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SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: February 28, 2022

Item Number: 19

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

Submitted by: Councilmember Robinson (Author), Councilmember Susan Wengraf (Co-sponsor)

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, excluding public hearings, appeals, and/or other quasi-judicial matters,~~ into a single public comment period ~~toward at~~ the start of the ~~Council meeting Action Calendar, (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 ~~and separate public comment periods toward the beginning of the Council meeting for the Consent Calendar and information items, and for non-agenda matters.;~~
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~~
- 3-2. _____ Rescind Resolution No. 70,091– N.S

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Rationale for Recommendation

Public comment plays a critical role in the policy-making process. However, the current system for scheduling public comment leaves significant room for improvement. Residents should be able to opine and advocate to the City Council without having to wait for many hours before the item is taken up, and ~~even~~ sometimes learning that the item will not be heard at all. In order to improve the predictability of the flow of Council meetings, members of the public should have some certainty that they will have the opportunity to advocate to their elected representatives at a reasonable hour in the evening. That can be achieved by holding public comment on Action Calendar items at a single time, immediately after the adoption of the Consent Calendar.

~~The original~~ Former Councilmember Droste's version of this item sought to consolidate all public comment into a single comment period, as well as creating protocols for council to limit the total number of speakers. ~~This supplemental item does not recommend those proposals.~~ This supplemental does not seek to limit the ability, in any way, of the public to give public comment.

The purpose of this supplemental item is to create ~~a better~~ a more equitable system for public comment, one where residents can show up to a council meeting and reasonably expect that they will be able to address the council by 9 PM. Those who wish to continue to listen to the council's business until the council adjourns are welcome and encouraged to do so.

Additionally, by taking public comment on action items at the start of the Action Calendar, the presiding officer may ~~be better equipped to~~ identify ~~which~~ items the council will have time to address during a given meeting. This has benefits for the public, as well as for city staff, who have at times been in the position of being on hand all evening to present on an item that is not ultimately heard.

By scheduling comments on action calendar items at the start of the Action Calendar, we can prioritize the perspectives of the public and respect both staff's and the public's time.

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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 who voice their~~ ~~opinions~~ opinions 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~~

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~~public comment hours of discussion on many different action items (much of which is often duplicative) before one gets to participate at an unspecified, unpredictable time and/or hear the position of one's elected representatives is neither fair, equitable, nor good for democracy. Especially for those with young children or who work in the evenings, the unpredictable and onerous way that Action Calendar public comment currently operates is inequitable and prevents valuable community members from participating in the public process.~~

Public comment and Council procedures have undergone iterations before. Most recently, Mayor Arreguín offered an 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~~ action items on Action, since no specific times are ~~available for when a piece of legislation will be heard~~ assigned. ~~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 time to 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~~ consolidate public comment. While this could entail moving all public comment into a single comment period, this ~~supplemental~~ item merely combines public comment on Action Calendar items—excluding public hearings, appeals, and/or other quasi-judicial matters—into one comment period at the beginning of the Action Calendar.

The current approach to public comment on the Action Calendar is inequitable and discourages participation from many community members. Consolidating Action Calendar public comment into one comment period would make the time that public comment occurs on action items far more predictable and boost the ability of community members to participate in public comment. Especially for working families and those with evening obligations, waiting potentially five hours to speak on an action item that will be taken up at an unspecified time—or may be continued to another meeting instead—is not feasible. While the time the Action Calendar is taken up would remain unspecified, the window in which it is likely to be would be far narrower and earlier in the meeting than the window during which individual items may currently be discussed or removed from the agenda. 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

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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.”

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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].”

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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 supplemental~~ item simply proposes to combine public comment on the Action Calendar into one comment period, leaving public comment on the Consent Calendar and other items unchanged. This would significantly increase the predictability of when public comment on many important action items will occur while still providing a separate opportunity to comment on other items. ~~proposes to use the approach used by BUSD.~~

Fiscal Impacts

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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 combined public speakers, or on the number of public speakers for each item.
- Combining all public comment into a single public comment period toward the beginning of each meeting.

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.~~ an approach that solves the most fundamental issue with public comment procedure—the unpredictability of when individual action items will be taken up—while maximizing public participation by leaving other public comment periods unchanged.

Contact Person

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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

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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 the Action Calendar.
- 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.

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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 during any single at public comment period 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.~~

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~~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.”

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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.

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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.

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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.

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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 in a~~ single public comment period at the beginning of the Action Calendar.

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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.

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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.

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

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32. Appeals Appearing on Action Calendar.

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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.

43. 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

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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.

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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.

54. Ralph M. Brown Act Pertaining to Public Comments.

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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~~ ~~one~~ ~~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.

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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.

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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.

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Exhibit B: City Council Rules of Procedure and Order