04
Special Meeting Item

Open Government Commission

ACTION CALENDAR
February 4, 2020

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Dean Metzger, Chair, Open Government Commission

Subject: Change to the Council Rules and Procedures
Public access to changing status of a Consent Calendar Item

RECOMMENDATION

Adopt a Resolution changing and updating the "Council Rules and Procedures" to give the public a procedure for moving items on the consent calendar to the Action Calendar.

FISCAL IMPACTS OF RECOMMENDATION

None

CURRENT SITUATION AND ITS EFFECTS

Up until recently, it was possible for citizens at council meetings (four or more asking to do so) to move an item on the Consent calendar to Action, so that it could be discussed in public by Council, and so that the public knew that their commentary might have an effect on how Council considered the item. That ability has been removed. This is a direct exclusion of the public from participation. Though people can still speak on Consent items, public input is non- effective.

This proposal is designed to restore to the public a way to remove an item from Consent and place it on Action. If the public wants a Consent item to be addressed by Council, there must be a democratic way to do it.

At the November 21, 2019 meeting, the Commission took the following action:
Motion to amend and send recommended resolution to Council (M/S/C: Metzger/Saver; Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused))

BACKGROUND

At an Open Government Commission meeting in 2018 the Pro-Democracy Project presented several issues pertaining to how the City Council Rules and Procedures effect the democratic process in Berkeley. The OGC formed a subcommittee to investigate the issues and met for the first time in May of 2019. The subcommittee met again on June 6, 2019, took public comment and made several recommendations. The June 2019 meeting resulted in the attached report that was heard and discussed by the OGC on September 19, 2019.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
Not relevant for CEQA review

RATIONALE FOR RECOMMENDATION
This proposal emerges from a growing concern regarding procedures in Berkeley City Council meetings. What this suggests is that some rules of Council procedure serve to prevent real participation in political matters.

The principles from which this proposal derives are first, that policy is made through public participation, and second, that those who will be affected by a policy should be involved in articulating and deciding the policy that will affect them.

ALTERNATIVE ACTIONS CONSIDERED
None.

CITY MANAGER
The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON
Dean Metzger, Chair, Open Government Commission
Samuel Harvey, Deputy City Attorney, (510) 981-6998

Attachments:
1: Resolution
2: OGC Subcommittee report June 6, 2019

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

ADOPTING THE CHANGE TO THE COUNCIL RULES AND PROCEDURES AND REVISING RESOLUTION NO. 68,753-N.S.

WHEREAS, the City of Berkeley's "Council Rules and Procedures" are of upmost important for conducting Council meetings they must be implemented in a way that allows the maximum possible public input to decisions that are made on the behalf of the citizens of Berkeley; and

WHEREAS, the updated Council Rules and Procedures will allow the citizens of Berkeley to participate in crafting the ordinances and laws that govern them; and

WHEREAS, the Council Rules and Procedures are updated regularly.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley, the Council Rules and Procedures are adopted as follows:

IV. CONDUCT OF MEETING

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, councilmembers, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings.
Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized.

Consent Calendar items may be moved to the Action Calendar by the Council. Action items may be reordered at the discretion of the Chair with the consent of Council.

Add the following to this section:

An item on the consent calendar shall be moved to the action calendar if five (5) or more speakers request that the item move to the action calendar. The Mayor may implement this as she or he sees fit. One implementation path is as follows: if a speaker requests that an item on the consent calendar move to action, then the Mayor will poll the audience to determine whether five (5) members of the public would like to pull the item, and, if so, the item shall be moved to action.

BE IT FURTHER RESOLVED that Resolution No. XXXX-N.S. is hereby adopted.

Open Government Commission Subcommittee Report

June 6, 2019

Minutes

1. Call to Order 7:30 p.pm.

   Roll Call:

2. Roll Call taken - Metzger & Saver

3. Public Comment

   None

4. Review of May 9, 2019 subcommittee meeting

   Reviewed

5. Discussion and possible action on Council Consent Calendar issues

   See following report.

6. Discussion and possible action on the inflexibility of the Council Agenda Order.

   See following report

7. Discussion and possible action on Public Comment procedures

   See following report

8. Next meeting date
9.

   No date set

10. Adjournment

    Motion to adjourn: Saver
    Ayes: Metzger & Saver

Subcommittee Report

The Pro-Democracy issues before the subcommittee:

1- City government procedures that essentially silence the people.

1- The Loss of Access to Determine the Consent Calendar

Proposal:
Council Rules of Procedure and Order – Adopted January 29, 2019

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Insert paragraph that reads as follows:

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Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

2- Speaking Time:

From the Councils Rules of Procedures and Order
Page 17 – Item A

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, 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, appeals and or public hearings 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 stand, 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.

Add the following to this section:

A member of the public will be given a minimum of 2 minutes to speak and up to a maximum of four (4) minutes, if given time from another speaker. If the number of speakers appears to be so large as to prevent essential city business from completion, then the item can be moved to a special meeting.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

3- The Inflexibility of the Agenda Order

From the Councils Rules of Procedures and Order
pages 15 & 16 – Item E

E. Agenda Sequence and Order of Business The Council agenda for a regular business meeting is to be arranged in the following order:

1. Preliminary Matters: (Ceremonial, Comments from the City Manager, Public Comment)
2. Consent Calendar
3. Action Calendar
a) Appeals
b) Public Hearings
c) Continued Business
d) Old Business

e) New Business
f) Referred Items
4. Information Reports
5. Communications
6. Adjournment Action items may be reordered at the discretion of the Chair with the consent of Council.

The Agenda Committee shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in this section.

Add the following to this section:

The City Clerk shall poll the public audience during the ceremonial and consent agenda to determine the number of persons at the meeting for action items. If the number exceeds twelve (12) for any one item, that item is moved to the first action item. If more than two items exceed 12, then the order for those items will be determined with the highest number going first.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

4- The "Public Comment" procedure reduces people "faces in the crowd."

From the Councils Rules of Procedures and Order
page 17 – Item A

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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.

Add the following to this section:

The council shall discuss the item after it is introduced, with each Council member stating their current understanding and general thoughts on the item. After council discussion, public comment will be taken. The council will then debate the item, ask any questions of the speakers and make its decision on the matter.

Motion to send added language to the OGC: Metzger

Ayes: Metzger and Saver

MEMO TO FILE

Date/Time: May 9, 2019

Subject: OPEN GOVERNMENT COMMISSION DEMOCRATIC PROJECT SUBCOMMITTEE MEETING

South Berkeley Senior Center
2939 Ellis Street .
Multi Purpose Room
Secretary:

Special Meeting
May 9, 2019
7:30 p.m.

The Commission may act on any item on this agenda

1. Call to Order 7:30 p.m.
2. Roll Call. Dean Metzger, Brian Tsui, Daniel Saver, Gregory Harper
3. Public Comment.
   4 Members of the public present. Steve Martinot for ProDemocracy Project.

4. Chairman and Vice Chair Selection:
   a. Gregory Harper elected chair, Dean Metzger elected vice chair.
   b.
5. Committee recognized need to recruit additional members to replace commissioners who will depart in the coming weeks and months:
   a. Tsui Graduation (Fulbright Ambassador);
   c. Saver- Family leave (baby)

6. Discussion on organizing the subcommittee:
7. **Management of City Council Meetings**

   a. Focus is to recommend items to implement governance by dialogue between elected officials and citizens. Discussions of subjects at council meetings is paramount.
   b. Committee identified and discusses issues raised per the ProDemocracy Project handout.

8. **City Council Meetings and The Consent Calendar - Areas of Concern**
   a. Very Complex issue
      i. Limited access to place items on consent calendar
   b. The Agenda Committee is key and sorely needs attention.
      i. Oversight is needed.
      ii. How are issues addressed and placed on the agenda. iii. What is the process and how can citizens have it discussed
   c. Desire to Maximize the number of speakers.
      i. Concerns over items being pulled from the agenda or limiting the number of speakers and the time they area allotted.

9. ACTION ON THE CONSENT CALENDAR ISSUE
   a. MOTION-Recommend to the city council the mayor or their designate request conduct an informal census/poll to determine the number of persons present for discussion of an item on the consent calendar. If four[4] or more persons are present the item will be moved from the consent to the action calendar.

   b. VOTE- Unanimous approval by members

   c. Restructure the Calendar.
      i. If a substantial number of people are present for a subject the item should be moved to accommodate the crowd.
      ii. Presently it is at the mayor's or presider's discretion. iii. The consensus is to make it mandatory
      iii.
10. What will be the process to accomplish the above?
11. **Speaking Time Concerns**
    a. Consensus is 2 Minutes is not enough
    b. Tyranny of the majority
       i. Take large number of minutes and yield it.
       ii. Individual or couples are ignored
12. **Agenda Order**
    a. The Calendar needs restructuring.
13. **Remaining Issues** Insufficient time to discuss:
    a. Zoning
    b. Ombudsman
14. Future meeting schedule
    a. June 6, 2019 7:30 P.M. Place TBD
    b. Adjournment: 9:30 P.M.

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The ProDemocracy Project

For the-initiation of a ProDemocracy Movement that will return the people to policy-making status in city government

Three areas of political process that block people from policy-making.

1- City Council procedures

2- Neighborhood issues from which local autonomy is highly restricted

3- City policy-making from which those to be affected are effectively excluded

1- City government procedures that essentially silence the people.

1- The Loss of Access to Determine the Consent Calendar: Recently, the City Council eliminated the ability of the public, at council sessions, to pull items from the Consent Calendar. For issues or items that the council agrees should be given no time, discussion, or consideration, the public now has no ability to countermand that, or bring it as an isue to the floor. This is one way by which the Council silences the people, by truncating its ability to foster discussion and substance in Council proceedings.

People who come to Council should have the power to pull items off Consent. Council should not have monopoly control over the consent calendar. Instead, if people come to Council to speak on an issue, then they should not have the issue removed from their influence by a consensual council. In other words, the inverse principle should be true. What concerns people, for which they come to Council meetings, must be given respect and priority.

2- Speaking Time: Individuals lose the ability to speak if many show up. In Public Comment, speakers ordinarily have two minutes. But if more than ten desire to speak, each gets only one minute. Time is reduced so that an item doesn't take more time than others. If more than ten people desire to speak on an item, it means that issue is more important than others for which no one wishes to speak. So each speaker should have more than two minutes, and not less. Large public presence for an item would also mean that there are different perspectives on it. One minute is not enough to present a coherent and cohesive argument on a complex question. Reducing speaking time is a way of silencing the people. Allowing more then two minutes to each speaker does not imply that each will take the time allowed. More time should be allowed out of respect for people's desire to participate.

3- The Inflexibility of the Agenda Order: In general, items concerning the well-being of the people, or impositions on neighborhoods by business or corporate interests, and for which many people come to Council to express themselves, are left for late in the session. Business or administrative issues are generally considered first. This is an "anti-people" deferral of an issue. When an issue is set late in the session, many of those concerned in it will have gone home. It is a way of silencing them. The inverse principle should hold. If many people come to Council for an issue, it should be considered early in the meeting. The agenda order should respond to people's involvement. That for which there are the most people should go first. People present should have the power to move items earlier according to their involvement.

4- The "Public Comment" procedure reduces people "faces in the crowd."

In Council discussion, "public comment" comes first, which council manages to sit through, and then council members discuss the item. The public is thus speaking into a vacuum, addressing the issue in disarray, from a variety of unfocused perspectives, without engagement with councilmembers. This produces conceptual confusion and incoherence of idea.

The inverse principle, which should be put in practice, is that Council address the item first, for a specific time-span, speaking about why it exists and what it is designed to accomplish from their various perspectives. Then public comment could address the issue as presented in a more focused way. People could take issue with specific attitudes or stances by councilmembers. Ultimately, some form of dialogue needs to be facilitated between council and the public since policy-making depends on dialogue, and not simply on monologue. As long as the public is only allowed monologue, it is essentially excluded from the policy-making process, and thus silenced.

Council should replace the monologue character of public comment with dialogue through inversion of session phases.

5- A Structure of Flexibility of Format Needs to be Invented

In cases where many people show up to discuss an issue, a shift of format should be possible. To include the people in policy-making, an arena of dialogue and discussion between the public and the council should be possible. For important issues affecting the people and/or the neighborhoods, it is anti-democratic to restrict the people only to monologue (commentary), leaving dialogue to a hermetic Council. One could image a form of townhall meeting in which the dozens of people who come to council to speak on an issue (which isn't rare) would have the ability to enter into dialogue with councilmembers and with each other. Policy does not depend on people speaking to the air. It requires people speaking to each other and exchanging ideas and perspectives. If this occurred prior to council making a final determination on the item, it would be much more democratic. Make procedural format flexible enough to accommodate the people's participation:

In general

- Berkeley City Council has been structured against the public/people having a voice in policy-making. That means *Procedure* takes precedence over *People.*
- In each area, the *people* could be given *priorityover* procedure.

2- Ancillary structural ideas that would put policy making in the people's hands.

A- neighborhood control over zoning (and thus their own neighborhoods)

The zoning regulations of Berkeley are enforced by the Zoning Adjustment Board (ZAB) and controlled by City Council. The Zoning Ordinance works within the city's relationship to corporate fmance and the real estate industry. In times of crisis, as in the present, they give only lip service to the specific needs of neighborhoods. Neither the ZAB nor the City Council are attuned to respond to neighborhood concerns about housing development. They hear and ignore, and thus essentially silence the neighborhoods.

- Both city and local zoning regulations (which are enacted by a neighborhood) become conditions to which industry and finance must conform. The people can do this locally by creating Zoning Overlays.
- A Neighborhood Zoning Overlay is a special set of zoning regulations and standards defining neighborhood conditions that are passed by a neighborhood in its own autonomous assembly (A Neighborhood Assembly).
- Zoning Overlays could control how housing development occurs in a neighborhood - corporate vs. non-profit, market rate vs. affordable, etc. For instance, require that any new development should be affordable to people who live in the vicinity of development.
- Neighborhood assemblies could extend their operations to other issues as well, such as stopping displacement of long-term tenants, or defining special community benefits (educational or health benefits).
- **Neighborhood assemblies would become the local policy making bodies for their neighborhood.**

B- an ombudsperson

An ombudsperson is someone to whom one can go to make complaints about a city agency's unethical behavior, and establish a dialogue with that city agency about its comportment or malfeasance. An ombudsperson would act to bring disagreeing parties into dialogue, with the aim goal of undoing unethical city activities.

Such an office is sorely needed. One can't go to City Council since it is a form of silencing. Complaints to the City Clerk will only be addressed as violations of rules or regulations. Yet ethics is an essential element of democratic governance.

What an ombudsperson could do:

1- Receive ethics complaints about city staff, police, councilmembers, etc. from residents, and have the power to bring those complaints to council's attention.

2- Be an advocate or special conduit for residents or neighborhood groups in dealing with bureaucratic attitudes and procedures.

3- Introduce political and economic issues brought by residents into council agendas.

4- Assist constituents in fmding and using the proper channels or procedures for obtaining city services, and assist in finding out about services.

3- Serious Anti-Democratic Procedures by the city government that have emerged recently, and which violate the fundamental principle of democracy.

The Fundamental Principle of Democracy -Ihose who will be affected by a policy should be able to participate in making tlte policy tit at will affect them:

A second crisis has emerged in California, and thus in Berkeley, the crisis of homelessness. It is ancillary to the housing crisis, but much more dire for those who now form part of the many communities of unhoused people. Federal courts say that the city must let people camp on public land if they cannot provide shelter, but the city has spent time and energy trying to figure out how to harass and torment the homeless, even against those federal conditions.

This has become particularly egregious with respect to those homeless people who live in RVs. Those people have partially housed themselves, and one would expect the city to applaid this. On the contrary, the city has been developing rules and regulations designed to torment and harass them.

The salient fact in all this is that none of the homeless people have ever been included in the process of arriving at rules and regulations concerning them as homeless. From on high, the City Council as an elite makes rules for people who become their victims.

The homeless are able to organize themselves. They have means of pressuring the city into providing primitive and basic services for them as human beings. The hesitancy and refusal to provide those services simply out of a sense of humanity or democracy becomes a mark on the face of Berkeley's government.

The simpiest solution

The fundamental principle of democracy holds that the city should bring the homeless together, along with members of the communities in which the homeless find space for themselves, in assemblies of common interest, and have them develop rules and regulations in dialogue with the neighborhoods and with other homeless people.

Democracy is about human beings governing themselves .

The purpose of the ProDemocracy Project is to put policy-making into the hands of people who will be be affected by those policies.

Contact us at: PO Box 11842, Berkeley. 510-845-8634 http://berkeleynativesun.com/
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