-19 Emergency to:

1. Consolidate non-agenda public comment, public comment on the Consent Calendar, and public comment on Action Items into a single public comment period toward the start of the Council meeting (consistent with the Berkeley Unified School District's public comment procedure), and continue to provide for additional time for public comment at the end of meetings;
2. Adopt reasonable limits on the overall number of public speakers (consistent with rulings from the Second District Court of Appeal) with a mechanism for the City Council to extend public comment; and
3. Rescind Resolution No. 70,091- N.S

Current Situation and Its Effects

City Council has occasionally tried to rebalance the City's approach to public comment at Council meetings to create a more welcoming atmosphere, conduct the people's business efficiently, and ensure elected officials have time to give items due consideration. Unfortunately, members of the public, applicants/appellants, and staff frequently have to wait for hours before an item is heard or unexpectedly moved to another meeting. This is due to the way public comment was established prior to the tenure of any of the current Councilmembers or the Mayor. This prevents many ordinary people, particularly those who have small children or work long hours, from having a reasonable opportunity to provide public comment and hear the Council deliberate. It also deprives the Council of the time needed for adequate consideration of items, especially major policy efforts, and frequently pushes important items to future meetings.

Background and Rationale

Pursuant to the Brown Act, Section 54954.3, members of the public shall be afforded the opportunity to speak on any agenda item of a substantive nature providing they are first recognized by the presiding officer. City Council greatly values input and comment from a broad cross-section of the public on legislative matters. The City of Berkeley and Councilmembers appreciate and admire the dedication of the many mainstays at public comment. Nevertheless, other community members often feel overwhelmed and intimidated by the prospect of enduring hours-long City Council meetings, not just to provide public comment but to even hear the Council's discussions. Having to wait through hours of public comment (much of which is often

duplicative) before one gets to participate and/or hear the position of one's elected representatives is neither fair, equitable, nor good for democracy.

Public comment and Council procedures have undergone iterations before. Most recently, Mayor Arreguin offered a very successful and equitable amendment to require three councilmembers to agree to pull an item from the consent calendar to the action calendar, instead of one councilmember or four public speakers. This change dramatically helped meetings run smoother and ensured that uncontroversial and broad-consensus consent calendar items were not subject to attempts at obstructionism or unduly long debates which extended meeting times.

Even with that positive change, the current approach to public comment ironically does not likely widen opportunities for civic engagement; but instead serves to preclude a more representative sample of participants-as political scientists from Boston University have [found](#). Currently, many residents must wait for extended periods of time in order to provide public comment on specific legislation, since no specific times are available for when a piece of legislation will be heard. This means that people who may care deeply about a particular issue are discouraged from participating in favor or those who have a general interest in speaking and the timeto sit through the entirety of a meeting. Although their commitment and interest are commendable, such individuals are not necessarily representative of the broader public.

[The Brown Act](#) actually provides leeway for the City to consider other approaches to public comment. Under the Brown Act, the City must allow the public to comment on any agenda item; and there are certain items that require ensuring public comment from all interested parties (e.g., quasi-judicial proceedings and public hearings where due process demands allowing comment from all participants). But for most items, the Brown Act permits agencies to limit the amount of time for public comment on any given item, provided that such limits are content-neutral. For example, for most Council items, the City Council would be permitted under the Brown Act to impose a 10-minute limit on public comment, comprising ten speakers with one minute each, with the speakers determined on a lottery or first-come, first-served basis. Alternatively, the City Council could also adopt a content-neutral limitation on the number of speakers for a general public comment period at the start of each meeting which covers all agenda and non-agenda comments - as proposed in this item.

In its decision in the 2018 Ribakoff v. City of Long Beach, et al. decision, the Second District Court of Appeal ruled in part:

*"On the other hand, having no limit on either the length of any particular presentation by a member of the public **or on the number of public speakers (or on the total time for public comment)** has the potential for endless discussion-given the potential that there will be a far greater number of members of the public who may wish to speak to an issue than there are staff and guests who make presentations concerning it. The number of staff and invited guests speaking on a topic will clearly be limited; **the potential for public speakers is potentially extensive and needs some reasonable limitation.***

*We do not suggest that members of the public may not have expertise, or that their presentations would be of lesser value than those of the invited, expert staff and guest speakers, **only that their number must be considered in weighing the time allotted to public participation.** Indeed, this concern was a factor in shaping the text of Government Code section 54954.3 as it moved through the Legislature with*

*amendments to the Brown Act adopted in 1986. On the one hand, the Legislature declared the importance of open governance and the public's right to participate. On the other, it **validated enactment of limits on public speakers so that the business of government could function.** (Gov. Code, § 54954.3.)²³[emphasis added]"*

Members of the public would still have ample additional means of addressing their concerns to councilmembers, including in-person meetings and office hours, written correspondence, emails, telephone calls, and social media/online platforms. Although it is beyond the scope of this item, the City may also wish to explore expanding and enhancing Berkeley Considers to provide a new platform for community members to provide comments on upcoming Council items. Berkeley could potentially pioneer having a "one-stop shop" for members of the public to provide feedback on upcoming Council items and have that feedback delivered to Council in a formalized and easily visualized format.

Best Practices

Berkeley Unified School District

The Berkeley Unified School District has adopted [a practice](#) that is likely more conducive to allowing a broader participation of residents in the civic process. There are two opportunities for public comment, one at the beginning and one at the end of the meeting. By allowing public comment at the beginning of the meeting, individuals do not have to wait for hours for an item with an unknown start time. And In other cities, the presiding officer can limit individual presentations, the amount of time allotted for public input, and/or limit the number of speakers with similar positions. This item proposes to use the approach used by BUSD.

Fiscal Impacts

De minimis costs for staff to revise local and public-facing digital copies of the City Council's Rules of Procedure and time and materials costs for any printing of physical copies.

Long-term fiscal impacts are speculative, but reduced Council and staff time for the receipt and management of in-person and virtual public comment have a strong potential to reduce City costs. The cost reductions would be highly variable depending on the number and nature of staff present at any given City Council meeting.

Alternative Actions Considered

Alternative Actions include but are not limited to:

- Leaving existing public comment policies and procedures unchanged.
- Adopting a limit on the number of public speakers for each item.

These options were rejected in favor of the more "tried and true" approach currently used by the Berkeley Unified School District, as well as other jurisdictions and agencies across California.

Contact Person

Councilmember Lori Droste (legislative aide Eric Panzer)

erpanzer@cityofberkeley.info

Phone: 510-981-7180

RESOLUTION NO ##,###-N.S.

RE-ADOPTING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER AND
RESCINDING RESOLUTION NO. 70,091-N.S.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the revised sections of the City Council Rules of Procedure and Order attached hereto as Exhibit A shall replace wholesale the corresponding sections of the existing City Council Rules of Procedure and Order attached hereto as Exhibit B and incorporated by reference.

BE IT FURTHER RESOLVED that the revised City Council Rules of Procedure and Order (Exhibit B as amended by Exhibit A) shall govern all proceedings of the City Council therein described, subject to the exceptions and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, except as provided for by the adopted Rules of Procedure and Order.

BE IT FURTHER RESOLVED that the Council shall review its Rules of Procedure and Order in March of each odd-numbered year per [April 26, 2016 City Council action](#).

BE IT FURTHER RESOLVED that Resolution No 70,091-N.S. is hereby rescinded.

Exhibits

Exhibit A: Sections of the City Council Rules of Procedure and Order to be revised

Exhibit B: Existing City Council Rules of Procedure and Order

Exhibit A: Sections of the City Council Rules of Procedure and Order to be Revised

IV. CONDUCT OF MEETING

A. Comments from the Public

Public comment will be taken in the following order:

- An initial ~~ten-minute~~ period of public comment on non-agenda items, the consent calendar, action items (excluding public hearings, appeals, and/or other quasi-judicial matters), and information items, after the commencement of the meeting and immediately after Ceremonial Matters and City Manager Comments.
- ~~Public comment on the Consent and Information Calendars.~~
- Public comment on ~~action items, any~~ appeals, ~~and/or~~ public hearings, and/or other quasi-judicial matters requiring extended public comment for due process purposes, as they are taken up under procedures set forth in the sections governing each below.
- Public comment on non-agenda items from any speakers who did not speak during the first round of ~~non-agenda~~ public comment at the beginning of the meeting.

Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. A speaker wishing to yield their time shall identify themselves, shall be recognized by the chair, and announce publicly their intention to yield their time. Disabled persons shall have priority seating in the front row of the public seating area.

A member of the public may only speak once at public comment on any single item, unless called upon by the Mayor or a Councilmember to answer a specific inquiry, or unless the individual is speaking with respect to a public hearing, a quasi-judicial matter, and/or any other item requiring unrestricted public comment as a matter of due process.

Prior to the general public comment period, the Presiding Officer shall announce any planned changes to the order of the agenda, including any items which are being moved to the Consent Calendar and/or any items that are being removed from the agenda at the prerogative of the Presiding Officer and/or the item's sponsor(s).

The Presiding Officer will request that persons wishing to speak, line up at the podium, raise their hands on Zoom, or otherwise indicate their intent to speak in order to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking virtually or in person, each speaker may speak for two minutes at the discretion of the Presiding Officer. If there are more than ten persons interested in speaking, the Presiding Officer shall limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one another, however no one speaker shall have more than four minutes.

A maximum of 50 individuals shall be permitted to speak or yield time during the general public comment period. This maximum shall apply whether speakers are virtual, in person, or a combination of the two. In the event that more than 50 individuals wish to speak at a fully virtual or fully in-person Council meeting, speaking opportunities shall be given on a "first come, first served" basis.

In the event that more than 50 individuals wish to speak at a "hybrid" Council meeting (with both a virtual and in-person component), 25 in-person speakers shall be allowed to speak first.

followed by 25 virtual speakers. For both the virtual and in-person queues, speakers shall be recognized in the order they lined up or provided virtual notification of their intent to speak. If the queue for either type of speaker is exhausted while speakers of the other type remain, the remaining individuals in either queue will be allowed to speak, up to the overall 50-speaker maximum.

The maximum number of speakers/yielders may be increased up to 100 total individuals by a two-thirds (2/3) vote of the City Council. Increases above 100 total individuals speaking or yielding shall require a unanimous vote of the City Council. In no case shall these limits be applied to items which require unconstrained public comment to ensure due process.

These procedures/limits also apply to public hearings except for those which would be precluded by the types of due process public hearings specifically provided for in Section 2, below.

1. Public Comment on Consent Calendar and Information Items.

As described above, public comment on the "Consent Calendar" will be taken as part of the general public comment period at the start of the Council meeting following Ceremonial Matters and any comments from the City Manager.

Prior to this initial general public comment period, the Council will first-determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar," and/or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent."

The Council will then take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. A speaker may only speak once during the period for public comment on Consent Calendar and Information items. Following the initial period of general public comment, the three or more members of City Council may still move items from the "Consent Calendar" to "Action," but no additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, the initial period of general public comment on Information and Consent items, the Mayor or any Councilmember may move any Information or Consent item to "Action." Three or more members of the City Council, including the Mayor, may move any Consent Item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

~~2. Public Comment on Action Items.~~

After the initial ten minutes of public comment on non-agenda items, public comment on consent and information items, and adoption of the Consent Calendar, the public may comment on each remaining item listed on the agenda for action as the item is taken up.

The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

If ten or fewer persons are interested in speaking, each speaker may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

This procedure also applies to public hearings except those types of public hearings specifically provided for in this section, below.

J~. Appeals Appearing on Action Calendar.

With the exception of appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission, appeals from decisions of City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand the matter to the commission. Appeals of proposed special assessment liens shall also appear on the "Action" section of the Council Agenda. Appeals from decisions of the Zoning Adjustments Board and Landmarks Preservation Commission are automatically set for public hearing and appear on the "Public Hearings" section of the Council Agenda. The procedures for public comment on appeals from these two bodies and attendant public hearings shall be the same as described below for all other commission appeals.

Time shall be provided for public comment for persons representing both sides of the action/appeal and each side will be allocated seven minutes to present their comments on the appeal. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have seven minutes to comment and the applicant shall have seven minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have seven minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have seven minutes to comment and the persons supporting the action of the board or commission on appeal shall have seven minutes to comment. In the case of an appeal of a proposed special assessment lien, the appellant shall have seven minutes to comment.

After the conclusion of the seven-minute comment periods, members of the public may comment on the appeal. Comments from members of the public regarding appeals shall be limited to one minute per speaker. Any person that addressed the Council during one of the seven-minute periods may not speak again during the public comment period on the appeal. Speakers may yield their time to one other speaker, however, no speaker shall have more than two minutes. Each side shall be informed of this public comment procedure at the time the Clerk notifies the parties of the date the appeal will appear on the Council agenda.

4~. Public Comment on Non-Agenda Matters.

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting.

Individuals wishing to address the Council about non-agenda matters may do so during the initial period of general public comment, and will count toward the overall limit on the number of individuals making public comment.

The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

Persons submitting speaker cards are not required to list their actual name, however they must list some identifying information or alternate name in order to be called to speak.

For the second round of public comment on non-agenda matters, the Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer will generally request that persons wishing to speak, line up at the podium, raise their hand on zoom, or otherwise to be recognized to determine the number of persons interested in speaking at that time. Each speaker will be entitled to speak for two minutes each unless the Presiding Officer determines that one-minute is appropriate given the number of speakers.

Pursuant to this document, no Council meeting shall continue past 11 :00 p.m. unless a two-thirds majority of the Council votes to extend the meeting to discuss specified items. If any agenda item remains unfinished at 11 :00 p.m. or the expiration of any extension after 11 :00 p.m., it will be referred to the Agenda & Rules Committee for scheduling pursuant to Chapter II, Section F. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

§1. Ralph M. Brown Act Pertaining to Public Comments.

The Brown Act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

APPENDIX C. TEMPORARY RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS THROUGH VIDEO CONFERENCE DURING THE COVID-19 EMERGENCY

Public Comment Speaking Time

With the exception of prescribed times in the Rules of Procedure for public hearings, the amount of time for each speaker during public comment is limited to two minutes maximum and that speakers can only address an agenda item once, **however the Presiding Officer has the discretion to reduce speaker time if needed in order to allow the orderly conduct of the meeting, subject to the consent of a majority of the City Council.** Speakers may yield their time for a maximum of four minutes per individual. If a speaker wishes to yield their time, they must indicate so when called on by the Presiding Officer and state who they are yielding their speaker time to. The Presiding Officer will keep a list with the names and amount of time yielded to individuals.

In order to inform members of the public of their place in the speaker's queue, the Presiding Officer will call the names of 5 speakers at a time.

Public Comment **on Non Agenda Matters will** may be conducted in the order of hands raised on the Zoom platform or based upon a lottery or similar system, and will be limited to either the first

10 speakers during the initial round of Non - Agenda public comment, as well as all hands raised during the closing round of Non-Agenda public comment at the conclusion to the meeting, until such time that the meeting adjourns. If there are five or fewer speakers with hands raised for Public Comment on Non-Agenda Matters, each speaker will have two minutes to address the City Council. If there are more than five speakers with their hands raised then speaker time will be limited to one minute per person. The procedure for selection of Non-Agenda speakers prescribed in the Rules of Procedure by random draw is suspended for videoconference meetings where there is no physical meeting location.

COMMUNICATIONS

Harvey, Samuel

From: kelly hammargren <kellyhammargren@gmail.com>
Sent: Friday, January 20, 2023 11:36 PM
To: Harvey, Samuel
Subject: updated status of posting of city meeting minutes
Attachments: 1-20-2023 Table on Minutes.docx; 11-18-2022 Table on Minutes.docx

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello,

Please share as appropriate

I have gone through every city meeting and updated the table as of January 20, 2023 after the close of the business day at 5 pm. The table is attached. For your convenience, I have also attached the 11-18-2022 table of minutes.

The city council is not included as that is always posted within a day or two.

In completing the January 20, 2023 table, I was surprised by the number of council committee meetings and joint meetings with council members that have no minutes.

kelly hammargren

January 20, 2023 Table of Meeting Minutes Posted

City Council Committees and Committees with Councilmembers as Participants

Committee Name	Date of Last Meeting	Minutes Posted	Delinquent
Agenda & Rules	1/17/2022	yes	
Budget & Finance	12/8/2022	yes	
Facilities, Infrastructure, Transportation, Environment & Sustainability	11/3/2022	yes	
Health, Life Enrichment, Equity & Community	12/12/2022	yes	
Land Use, Housing & Economic Development	12/1/2022	no	yes
Public Safety Policy Committee	12/5/2022	no	yes
2 x 2 (Council and BUSD)	11/4/2022 4/4/2022	No posting by 6 pm for 11/4/22 and no minutes for 4/22/2022	yes
3 x 3 (Berkeley & Housing Authority)	9/27/2022	no	yes
4 x 4 (Council & Rent Stabilization Board)	12/14/2022	no	yes
City/UC/Student Relations Committee	10/14/2022	no	yes
Boards and Commissions			
Committee Name	Date of Last Meeting	Minutes Posted	Delinquent
Board of Library Trustees	1/4/2023	Mp3 posted no minutes	yes
Cannabis Commission now subcommittee of Community Health Commission so no minutes As only meeting as subcommittee	No commission meetings in 2022 or 2023		
Civic arts Commission	1/18/2023	Not due	
Commission on Aging	11/16/2022	yes (posted in 2 days)	
Commission on Disability	10/26/2022 9/7/2022 8/3/2022 5/18/2022 3/2/2022 2/2/2022	No minutes for any of the listed meetings Not due for most recent meetings 1/11/2023 and 1/18/2023	yes
Commission on Labor	11/30/2022	yes	
Commission on the Status of Women	1/18/2023 6/15/2022	Not due June minutes missing	yes
Community Health Commission	11/29/2022	yes	
Design Review Committee	1/19/2023	Not due	
Disaster and Fire Safety Commission	12/7/2022	yes	
Elmwood Business Improvement District	9/30/2022	yes	
Fair Campaign Practices Commission & Open Government Commission	1/19/2023 5/19/2022 3/17/2022	Not due No minutes 5/19/2022 or 3/17/2022	Yes (March and May)
Homeless Services Panel of Experts	1/4/2023	yes	
Housing Advisory Commission	11/9/2022	yes	
Human Welfare and Community Action Commission	1/18/2023 11/16/2022	Not due No	Yes for 11/16/2022
Landmarks Preservation Commission	1/5/2023 12/1/2022	No minutes for all listed dates	yes
Loan Administration Board	9/8/2022	yes	

Mental Health Commission	10/27/2022	yes	
Parks, Recreation and Waterfront Commission	1/11/2023	Not due	
Peace and Justice Commission	1/9/2023	yes	
Personnel Board	1/9/2023 12/5/2022	Not due No minutes	Yes for 12/5/2022
Planning Commission	12/7/2022	yes	
Police Accountability Board	1/11/2023 12/5/2022 12/2/2023	Not due 12/5/2022 and 12/2/2022 were closed session meetings no minutes posted, if no action they could have posted no reportable action	
Rent stabilization Board	1/19/2023	Not due	
Solano Avenue BID Advisory Board	9/20/2022	yes	
Sugar Sweetened Beverage Panel of Experts	1/19/2023	Not due	
Transportation and Infrastructure Commission	1/19/2023 11/17/2022	Not due Not posted	Yes for 11/17/2022
Youth Commission	1/9/2023 12/12/2022	Not due No minutes for 12/12/2022	Yes for 12/12/2022
Zero Waste Commission https://berkeleyca.gov/your-government/boards-commissions/zero-waste-commission	11/29/2022	Yes, minutes are posted but they are posted with the meeting at which they were or are to be approved not with the date of the meeting of record	Need instruction on correct posting
Zoning Adjustment Board	1/12/2023 12/8/2022 10/13/2022 9/22/2022	1/12/2023 not due No minutes for 12/8/2022 10/13/2022 or 9/22/2022	yes

November 18, 2022 Table of Meeting Minutes Posted

City Council Committees and Committees with Councilmembers as Participants

Committee Name	Date of Last Meeting	Minutes Posted	Delinquent
Agenda & Rules	11/14/2022	yes	
Budget & Finance	11/13/2022	No due 11/27/2022	
Facilities, Infrastructure, Transportation, Environment & Sustainability	11/3/2022	yes	
Health, Life Enrichment, Equity & Community	11/14/2022	yes (posted in 4 days)	
Land Use, Housing & Economic Development	7/19/2022	yes	
Public Safety Policy Committee	9/19/2022	Yes	
2 x 2 (Council and BUSD)	11/4/2022 4/4/2022	No posting by 6 pm for 11/4/22 and no minutes for 4/22/2022	yes
3 x 3 (Berkeley & Housing Authority)	9/27/2022	no	yes
4 x 4 (Council & Rent Stabilization Board)	10/26/2022	no	yes
City/UC/Student Relations Committee	10/14/2022	no	yes
Boards and Commissions			
Committee Name	Date of Last Meeting	Minutes Posted	Delinquent
Board of Library Trustees	11/2/2022	no	yes
Cannabis Commission	No meetings in 2022		
Civic arts Commission	10/19/2022	yes	
Commission on Aging	11/16/2022	yes (posted in 2 days)	
Commission on Disability	10/26/2022 9/7/2022 8/3/2022 5/18/2022 3/2/2022 2/2/2022	No minutes for any of the listed meetings	yes
Commission on Labor	9/21/2022	yes	
Commission on the Status of Women	10/19/2022	yes	
Community Health Commission	10/27/2022	no	yes
Design Review Committee	10/20/2022	yes	
Disaster and Fire Safety Commission	10/26/2022	yes	
Fair Campaign Practices Commission & Open Government Commission	11/17/2022 5/19/2022 3/17/2022	Not due until 12/1/2022 No minutes 5/19/2022 or 3/17/2022	Yes (March and May)
Homeless Services Panel of Experts	11/2/2022	yes	
Housing Advisory Commission	11/9/2022	No Due 11/23/2022	
Human Welfare and Community Action Commission	11/16/2022	No Due 11/30/2022	
Landmarks Preservation Commission	11/3/2022 10/6/2022 9/1/2022	No minutes for all listed dates	yes
Loan Administration Board	9/8/2022	yes	
Mental Health Commission	10/27/2022	No	yes
Parks, Recreation and Waterfront Commission	11/9/2022	No due 11/23/2022	
Peace and Justice Commission	11/7/2022	No due 11/21/2022	

Personnel Board	11/7/2022	No due 11/21/2022	
Planning Commission	11/2/2022	yes	
Police Accountability Board	11/15/2022 11/9/2022	11/15 due 11/29/2022 11/9 due 11/23/2022	
Solano Avenue BID Advisory Board	9/20/2022	yes	
Sugar Sweetened Beverage Panel of Experts	11/17/2022	No due 12/1/2022	
Transportation and Infrastructure Commission	11/17/2022	No due 12/1/2022	
Youth Commission	11/14/2022 10/11/2022 9/12/2022 5/9/2022 2/14/2022	11/14 due 11/29/2022 No minutes for 10/11/2022, 9/12/2022. 5/9/2022, or 2/14/2022	yes
Zero Waste Commission	11/24/2022	yes	
Zoning Adjustment Board	10/13/2022 9/22/2022	No minutes for 10/13/2022 or 9/22/2022	yes