

**BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE
SPECIAL MEETING**

MONDAY, SEPTEMBER 16, 2019

2:30 P.M.

2180 Milvia Street, 6th Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

AGENDA

Roll Call

Public Comment

Consent Calendar

1. **Approval of Minutes: September 9, 2019**

Referred Items for Review

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Discussion and Direction Regarding Revisions to the City Council Rules of Procedure and Order

From: City Manager

Contact: Mark Numainville, City Clerk

3. Discussion and Direction on City Manager Evaluation Process – Schedule, Timing, and Structure of Evaluation Process

Adjournment – Next Meeting Tuesday, October 1, 2019

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**Additional items may be added to the draft agenda per Council Rules of Procedure.**

*Rules of Procedure as adopted by Council resolution, Article III, C3c - Agenda - Submission of Time Critical Items*

*Time Critical Items. A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or council member is received by the City Clerk after established deadlines and is not included on the Agenda Committee's published agenda.*

*The City Clerk shall bring any reports submitted as Time Critical to the meeting of the Agenda Committee. If the Agenda Committee finds the matter to meet the definition of Time Critical, the Agenda Committee may place the matter on the Agenda on either the Consent or Action Calendar.*

*The City Clerk shall not accept any item past the adjournment of the Agenda Committee meeting for which the agenda that the item is requested to appear on has been approved.*

*Written communications addressed to the Agenda Committee and submitted to the City Clerk Department by 5:00 p.m. the Friday before the Committee meeting, will be distributed to the Committee prior to the meeting. After the deadline for submission, residents must provide 10 copies of written communications to the City Clerk at the time of the meeting.*

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.*



**COMMUNICATION ACCESS INFORMATION:**

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 (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

\* \* \*

I hereby certify that the agenda for this special meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on September 12, 2019.

A handwritten signature in black ink that reads "Mark Numainville".

Mark Numainville, City Clerk

**Communications**

*Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA.*

# BERKELEY CITY COUNCIL AGENDA & RULES COMMITTEE SPECIAL MEETING MINUTES

**MONDAY, SEPTEMBER 9, 2019**

**2:30 P.M.**

2180 Milvia Street, 6<sup>th</sup> Floor – Redwood Room

Committee Members:

Mayor Jesse Arreguin, Councilmembers Kate Harrison and Susan Wengraf

**Roll Call:** 2:34 p.m. All present.

**Announcement: Brown Act Participation Rules** – Announcement made

**Public Comment:** 2 speakers

## Review of Agendas

**1. Approval of Minutes: August 26, 2019**

**Action:** M/S/C (Wengraf/Harrison) to approve the minutes of August 26, 2019

**Vote:** All Ayes.

**2. Review and Approve Draft Agendas:**

a. 9/24/19 – 6:00 p.m. Regular City Council Meeting

**Action:** M/S/C (Harrison/Arreguin) to refer Item 27 to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee.

**Vote:** All Ayes

**Action:** M/S/C (Harrison/Arreguin) to approve the agenda for the September 24, 2019 regular meeting with the changes noted below.

**Vote:** All Ayes.

- *Ceremonial Item: Berkeley Free Clinic*
- *Ceremonial Item: Sandy Bales*
- *Ceremonial Item: Emmaline Campbell*
- *Ceremonial Item: Indigenous People's Day*
- *Item Added: Resolution to CPUC (Wengraf) – Mayor Arreguin added as a co-sponsor*
- *Item Added: Contract: The Dutra Group (City Manager)*
- *Item Added: Contract: Don Fowler Construction (City Manager)*
- *Item Added: Contract: Mar Con Builders (City Manager)*
- *Item Added: Solid Waste Supervisor (City Manager)*
- *Item 13 Support HR 2809 (Arreguin) – Councilmember Bartlett added as a co-sponsor*
- *Item 14 United Against Hate Week (Arreguin) – Councilmembers Wengraf, Harrison, and Bartlett added as co-sponsors*
- *Item 17 Support ACA 8 (Robinson) – Mayor Arreguin added as a co-sponsor*
- *Item 22 TOPA Ordinance (City Manager) – Moved to Consent Calendar*

- *Item 24 Clean Air Day (Arreguin) – Moved to 9/24 Consent Calendar; Councilmembers Wengraf, Harrison, and Bartlett added as co-sponsors*
- *Item 25 Waiver of Fees (Bartlett) – Removed from agenda by author*
- *Item 26 Pollinators (Harrison) – Moved to 9/24 Consent Calendar; Councilmembers Wengraf and Bartlett added as co-sponsors*
- *Item 27 Exhaust Ventilation (Harrison) – Referred to the Facilities, Infrastructure, Transportation, Environment & Sustainability Committee*
- *Item 28 Naming of Paths (Hahn) – Revised item submitted; Councilmember Davila added as co-sponsor; Moved to 9/24 Consent Calendar*
- *Item 29 Bicycle Lanes and Pedestrian Improvements (Robinson) – Revised item submitted; Moved to 9/24 Action Calendar; Councilmember Harrison and Mayor Arreguin added as co-sponsors*
- *Item 30 Crosswalk Art (Robinson) – Moved to 9/24 Consent Calendar*

#### Order of Items on Action Calendar

Item 20 ZAB Appeal

Item 21 Grant Writing

Item 23 Shelter for Homeless Youth

Item 29 Bicycle Lanes and Pedestrian Improvements

### **3. Selection of Item for the Berkeley Considers Online Engagement Portal**

- Selected Item 29 Bicycle Lanes and Pedestrian Improvements

### **4. Adjournments In Memory**

- Sandy Floyd, Berkeley Resident

## **Scheduling**

### **5. Council Worksessions Schedule – received and filed**

### **6. Council Referrals to Agenda Committee for Scheduling – received and filed**

### **7. Land Use Calendar – received and filed**

## **Referred Items for Review**

*Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.*

### **8. Discussion and Direction Regarding Revisions to the City Council Rules of Procedure and Order**

**From: City Manager**

Contact: Mark Numainville, City Clerk

**Action:** Minor revisions noted on pages 8 and 10. Item held over to special meeting on September 16, 2019.

## Items for Future Agendas

- Added an item regarding the timing and process for the City Manager evaluation to the 9/16/19 special meeting.

## Adjournment

**Action:** M/S/C (Harrison/Arreguin) to adjourn the meeting.

**Vote:** All Ayes.

Adjourned at 3:42 p.m.

I hereby certify that the foregoing is a true and correct record of the Agenda & Rules Committee meeting held on September 9, 2019.

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Mark Numainville  
City Clerk



**This version incorporates  
the edits and changes  
made through the  
meeting of Sept. 9, 2019.**

## The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 68,753–N.S.  
Effective  
January 29, 2019

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## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak. The Presiding Officer may set limits on the speaking time allotted to councilmembers during Council discussion.

Commented [NML2]: Edit from July 15, 2019 Agenda & Rules Committee meeting

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be

decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~ ~~recuse~~ themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML3]: Correct terminology

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**G. ~~City Council Policy for Naming and Renaming Public Facilities~~**

~~The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.~~

Commented [NML4]: Edit from July 15, 2019 Agenda & Rules Committee meeting

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair, ~~at the conclusion of the business presently before the Council.~~ In the absence of the two officers specified in this section, the ~~Councilmember~~council member present with the longest period of Council service shall preside.

Commented [NML5]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML6]: Amended to standardize use throughout the document

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

Commented [NML7]: Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial ~~Items (including comments from the City Auditor if requested);~~ Comments from the City Manager; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Commented [NML8]: Edit from July 15, 2019 Agenda & Rules Committee meeting

Commented [NML9]: Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by any ~~Councilmember~~council member, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by any ~~Councilmember~~council member, ~~the Council~~council member may also move an item from the Action Calendar to the Consent Calendar.

Commented [NML10]: Edit from July 15, 2019 Agenda & Rules Committee meeting – changed "a Councilmember" to "the Council"

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the

~~Agenda Committee~~ Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML11]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. 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; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the ~~Agenda Committee~~ Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m.

Commented [NML12]: Proposed addition regarding starting early for ceremonial items was removed at the July 15, 2019 Agenda & Rules Committee meeting

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML13]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary for the immediate preservation of the public peace, health or safety; the authority to

II. MEETINGS

extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~ Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through-up to the deadline for submission of staff reports for date of the first~~ through-up to the date of the first ~~Agenda & Rules Committee~~ Agenda & Rules Committee meeting ~~for the first regular meeting~~ after the Council recess.

Commented [NML14]: The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

Commented [NML15]: Edit from July 15, 2019 Agenda & Rules Committee meeting

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

**H. Pledge of Allegiance to the Flag**

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~ Ceremonial Calendar will be the Pledge of Allegiance.

**I. Ad Hoc Subcommittees**

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~ be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in ~~public and in accessible~~ locations that are open to the public and meet accessibility requirements under the Americans with Disabilities Act. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

Commented [NML16]: Edit from July 15, 2019 Agenda & Rules Committee meeting

## II. MEETINGS

~~City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.~~

~~Ad hoc~~ subcommittees will be staffed by City Council legislative staff. As part of the ad hoc subcommittee process, City staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item(s) under consideration. Staff analysis at ad hoc subcommittees is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

~~Certain requirements listed above may not apply to a~~ Ad hoc subcommittees ~~may seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.~~ convene a closed session meeting pursuant to the conditions and regulations imposed by the Brown Act.

Commented [NML17]: Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting. This language mirrors the language used for Policy Committees Charter III, Section G

Commented [NML18]: Staff proposed language based on discussion at July 15, 2019 Agenda & Rules Committee meeting.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML19]: Additional clarification

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any ~~Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a ~~Councilmember~~ council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of four Co-Authors (including the primary author). Co-Authors to Council reports may only be added in the following manner:

Commented [NML20]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. New language for designation of co-authors from the July 15, 2019 Agenda & Rules Committee meeting – removed limitation on when co-sponsors could be added and changed it to limit the addition of co-sponsors to discretion of the primary author.

- In the original item as submitted by the primary author
- In a revised item submitted by the primary author at the Agenda & Rules Committee
- By verbal request of the primary author at the Agenda & Rules Committee
- In a revised item submitted by the primary author in Supplemental Reports and Communications Packet #1 or #2
- By verbal request of any Councilmember at the policy committee meeting or meeting of the full council at which the item is considered

**<<Reviewed and Approved to this point 9/9/19>>**

Agenda items shall contain all relevant documentation, including the information listed below and the recommended points of analysis in the Council Report Guidelines in Appendix B. following as applicable:

Commented [NML21]: Adding reference to the new guidelines.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested;~~
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;



- c) Recommendation of the City Manager report author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;
- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
- j) Person or persons to contact for further information, with telephone number.
- k) Additional information and analysis as required.
- ~~j) If the author of any report believes additional background information beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML22]: Required by the Brown Act for all agenda items.

Commented [NML23]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Co-Author" means the primary author of a council agenda item and other Councilmembers designated by the primary author to be co-authors of the council agenda item.

- 3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
- 4. "Packet" means the agenda plus all its corresponding duplicated agenda items.
- 5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
  - a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency

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matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

- 6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~
- 7. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring~~ occurring more than 11 days earlier.

Commented [NML24]: Per Open Government Ordinance

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any ~~Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by ~~an the Agenda Committee~~ Agenda & Rules Committee, which shall be a standing committee of the City Council. ~~The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.~~

Commented [NML25]: Superseded by policy committee section below

The ~~Agenda Committee~~ Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. ~~Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day.~~ The ~~Agenda Committee~~ Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the ~~Agenda Committee~~ Agenda & Rules Committee meeting.

Commented [NML26]: Clarification

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by a Councilmember or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the ~~Agenda Committee~~ Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a policy committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the ~~Agenda Committee~~ Agenda & Rules Committee meeting whether ~~he or she~~ they prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the ~~Agenda Committee~~ Agenda & Rules Committee within 24 hours of the adjournment of the Agenda

Commented [NML27]: Current practice

~~Committee~~ Agenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a policy committee.

Commented [NML28]: Per policy committee regulations

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the ~~Agenda Committee~~ Agenda & Rules Committee's adjournment, the recommendation of the ~~Agenda Committee~~ Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. ~~If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.~~

Commented [NML29]: Unecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML30]: No longer needed with the policy committee system.

- ~~Reason 1 — Significant Lack of Background or Supporting Information~~
- ~~Reason 2 — Significant Grammatical or Readability Issues~~

b) **Items Authored by the City Manager.** The ~~Agenda Committee~~ Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the ~~Agenda Committee~~ Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the ~~referral~~ recommendation of the ~~Agenda Committee~~ Agenda & Rules Committee ~~or revised items that have not been resubmitted to the Agenda Committee~~ will automatically be placed on the Action Calendar.

Commented [NML31]: Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the ~~Agenda Committee~~ Agenda & Rules Committee.

i) For a commission item that does not require a companion report from the City ~~Mananger~~ Manager, the ~~Agenda Committee~~ Agenda & Rules

[Committee](#) may act on an agendized commission report in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
  2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports submitted in response to a Council referral shall receive higher priority for scheduling.
  3. Allow the item to proceed as submitted.
- ii) For any commission report that requires a companion report, the ~~Agenda Committee~~[Agenda & Rules Committee](#) will schedule the item on a Council agenda for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the ~~Agenda Committee~~[Agenda & Rules Committee](#). A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.
- d) The ~~Agenda Committee~~[Agenda & Rules Committee](#) shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

**2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

**3. Submission of Agenda Items.**

- a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.
- b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.
- c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or ~~Councilmember~~[council member](#) is

received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ Agenda & Rules Committee's published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~ Agenda & Rules Committee. Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~ Agenda & Rules Committee finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~ Agenda & Rules Committee may place the matter on the Agenda on either the Consent or Action Calendar.

- d) The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~ Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

#### 4. Submission of Supplemental and Revised Agenda Material.

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need

Commented [NML32]: Per Open Government Ordinance

for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

~~a)~~

b)c) After 5:12:00 p.m. ~~seven~~one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

~~The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.~~

Commented [NML33]: Reflects current practice, which is much less formal than deleted text.

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. Reports carried over, as Continued Business or Old Business need not be reproduced again.

Commented [NML34]: Inconsistent with OGO

**2. Distribution and Posting of Agenda.**

a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a

special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.

- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which support~~ing~~ materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**E. Agenda Sequence and Order of Business**

Commented [NML35]: Edits to reflect current order

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, [Comments from the City Auditor, Non-Agenda](#) 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

~~4-5.~~ [Non-Agenda Public Comment](#)

~~5-6.~~ [Adjournment](#)~~Communications~~

~~6-7.~~ [Communications](#)~~Adjournment~~

Action items may be reordered at the discretion of the Chair with the consent of Council.

The ~~Agenda Committee~~[Agenda & Rules Committee](#) shall have the authority to reorder the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at



the end of each closed session meeting and return them to the City Attorney's Office.

3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

**1A. Legislative Item Process**

All agenda items begin with submission to the ~~Agenda Committee~~ Agenda & Rules Committee.

Full Council Track

Items under this category are exempt from ~~Agenda Committee~~ Agenda & Rules Committee discretion to refer them to a policy committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- k.l. Committee and Regional Body Appointments

Commented [NML36]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

Commented [NML37]: Clarification

Commented [NML38]: Standard administrative item

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Notwithstanding the exemption stated above, the ~~Agenda Committee~~ Agenda & Rules Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.

The ~~Agenda Committee~~ Agenda & Rules Committee has discretion to determine if an item falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

#### Policy Committee Track

Items submitted by Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the ~~Agenda Committee~~ Agenda & Rules Committee on a draft City Council agenda ~~(on a list)~~.

Commented [NML39]: Clarification

The ~~Agenda Committee~~ Agenda & Rules Committee must refer an item to a policy committee at the first meeting that the item appears before the ~~Agenda Committee~~ Agenda & Rules Committee. The ~~Agenda Committee~~ Agenda & Rules Committee may only assign the item to a single policy committee.

For a Policy Committee Track item, the ~~Agenda Committee~~ Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a policy committee.

#### Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or ~~Councilmember~~ council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ Agenda & Rules Committee's published agenda.

The ~~Agenda Committee~~ Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass policy committee review if determined to be time critical. If such an item is deemed not to be time critical, it will be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the ~~Agenda Committee~~ Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

#### **B2. Council Referrals to Committees**

The full Council may refer any agenda item to a policy committee by majority vote.

**3. Participation Rules for Policy Committees Pursuant to the Brown Act**

Commented [NML40]: New requirements due to re-evaluation of Brown Act applicability to policy committees

- a. The quorum of a three-member policy committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two policy committee members may not discuss any item within the committee's subject matter jurisdiction outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a policy committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or and action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.
- d. All three members of a policy committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the policy committee may attend the committee meeting to participate in discussion of the item.
- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other councilmembers may attend as observers.
- g. An item may be considered by only one policy committee before it goes to the full Council.

**6.4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.

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e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.

f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.

~~f.g.~~ The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.

Commented [NML41]: Clarification of authority; reflects Charter

~~g-h.~~ Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.

i. Reports leaving a policy committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.

~~h-i.~~ No final action may be taken on an item for which revised or supplemental materials were submitted at the meeting. Per Brown Act regulations, any such materials must be direct revisions or supplements to the item that was published in the agenda packet.

Commented [NML42]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agendized items

Items referred to a policy committee from the ~~Agenda Committee~~Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the ~~Agenda Committee~~Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's ~~will include their~~ recommendation will be included in a ~~new separate~~ section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML43]: Clarification of authority. Commissions are advisory to the Full Council

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the policy committee are submitted to the agenda process by the members of the committee.

Commented [NML44]: Clarification of responsibility for shepherding items through process

~~A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.~~

Commented [NML45]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a policy committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda Committee~~ Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda Committee~~ Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a policy committee may not be referred to a policy committee and must remain on the full Council agenda for consideration.

Commented [NML46]: Closes "endless loop" loophole

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Commented [NML47]: Clarification

Once the item is voted out of a policy committee, the final item will be resubmitted to the agenda process by the author, and it will return to the ~~Agenda Committee~~ Agenda & Rules Committee on the next available agenda. The ~~Agenda Committee~~ Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML48]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the item first appeared on the committee agenda.

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three ~~Councilmembers~~ Councilmembers ~~with a fourth Councilmember appointed as an alternate~~. Each Councilmember and the Mayor will serve on two committees. The committees are as follows:

Commented [NML49]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

1. Agenda and Rules Committee

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2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The ~~Agenda Committee~~ Agenda & Rules Committee shall establish the policy committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing policy committees of the City Council are considered “legislative bodies” under the Brown Act and must conduct all business in accordance with the Brown Act.

Commented [NML50]: Clarification

**6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## 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, 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 and 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.

#### 1. Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar," 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. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or 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 and public comment and action on consent items, 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.](#)

**3. 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.

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 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.

Commented [NML51]: Reflects existing due process standards



**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.

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 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.

~~According to the current Rules and Procedures 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 Committee~~ [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.

**5. 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.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, ~~C~~ouncilmembers, 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.

IV. CONDUCT OF MEETING

It is the policy of the Council that ~~C~~eouncilmembers 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.

**C. Information Reports Called Up for Discussion**

Reports for Information designated for discussion at the request of any ~~Councilmember~~council member shall be added to the appropriate section of ~~the Reports for Action~~ Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of any ~~Councilmember~~council member a Report for Information may be acted upon by the Council.

**D. Communications**

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. A ~~Councilmember~~council member may refer a communication to ~~staff~~ the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

Commented [NML52]: Clarification per OGO

**E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters**

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML53]: Same as above

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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Commented [NML54]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML55]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

#### IV. CONDUCT OF MEETING

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~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

#### H. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a ~~Councilmember~~council member except through the Presiding Officer.

## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. ~~message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML56]: Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and

9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn~~, amend, or substitute, shall be put to a vote without debate.

Commented [NML57]: Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercede~~supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The ~~Councilmember~~council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Councilmember~~council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded~~ by a member one of the prevailing sides, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML58]: Must happen at the same meeting, not just the same day.

Commented [NML59]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, e~~ Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of ~~Good of the City Information Reports~~; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a-1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~ council member to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~ council member may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph Section a-4D~~ hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Commented [NML60]: Exactly restated later in same paragraph

Commented [NML61]: Not sure what could be meant by "qualified"



Interested parties or their authorized representatives may address the Council ~~by in the form of~~ written communications in regard to matters of concern to them ~~by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.~~

~~Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.~~

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

Commented [NML62]: Described elsewhere and unnecessary here.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than a ~~Councilmember~~council member shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI. FACILITIES

### A. Council Chamber Capacity

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location~~thereof~~. Entrance to the ~~City Hall~~ meeting location will be appropriately regulated by the City Manager on occasions when ~~the Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML63]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location has ~~have~~ reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.

APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the [Agenda Committee](#) [Agenda & Rules Committee](#) to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan



- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

#### **7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

#### **8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

#### **9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., *"it is expected that 100 homeless people will be referred to housing every year"*) and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

July 15, 2019

To: Honorable Members of the Agenda and Rules Committee

From: Councilmembers Lori Droste, Susan Wengraf

Subject: Updated Guidelines for Council Items

**Recommendation**

Adopt revised Guidelines for Writing and Developing Council Agenda Items (Attachment 2) to serve as a guiding template for Council referrals beginning in September 2019.

**Problem/ Summary Statement**

Current Council guidelines lack a few critical elements –opportunity costs and an evaluative criteria category, including specific budget allocation requests and *alignment* with strategic plan tenets– in [Guidelines for Writing and Developing Council Agenda Items](#). As a result, Council may not have adequate information to make decisions in the best interest of the public. Staff may be required to implement a measure without necessary funding or clarity of what to prioritize given the new item.

**Background**

In January 2019, City Council adopted new guidelines for writing and developing Council items. These guidelines were an important step in ensuring that Council items on the agenda include detailed, contextual background information.

During the 2019 budget subcommittee process, community members provided valuable input regarding the City of Berkeley’s budget process. Typically, budget referrals are not tied to Council referrals. For example, many items that are high priorities for Berkeley City Council may not have a specific budget request. Additionally, prior to the June and November budget decisions, a flurry of Council budget referrals are submitted after the printed budget deadline. This can result in making budget adjustments much more challenging in the closing days of the budget process and passing a budget where top priorities are unfunded while other initiatives are funded without an accompanying policy referral.

Additionally, City Auditor Jenny Wong has also indicated to Council and various policy committees the necessity of confronting tradeoffs and opportunity costs prior to adopting policies.<sup>1</sup> This was based on the auditor’s report that found some ordinances are passed without fully analyzing the resources needed and without understanding current staffing capacity. By passing ordinances without understanding tradeoffs or opportunity costs, Council is not equipped with adequate information to make decisions and the public does not have the proper expectations about when and how an ordinance will be implemented, even at a high level.

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<sup>1</sup>[https://www.cityofberkeley.info/uploadedFiles/Auditor/Level\\_3\\_-\\_General/A.2\\_RPT\\_Code%20Enforcement\\_Fiscal%20Year%202018.pdf](https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A.2_RPT_Code%20Enforcement_Fiscal%20Year%202018.pdf)

## Actions/Alternatives Considered

### *Current policy*

The revised guidelines adopted in January 2019 were a tremendous step forward toward better policy making and procedures. The revised item provides some minor amendments and formatting changes and simplifies the guidelines.

### *Proposed Guidelines*

The revised guidelines for council items draws upon Eugene Bardach's *Eightfold Path for Policy Analysis*.

1. Define the Problem
  - "Problem/Summary Statement"
  - Emphasis on defining the problem with specifics (e.g. quantify) and with enough context to explain why people should care.
  - E.g. "What private troubles warrant definition as public problems and thereby legitimately raise claims for amelioration by public resources?"
2. Assemble the Evidence
  - Merges "Background," "Review of Existing Plans, Programs, Policies, and Laws", "Consultation/Outreach Overview and Results"
  - E.g. What current plans, programs, policies, laws, and best practices currently address this issue?
  - E.g. What stakeholders did you engage and what was the feedback?
3. Construct the Alternatives
  - Merges status quo ("Current Situation and Its Effects") with "Actions/Alternatives Considered"
  - E.g. What is the current situation? What were some alternatives you considered when trying to address the problem?
4. Select the Criteria
  - **New recommendation: "Criteria Considered"**
  - Includes current categories "Environmental Sustainability" and "Fiscal Impacts"
  - Adds new categories "Effectiveness" and "Strategic Plan Alignment"
  - Amends Fiscal Impacts to include "Budget Referral" that dollarizes staff time and program implementation.
5. Project the Outcomes
  - AKA "Outcomes and Evaluation"
  - Evaluates the alternatives using the selected criteria
  - Identifying results to be achieved from passing item, which can include short and long term outcomes.

Example:

|                      | Benefits/<br>Effectiveness | Fiscal<br>Impacts/ Cost | Strategic Plan<br>Alignment                                                                                | Additional criteria<br>(environmental<br>sustainability, equity,<br>privacy, or safety, etc.) |
|----------------------|----------------------------|-------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Current<br>situation | <i>Analysis</i>            | <i>Analysis</i>         | E.g. “Provide state-<br>of-the-art well-<br>maintained<br>infrastructure,<br>amenities, and<br>facilities” | <i>Analysis</i>                                                                               |
| Alternative A        | <i>Analysis</i>            | <i>Analysis</i>         | E.g. “Provide state-<br>of-the-art well-<br>maintained<br>infrastructure,<br>amenities, and<br>facilities” | <i>Analysis</i>                                                                               |
| Alternative B        | <i>Analysis</i>            | <i>Analysis</i>         | E.g. “Provide state-<br>of-the-art well-<br>maintained<br>infrastructure,<br>amenities, and<br>facilities” | <i>Analysis</i>                                                                               |

6. Confront the Tradeoffs

- **NEW RECOMMENDATION “Operational Considerations”<sup>2</sup>**
- E.g. What are the tradeoffs, including what services and programs will diminish and by how much and how long when staff shift their efforts from an existing service or program to the proposed item? What is the estimated staff time needed for the proposed item? Will critical projects have to be delayed? Will crucial work not get done? Are there fiscal implications of not doing currently assigned work? Does diverting staff’s time risk noncompliance with laws and regulations? Assess the shift of staff time in terms of time and dollars.
- If this is a referral to commissions, what previous referrals will be put on hold in order to complete this? How does this fit into the Commission’s existing workplan?
- Operational considerations will be finalized during policy committee review before Council review and will not be a requirement for initial submission.

7. Decide

- AKA “Rationale for Recommendation”
- Moves this category to the end of the referral after appropriate analysis.

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<sup>2</sup> Recommendation from City Auditor Jenny Wong’s 2019 letter

- E.g. How did you land on this policy as being the most effective path forward?

8. Tell Your Story

- Drafting council items is a form of telling your story.

**Rationale for Recommendation**

If Council and staff incorporate these guidelines into agenda items, better policies will result. Namely, the City Council and the public will learn more about costs and benefits of certain policies. The community will learn about potential tradeoffs of current or existing policies. Finally, Council will no longer have to submit last minute budget referrals so budget requests will be easily prioritized, quantified and considered in time for budget adoption. Collectively, the improved process will better communicate expectations to policy makers, stakeholders and the community.

**Contact Information**

Councilmember Lori Droste, (510) 981-7180

Councilmember Susan Wengraf, (510) 981-7160

**Attachment 1**

RESOLUTION NO. ##,###-N.S.  
AMENDING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order attached hereto and incorporated by reference shall govern all proceedings of the City Council herein prescribed, 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, excepting that breach of the peace or willful failure to comply with the lawful orders of the Council or its presiding officer shall be punishable as misdemeanors under applicable law.

BE IT FURTHER RESOLVED that the City Council Rules of Procedure and Order are amended to include amendments to Appendix B. Guidelines for Developing and Writing Council Agenda Items.

BE IT FURTHER RESOLVED that such guidelines constitute suggestions but not requirements for items submitted to the agenda for consideration by the City Council.

BE IT FURTHER RESOLVED that preceding amendatory Resolutions XXXXX-N.S. and xxxxx-N.S. are hereby rescinded.

## Attachment 2

### APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as applicable:

- A. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
- B. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- C. Recommendation;
- D. Problem/Summary Statement
- E. Background information as needed;
- F. A description of the current situation and its effects and alternative actions considered;
- G. Criteria considered, including fiscal impacts of the recommendation;
- H. Outcomes and evaluation;
- I. Operational considerations;
- J. Rationale for recommendation;
- K. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
- L. Person or persons to contact for further information, with telephone number.

Guidelines for City Council Items:

1. Title
2. Consent/Action/Information Calendar
3. Recommendation
4. Problem/Summary Statement
5. Background
6. Current Situation and Actions/Alternatives Considered



7. Criteria Considered
8. Outcomes and Evaluation
9. Operational Considerations
10. Rationale for Recommendation
11. Budget Referral
12. Contact Information
13. Attachments/Supporting Materials

### **1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

### **2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

### **3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

### **4. Problem/Summary Statement**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- State the opportunity/problem/concern that has been identified and why it warrants intervention.
- Define, quantify and contextualize the problem

### **5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

#### **a. *Review of Existing Plans, Programs, Policies and Laws***

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to

them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan
- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

*b. Consultation/Outreach Overview and Results*

- Review/list external and internal stakeholders that were consulted
  - External: constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - Internal: staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

**6. Actions/Alternatives Considered**

*a. Current Situation and Its Effects*

*b. Alternatives Considered*

- What are some policy options that may mitigate or solve the problem?
- What solutions/measures have other jurisdictions adopted?
- What solutions/measures are recommended by advocates, experts, organizations?

**7. Criteria Considered**

- *Effectiveness*—How does this alternative maximize net benefits? How does it maximize public interest?
- *Fiscal Impacts*—Dollarize the estimated staff time and program implementation. Clarify whether the item is already budgeted, being shifted from an existing service to another, or a new funding source. [CG1] If the item requires a new funding source, include a budget referral. Review the recommended action’s potential to generate funds or savings for the City in the short and long-term.
- *Strategic Plan Alignment*—What provision of the strategic plan does this fall under?
- *Additional Criteria*—Additional criteria includes environmental sustainability, privacy, equity, safety or any other relevant and pertinent criteria.

**8. Outcomes and Evaluation**

- Project the outcomes and evaluate the alternatives using the selected criteria (Alternatives X Criteria).
- What are some of the major pros and cons?
- Why were other solutions not advisable/feasible?

Example:

|                   | Benefits/<br>Effectiveness | Fiscal<br>Impacts/<br>Cost | Strategic Plan Alignment                                                                  | Additional criteria<br>(environmental<br>sustainability, equity,<br>privacy, or safety, etc.) |
|-------------------|----------------------------|----------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|
| Current situation | <i>Analysis</i>            | <i>Analysis</i>            | E.g. “Provide state-of-the-art well-maintained infrastructure, amenities, and facilities” | <i>Analysis</i>                                                                               |
| Alternative A     | <i>Analysis</i>            | <i>Analysis</i>            | E.g. “Provide state-of-the-art well-maintained infrastructure, amenities, and facilities” | <i>Analysis</i>                                                                               |
| Alternative B     | <i>Analysis</i>            | <i>Analysis</i>            | E.g. “Provide state-of-the-art well-maintained infrastructure, amenities, and facilities” | <i>Analysis</i>                                                                               |

**9.Operational Considerations**

- What are the tradeoffs, including what services and programs will diminish and by how much and how long when staff shift their efforts from an existing service or program to the proposed item? What is the estimated staff time needed for the proposed item? Will

critical projects have to be delayed? Will crucial work not get done? Are there fiscal implications of not doing currently assigned work? Does diverting staff's time risk noncompliance with laws and regulations? Assess the shift of staff time in terms of time and dollars. (Wong, 2019).

- If this is a referral to commissions, what previous referrals will be put on hold in order to complete this? How does this fit into the Commission's existing workplan?
- Operational considerations will be finalized during policy committee review before Council review and will not be a requirement for initial submission.

#### **10. Rationale for Recommendation**

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented, but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in minor ways
- Change/Amend existing Plans, Programs, Policies and Laws in major ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

#### **11. Budget Referral**

Include a budget referral. If the accompanying item is already budgeted, indicate so. Budget considerations should be finalized during policy committee analysis and are not a requirement for referral to a policy committee.

#### **12. Contact Information**

#### **13. Attachments/Supporting Materials**



**Date:** June 25, 2019

**To:** Jesse Arreguin, Mayor

**From:** Jenny Wong, City Auditor *zw*

**Topic:** Operational Considerations of New Council Directives and Ordinances

### Background and Current Situation

Drafting and considering a new ordinance requires thorough research and input from a variety of stakeholders. While there is suggested guidance, the current rules do not require new ordinances to go to the new policy committees. This can lead to inadequate vetting of a new ordinance. In addition, the current lack of operational information on City Council items leaves a gap in information for this legislative body to make informed decisions.

On January 29, 2019, the City Council referred the issue to the Agenda and Rules Committee to consider amendments related to opportunity costs. On February 4, 2019, the City Manager introduced an operational impacts analysis for use in staff reports. However, this information is not currently being used. As of today, this issue of operational and opportunity cost is not consistently available and therefore not considered in decision making by the City Council.

### Suggested Action

Amend the Berkeley City Council Rules of Procedure and Order to require all ordinances be automatically referred to a policy committee; and identify the operational considerations as requirements to be included in agenda items that will result in the use of staff time.

### Operational Considerations

It is in the best interest of the public and transparency in government when adequate information is provided for the City Council to make decisions. Currently, there is no requirement that operational cost, including opportunity cost (tradeoffs), be included in council directives, including ordinances. The lack of information does not equip City Council with information about what staff can reasonably accomplish given its available resources, nor does it give City Council an understanding of the tradeoffs they are making when proposing new items. New projects, new ordinances, and similar directives all require staff time and staff time has fiscal implications.

Many staff are working at high-capacity and any new work or need realistically means that they must stop working on one service or program in order to address new demands. This makes sense as City Council sets new priorities given the needs of the community. It is, therefore, essential for Council to have this information to think in terms of tradeoffs as they work to address the many, diverse needs of the community. This information will also serve as transparency and provide expectations to the public about the timeframes and resources related to the rollout of a new directive.

The term opportunity costs may seem more daunting than need be. While over time this concept can be developed into something more robust with a deeper analysis, the City can start from a more basic position to inform their decisions and remain accountable to the public. When drafting new items, Councilmembers can be better informed by working with city management to get an understanding of the operational impact that the new directive will require. The following outlines a way for City Council to prepare their item for review and consideration by the Policy Committee:

- **Analyze what is being gained against what must be lost (tradeoffs):**

A new commitment to the public without new resources, i.e., new staff, to provide the service means that an existing commitment can no longer be kept. To ensure that public needs are met, there some questions to ask of management when developing a new directive include: How severe would the shift from an existing service to the new service be? Is the new promise more important than the old? Is there a middle ground? Will critical projects have to be delayed? Will crucial work not get done? Are there fiscal implications of not doing that work? Does diverting staff's time risk noncompliance with laws and regulations? Will the public still expect the former promises to be kept?

Those are just some of the questions to guide the discussion because while there will always be strictly fiscal implications, the real issue to think about is the need to shift staff from one project to another, either entirely or at least partially, which removes the ability to get other work done or greatly delays it.

- **Assess the shift in staff priorities in terms of time and dollars:**

The discussion with management should also consider how much time it will take of staff to do the work. This will first require an open discussion about what the expectations are of the new item. Questions to ask include: How soon does this need to be done? Is it an ongoing need or short-term? Is it a high-priority? Does it require proactive enforcement? What other work needs to be done to make it happen?

After having those and other questions answered, management will be better able to identify resource needs in terms of staff time, e.g., “it’ll take two full weeks (80 hours),” or “a ½ FTE.” This then will allow management to assess dollars using known salaries and fringe benefit rates.

- **Set timeframes for the information:**

Management will need some time to provide City Council with the information they need. For some items, that are less complex and have a known comparison, a two-week turnaround to get the information may be feasible. For complex items involving multiple departments and that do not have an existing framework to build upon, more time will be needed, e.g., a month. There is no one size fits all but guidelines can set up these expectations.

### Agenda Item Requirements

To better inform Councilmembers who will vote on an agenda item and ensure that the public is provided transparent information on what services they may lose or have reduced as the result of a new Council directive, we suggest that Council amend the Berkeley City Council Rules of Procedure and Order (Rules):

- **Ordinances automatically referred to a policy committee:**

This will help ensure that a proposed policy is fully vetted and includes a discussion on both operational considerations and fiscal implications before sent to City Council for a vote.

- **Include service and program tradeoffs as an agenda item requirement:**

Adopting a new ordinance or giving a directive to have city staff produce an item will always require the use of a resource – staff time – and those always translate into fiscal implications. This should be transparent to both City Council considering the adoption of the new item and the public impacted by the new item. Page nine of the Berkeley City Council Rules of Procedure and Order (Rules) list the requirements for agenda items. Missing from those is the requirement to provide information on tradeoffs – shifting of staff time from one service or program to another and the impact of that shift.

- **Change “Implementation, Administration, and Enforcement” to “Operational Considerations:”**

Administration and enforcement are subsets of implementation and all are the operational considerations that Council should understand before adopting an item. This section should be used to discuss the service and program tradeoffs, including what services and programs will diminish and by how much and how long.

- **Move “Fiscal Implications” below “Operational Considerations:”**

Fiscal implications and operational considerations are intricately linked. By having fiscal implications shifted above environmental sustainability, this will be more transparent to both City Council and the public.

- **Dollarize staff time and make this a requirement:**

Staff time is the city’s largest cost and new Council directives requiring either short-term or ongoing staff time will result in fiscal implications that shift the use of existing budgeted funds. A well vetted agenda item that has identified staff time, e.g., ½ FTE, should automatically require that the time be translated into salaries and benefit costs and clarify that these are budgeted funds being shifted from an existing service to another. This practice is done on some items but not all. Making it a requirement will ensure Council has this information to make informed decisions.



### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items carried over.

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.
2. Agenda items shall contain all relevant documentation, including the following as applicable:
  - a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c) Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d) Operational considerations of the recommendation;
  - e) Fiscal impacts of the recommendation;
  - f) A description of the current situation and its effects;
  - g) Background information as needed;
  - h) Rationale for recommendation;
  - i) Alternative actions considered;
  - j) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

- j) Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.
3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.
4. "Packet" means the agenda plus all its corresponding duplicated agenda items.
5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:
  - a) A work stoppage or other activity which severely impairs public health, safety, or both;
  - b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.
6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, as uncompleted items.
7. "Old Business" Items carried over from a prior agenda of a meeting as uncompleted items.

### **C. Procedure for Bringing Matters Before City Council**

#### **1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by an Agenda Committee, which shall be a standing committee of the City Council. The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting. **Proposed ordinances are automatically referred to policy committee for review.**

The Agenda Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. The Agenda Committee packet, including a draft agenda and Councilmember and Commission

1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the Agenda Committee to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Operational considerations of the recommendation;
  - e. Fiscal impacts of the recommendation;
  - f. A description of the current situation and its effects;
  - g. Background information as needed;
  - h. Rationale for recommendation;
  - i. Alternative actions considered;
  - j. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - k. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

## Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. ~~Implementation, Administration and Enforcement~~  
Operational considerations of the recommendation;
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City’s Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

## 7. Actions/Alternatives Considered

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

## 8. Consultation/Outreach Overview and Results

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

## 9. Rationale for Recommendation

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. ~~Implementation, Administration and Enforcement~~ Operational Considerations of the Recommendation**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation? What are the tradeoffs, including what services and programs will diminish and by how much and how long when staff shift their efforts from an existing service or program to the proposed item? What is the estimated staff time needed for the proposed item, e.g., 1/2 FTE?

**11. Fiscal Implications**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs. Translate the estimated staff time from item 10 into salaries and benefit costs and clarify that these are budgeted funds being shifted from an existing service to another, or a new funding source.

**12. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**





City Clerk Department

July 1, 2019

To: Agenda and Rules Committee  
From: Mark Numainville, City Clerk  
Subject: Amendments to the City Council Rules of Procedure and Order

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The attached document contains significant amendments to City Council Rules of Procedure and Order. The amendments are needed to update the Rules of Procedure (ROP) to incorporate the regulations adopted to govern City Council Policy Committees in Resolution 68,726-N.S. adopted on December 11, 2018. In addition, with three months of policy committee meetings completed, the need for amendments to the original policy committee regulations have surfaced. The amendments related to policy committees have ripples throughout the document and require changes to the sections for the Agenda Committee and the legislative process.

Some of the amendments related to policy committees are related to the participation of councilmembers. These amendments are being proposed due to a re-evaluation of the Brown Act's applicability to the policy committee process. After thorough review by the City Attorney's Office, the City Clerk Department, and the Chair of the League of California Cities Brown Act Committee, staff has concluded that new rules limiting participation by councilmembers are required. These changes are located on pages 20-21 of the attachment.

With the significant amendments needed to incorporate policy committees, staff recommends using this update to make other amendments related to the items below.

- Revised and Supplemental materials per the Open Government Ordinance
- Outdated language and agenda headings
- Clarification regarding public comment on appeals
- Parliamentary clarifications to adhere to Roberts Rules of Order
- Updates to reflect the move to BUSD Board Room
- Other minor modifications and technical corrections

A fully annotated version of the revised document with all amendments in track changes is attached.

The Rules of Procedure and Order are adopted by Resolution. Staff is seeking comments and suggestions from the Committee on the proposed changes and will submit the amendments to the full Council after the committee has taken action on the amendments.

\* \* \*

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# The Berkeley City Council Rules of Procedure and Order

Adopted by Resolution No. 68,753–N.S.  
Effective  
January 29, 2019

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## I. DUTIES

### A. Duties of Mayor

The Mayor shall preside at the meetings of the Council and shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal to the Council, in which event a majority vote of the Council shall govern and conclusively determine such question of order. In the Mayor's absence, the Vice President of the Council (hereafter referred to as the Vice-Mayor) shall preside.

Commented [NML1]: Standard current practice per City Charter

### B. Duties of Councilmembers

Promptly at the hour set by law on the date of each regular meeting, the members of the Council shall take their regular stations in the Council Chambers and the business of the Council shall be taken up for consideration and disposition.

### C. Motions to be Stated by Chair

When a motion is made, it may be stated by the Chair or the City Clerk before debate.

### D. Decorum by Councilmembers

While the Council is in session, the City Council will practice civility and decorum in their discussions and debate. Councilmembers will value each other's time and will preserve order and decorum. A member shall neither, by conversation or otherwise, delay or interrupt the proceedings of the Council, use personal, impertinent or slanderous remarks, nor disturb any other member while that member is speaking or refuse to obey the orders of the presiding officer or the Council, except as otherwise provided herein.

All Councilmembers have the opportunity to speak and agree to disagree but no Councilmember shall speak twice on any given subject unless all other Councilmembers have been given the opportunity to speak.

The presiding officer has the affirmative duty to maintain order. The City Council will honor the role of the presiding officer in maintaining order. If a Councilmember believes the presiding officer is not maintaining order, the Councilmember may move that the Vice-Mayor, or another Councilmember if the Vice-Mayor is acting as the presiding officer at the time, enforce the rules of decorum and otherwise maintain order. If that motion receives a second and is approved by a majority of the Council, the Vice-Mayor, or other designated Councilmember, shall enforce the rules of decorum and maintain order.

### E. Voting Disqualification

No member of the Council who is disqualified shall vote upon the matter on which the member is disqualified. Any member shall openly state or have the presiding officer announce the fact and nature of such disqualification in open meeting, and shall not be subject to further inquiry. Where no clearly disqualifying conflict of interest appears, the matter of disqualification may, at the request of the member affected, be decided by the other members of the Council, by motion, and such decision shall determine such member's right and obligation to vote. A member who is disqualified

by conflict of interest in any matter shall not remain in the Chamber during the debate and vote on such matter, but shall request and be given the presiding officer's permission to ~~absent~~recuse themselves. Any member having a "remote interest" in any matter as provided in Government Code shall divulge the same before voting.

Commented [NML2]: Correct terminology

**F. Requests for Technical Assistance and/or Reports**

A majority vote of the Council shall be required to direct staff to provide technical assistance, develop a report, initiate staff research, or respond to requests for information or service generated by an individual council member.

**G. City Council Policy for Naming and Renaming Public Facilities**

The City Council Policy for Naming and Renaming Public Facilities adopted on January 31, 2012, and all its successors, is incorporated by reference into the City Council Rules of Procedure and included as Appendix A to this document.

## II. MEETINGS

### A. Call to Order - Presiding Officer

The Mayor, or in the Mayor's absence, the Vice Mayor, shall take the chair precisely at the hour appointed by the meeting and shall immediately call the Council to order. Upon the arrival of the Mayor, the Vice Mayor shall immediately relinquish the chair at the conclusion of the business presently before the Council. In the absence of the two officers specified in this section, the ~~Councilmember~~council member present with the longest period of Council service shall preside.

Commented [NML3]: Amended to standardize use throughout the document

### B. Roll Call

Before the Council shall proceed with the business of the Council, the City Clerk shall call the roll of the members and the names of those present shall be entered in the minutes. The later arrival of any absentee shall also be entered in the minutes.

### C. Quorum Call

During the course of the meeting, should the Chair note a Council quorum is lacking, the Chair shall call this fact to the attention of the City Clerk. The City Clerk shall issue a quorum call. If a quorum has not been restored within two minutes of a quorum call, the meeting shall be deemed automatically adjourned.

### D. Council Meeting ~~Schedule~~Conduct of Business

~~The City Council shall hold a minimum of twenty four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.~~

Commented [NML4]: Moved to more appropriate location below

~~Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.~~

~~Regular City Council meetings shall begin no later than 6:00 p.m.~~

The agenda for the regular business meetings shall include the following: Ceremonial; Comments from the City Manager; Comments from the City Auditor; Comments from the Public; Consent Calendar; Action Calendar (Appeals, Public Hearings, Continued Business, Old Business, New Business); Information Reports; and Communication from the Public. Presentations and workshops may be included as part of the Action Calendar. ~~Items removed from the Consent Calendar will be moved to the Action Calendar.~~ The Chair will determine the order in which the item(s) will be heard with the consent of Council.

Commented [NML5]: Items removed from Consent may have many other actions taken and listing this single action is misleading.

Upon request by any ~~Councilmember~~council member, any item may be moved from the Consent Calendar or Information Calendar to the Action Calendar. Unless there is an objection by any ~~Councilmember~~council member, a ~~Councilmember~~council member may also move an item from the Action Calendar to the Consent Calendar.

A public hearing that is not expected to be lengthy may be placed on the agenda for a regular business meeting. When a public hearing is expected to be contentious and lengthy and/or the Council's regular meeting schedule is heavily booked, the



~~Agenda Committee~~ Agenda & Rules Committee, in conjunction with the staff, will schedule a special meeting exclusively for the public hearing. No other matters shall be placed on the agenda for the special meeting. All public comment will be considered as part of the public hearing and no separate time will be set aside for public comment not related to the public hearing at this meeting.

Commented [NML6]: Amended to standardize use throughout the document

Except at meetings at which the budget is to be adopted, no public hearing may commence later than 10:00 p.m. unless there is a legal necessity to hold the hearing or make a decision at that meeting or the City Council determines by a two-thirds vote that there is a fiscal necessity to hold the hearing.

**E. Adjournment**

1. 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; and any motion to extend the meeting beyond 11:00 p.m. shall include a list of specific agenda items to be covered and shall specify in which order these items shall be handled.
2. Any items not completed at a regularly scheduled Council meeting may be continued to an Adjourned Regular Meeting by a two-thirds majority vote of the Council.

**F. Unfinished Business**

Any items not completed by formal action of the Council, and any items not postponed to a date certain, shall be considered Unfinished Business. All Unfinished Business shall be referred to the ~~Agenda Committee~~ Agenda & Rules Committee for scheduling for a Council meeting that occurs within 60 days from the date the item last appeared on a Council agenda. The 60 day period is tolled during a Council recess.

**G. City Council Schedule and Recess Periods**

The City Council shall hold a minimum of twenty-four (24) meetings, or the amount needed to conduct City business in a timely manner, whichever is greater, each calendar year.

Regular meetings of the City Council shall be held generally two to three Tuesdays of each month; the schedule to be established annually by Council resolution taking into consideration holidays and election dates.

Regular City Council meetings shall begin no later than 6:00 p.m. ~~Ceremonial~~ items may be taken up as special items noticed to be heard in advance of the scheduled start time of the regular meeting.

Commented [NML7]: Allows for possibility of starting earlier for ceremonial items

A recess period is defined as a period of time longer than 21 days without a regular ~~or special~~ meeting of the Council.

Commented [NML8]: Special meetings are as needed and are not factored in to the annual schedule that is adopted, which includes the recess periods.

When a recess period occurs, the City Manager is authorized to take such ministerial actions for matters of operational urgency as would normally be taken by the City Council during the period of recess except for those duties specifically reserved to the Council by the Charter, and including such emergency actions as are necessary

## II. MEETINGS

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for the immediate preservation of the public peace, health or safety; the authority to extend throughout the period of time established by the City Council for the period of recess.

The City Manager shall have the aforementioned authority beginning the day after the ~~Agenda Committee~~Agenda & Rules Committee meeting for the last regular meeting before a Council recess and this authority shall extend ~~through~~up to the ~~deadline for submission of staff reports for~~date of the first meeting after the Council recess.

Commented [NML9]: The existing definition left a significant gap that did not allow City Manager action on administratively urgent items

The City Manager shall make a full and complete report to the City Council at its first regularly scheduled meeting following the period of recess of actions taken by the City Manager pursuant to this section, at which time the City Council may make such findings as may be required and confirm said actions of the City Manager.

### H. Pledge of Allegiance to the Flag

At the first meeting of each year following the August recess and at any subsequent meeting if specifically requested before the meeting by any member of the Council in order to commemorate an occasion of national significance, the first item on the ~~program~~Ceremonial Calendar will be the Pledge of Allegiance.

### I. Ad Hoc Subcommittees

From time to time the Council or the Mayor may appoint several of its members but fewer than the existing quorum of the present body to serve as an ad hoc subcommittee. Only Council ~~members~~ may ~~become~~be members of the ad hoc subcommittee; however, the subcommittee shall seek input and advice from ~~the~~ residents, related commissions, and other groups. Ad Hoc Subcommittees must be reviewed annually by the Council to determine if the subcommittee is to continue.

Upon creation of an ad hoc subcommittee, the Council shall allow it to operate with the following parameters:

1. A specific charge or outline of responsibilities shall be established by the Council.
2. A target date must be established for a report back to the Council.
3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the Council.

Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular Council meetings except that subcommittee agendas may be posted with 24-hour notice. The public will be permitted to comment on agenda items but public comments may be limited to one minute if deemed necessary by the Committee Chair. Agendas and minutes of the meetings must be maintained and made available upon request.

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## II. MEETINGS

-City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two.

Certain requirements listed above may not apply to ad hoc subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.

### III. AGENDA

#### A. Declaration of Policy

No ordinance, resolution, or item of business shall be introduced, discussed or acted upon before the Council at its meeting without prior thereto its having been published on the agenda of the meeting and posted in accordance with Section III.D.2. Exceptions to this rule are limited to circumstances listed in Section III.D.4.b and items ~~carried over~~ continued from a previous meeting and published on a revised agenda.

Commented [NML10]: Additional clarification

#### B. Definitions

For purposes of this section, the terms listed herein shall be defined as follows:

1. "Agenda Item" means an item placed on the agenda (on either the Consent Calendar or as a Report For Action) for a vote of the Council by any ~~Councilmember~~ council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council, or any Report For Information which may be acted upon if a ~~Councilmember~~ council member so requests. For purposes of this section, appeals shall be considered action items. All information from the City Manager concerning any item to be acted upon by the Council shall be submitted as a report on the agenda and not as an off-agenda memorandum and shall be available for public review, except to the extent such report is privileged and thus confidential such as an attorney client communication concerning a litigation matter.

Council agenda items are limited to a maximum of three Co-Authors. Co-Authors to a Council agenda item must be designated and included on the agenda item when it is originally submitted to the City Clerk. Co-Authors may not be added after the item is initially submitted to the City Clerk.

Commented [NML11]: Must have certainty at the time of submission and throughout the process to properly monitor participation in policy committee meetings per the Brown Act. Limiting to three allows for more flexibility for compliance in the legislative process.

Agenda items shall contain all relevant documentation, including the information listed below and the recommended points of analysis in the Council Report Guidelines in Appendix B. following as applicable:

Commented [NML12]: Adding reference to the new guidelines.

- a) A descriptive title that adequately informs the public of the subject matter and general nature of the item or report ~~and action requested;~~
- b) Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
- c) Recommendation of the ~~City Manager~~ report author that describes the action to be taken on the item, if applicable; ~~(these provisions shall not apply to Mayor and Council items.);~~
- d) Fiscal impacts of the recommendation;
- e) A description of the current situation and its effects;
- f) Background information as needed;

Commented [NML13]: Required by the Brown Act for all agenda items.

- g) Rationale for recommendation;
- h) Alternative actions considered;
- i) For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);

j) Person or persons to contact for further information, with telephone number.

k) Additional information and analysis as required.

~~j) If the author of any report believes additional background information beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.~~

Commented [NML14]: Outdated. We publish all materials except for the full administrative record of ZAB appeal.

2. "Co-Author" means the primary author of a council agenda item and other Councilmembers designated by the primary author to be co-authors of the council agenda item.

3. "Agenda" means the compilation of the descriptive titles of agenda items submitted to the City Clerk, arranged in the sequence established in Section III.E hereof.

4. "Packet" means the agenda plus all its corresponding duplicated agenda items.

5. "Emergency Matter" arises when prompt action is necessary due to the disruption or threatened disruption of public facilities and a majority of the Council determines that:

- a) A work stoppage or other activity which severely impairs public health, safety, or both;
- b) A crippling disaster, which severely impairs public health, safety or both. Notice of the Council's proposed consideration of any such emergency matter shall be given in the manner required by law for such an emergency pursuant to Government Code Section 54956.5.

6. "Continued Business" Items carried over from a prior agenda of a meeting occurring less than 11 days earlier, ~~as uncompleted items.~~

7. "Old Business" Items carried over from a prior agenda of a meeting ~~as uncompleted items occurring occurring more than 11 days earlier.~~

Commented [NML15]: Per Open Government Ordinance

**C. Procedure for Bringing Matters Before City Council**

**1. Persons Who Can Place Matters on the Agenda.**

Matters may be placed on the agenda by any ~~Councilmember~~council member, the City Manager, the Auditor, or any board/commission/committee created by the City Council. All items, other than board and commission items shall be subject to review by ~~an the Agenda Committee~~Agenda & Rules Committee, which shall be a standing committee of the City Council. ~~The Agenda Committee shall consist of the Mayor and two councilmembers, nominated by the Mayor and approved by the Council. A third council member, nominated by the Mayor and approved by the Council, will serve as an alternate on the Committee in the event that an Agenda Committee member cannot attend a meeting.~~

Commented [NML16]: Superseded by policy committee section below

The ~~Agenda Committee~~Agenda & Rules Committee shall meet 15 days prior to each City Council meeting and shall approve the agenda of that City Council meeting. ~~Pursuant to BMC Section 1.04.080, if the 15<sup>th</sup> day prior to the Council meeting falls on a holiday, the Committee will meet the next business day.~~ The ~~Agenda Committee~~Agenda & Rules Committee packet, including a draft agenda and Councilmember, Auditor, and Commission reports shall be distributed by 5:00 p.m. 4 days before the ~~Agenda Committee~~Agenda & Rules Committee meeting.

Commented [NML17]: Clarification

The ~~Agenda Committee~~Agenda & Rules Committee shall have the powers set forth below.

- a) **Items Authored by a Councilmember or the Auditor.** As to items authored by the Mayor, a Councilmember, or the Auditor, the ~~Agenda Committee~~Agenda & Rules Committee shall review the item and may recommend that the matter be referred to a commission, to the City Manager, a policy committee, or back to the author for adherence to required form or for additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

The author of a "referred" item must inform the City Clerk within 24 hours of the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting whether ~~he or she~~they prefers to: 1) hold the item for a future meeting pending modifications as suggested by the Committee; 2) have the item appear on the Council agenda under consideration as originally submitted; 3) pull the item completely; or 4) re-submit the item with revisions as requested by the ~~Agenda Committee~~Agenda & Rules Committee within 24 hours of the adjournment of the Agenda CommitteeAgenda & Rules Committee meeting for the Council agenda under consideration. Option 2 is not available for items eligible to be referred to a policy committee.

Commented [NML18]: Current practice

Commented [NML19]: Per policy committee regulations

In the event that the City Clerk does not receive guidance from the author of the referred item within 24 hours of the ~~Agenda Committee~~Agenda & Rules Committee's adjournment, the recommendation of the ~~Agenda Committee~~Agenda & Rules Committee will take effect.

Items held for a future meeting to allow for modifications will be placed on the next available Council meeting agenda at the time that the revised version is submitted to the City Clerk. ~~If changes made to the item extend beyond the scope of the Agenda Committee referral recommendations, the item must be re-submitted as a new Council item.~~

Commented [NML20]: Unnecessary. If the item is being submitted for a future meeting, it is a "new" item.

~~For authors of referred items that select option 2) above, the referred item will automatically be placed at the end of the Action Calendar under the heading "Referred Items". The Agenda Committee shall specify the reason for the referral from the categories listed below. This reason shall be printed with the item on the agenda.~~

Commented [NML21]: No longer needed with the policy committee system.

~~Reason 1 — Significant Lack of Background or Supporting Information  
Reason 2 — Significant Grammatical or Readability Issues~~

- b) **Items Authored by the City Manager.** The ~~Agenda Committee~~Agenda & Rules Committee shall review agenda descriptions of items authored by the City Manager. The Committee can recommend that the matter be referred to a commission or back to the City Manager for adherence to required form, additional analysis as required in Section III.B.2, or suggest other appropriate action including scheduling the matter for a later meeting to allow for appropriate revisions.

If the City Manager determines that the matter should proceed notwithstanding the ~~Agenda Committee~~Agenda & Rules Committee's action, it will be placed on the agenda as directed by the Manager. All City Manager items placed on the Council agenda against the ~~referral recommendation of the Agenda Committee~~Agenda & Rules Committee or ~~revised items that have not been resubmitted to the Agenda Committee~~ will automatically be placed on the Action Calendar.

Commented [NML22]: Inconsistent with current practices. Staff reports are still in review and are not printed in the Agenda & Rules Committee packet.

- c) **Items Authored by Boards and Commissions.** Council items submitted by boards and commissions are subject to City Manager review and must follow procedures and timelines for submittal of reports as described in the Commissioners' Manual. The content of commission items is not subject to review by the ~~Agenda Committee~~Agenda & Rules Committee.

- i) For a commission item that does not require a companion report from the City ~~Mananger~~Manager, the ~~Agenda Committee~~Agenda & Rules Committee may act on an agendized commission report in the following manner:

1. Move a commission report from the Consent Calendar to the Action Calendar or from the Action Calendar to the Consent Calendar.
2. Re-schedule the commission report to appear on one of the next three regular Council meeting agendas that occur after the regular meeting under consideration. Commission reports

submitted in response to a Council referral shall receive higher priority for scheduling.

3. Allow the item to proceed as submitted.

ii) For any commission report that requires a companion report, the ~~Agenda Committee~~ [Agenda & Rules Committee](#) will schedule the item on a Council agenda for a meeting occurring not sooner than 60 days and not later than 120 days from the date of the meeting under consideration by the ~~Agenda Committee~~ [Agenda & Rules Committee](#). A commission report submitted with a complete companion report may be scheduled pursuant to subparagraph c.i. above.

d) The ~~Agenda Committee~~ [Agenda & Rules Committee](#) shall have the authority to re-order the items on the Action Calendar regardless of the default sequence prescribed in Chapter III, Section E ~~of the Rules of Procedures and Order~~.

**2. Scheduling Public Hearings Mandated by State, Federal, or Local Statute.**

The City Clerk may schedule a public hearing at an available time and date in those cases where State, Federal or local statute mandates the City Council hold a public hearing.

**3. Submission of Agenda Items.**

a) **City Manager Items.** Except for Continued Business and Old Business, as a condition to placing an item on the agenda, agenda items from departments, including agenda items from commissions, shall be furnished to the City Clerk at a time established by the City Manager.

b) **Council and Auditor Items.** The deadline for reports submitted by the Auditor, Mayor and City Council is 5:00 p.m. on Monday, 22 days before each Council meeting.

c) **Time Critical Items.** A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the City Manager, Auditor, Mayor or ~~Councilmember~~ [council member](#) is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ [Agenda & Rules Committee](#)'s published agenda.

The author of the report shall bring any reports submitted as Time Critical to the meeting of the ~~Agenda Committee~~ [Agenda & Rules Committee](#). Time Critical items must be accompanied by complete reports and statements of financial implications. If the ~~Agenda Committee~~ [Agenda & Rules Committee](#) finds the matter to meet the definition of Time Critical, the ~~Agenda Committee~~ [Agenda & Rules Committee](#) may place the matter on the Agenda on either the Consent or Action Calendar.



- d) The City Clerk may not accept any agenda item after the adjournment of the ~~Agenda Committee~~Agenda & Rules Committee meeting, except for items carried over by the City Council from a prior City Council meeting occurring less than 11 days earlier, which may include supplemental or revised reports, and reports concerning actions taken by boards and commissions that are required by law or ordinance to be presented to the Council within a deadline that does not permit compliance with the agenda timelines in BMC Chapter 2.06 or these rules.

**4. Submission of Supplemental and Revised Agenda Material.**

Berkeley Municipal Code Section 2.06.070 allows for the submission of supplemental and revised agenda material. Supplemental and revised material cannot be substantially new or only tangentially related to an agenda item. Supplemental material must be specifically related to the item in the Agenda Packet. Revised material should be presented as revised versions of the report or item printed in the Agenda Packet. Supplemental and revised material may be submitted for consideration as follows:

- a) Supplemental and revised agenda material shall be submitted to the City Clerk no later than 5:00 p.m. seven calendar days prior to the City Council meeting at which it is to be considered. Supplemental and revised items that are received by the deadline shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. five calendar days prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Council-member evaluation.

- b) Supplemental and revised agenda material submitted to the City Clerk after 5:00 p.m. seven days before the meeting and no later than 12:00 p.m. one day prior to the City Council meeting at which it is to be considered shall be distributed to Council in a supplemental reports packet and posted to the City's website no later than 5:00 p.m. one day prior to the meeting. Copies of the supplemental packet shall also be made available in the office of the City Clerk and in the main branch of the Berkeley Public Library. Such material may be considered by the Council without the need for a determination that the good of the City clearly outweighs the lack of time for citizen review or City Councilmember evaluation.

Commented [NML23]: Per Open Government Ordinance

~~a)~~

- b)c) After ~~5~~12:00 p.m. ~~seven~~one calendar days prior to the meeting, supplemental or revised reports may be submitted for consideration by delivering a minimum of 42 copies of the supplemental/revised material to the City Clerk for distribution at the meeting. Each copy must be accompanied by a completed supplemental/revised material cover page, using the form provided by the City Clerk. Revised reports must reflect a

comparison with the original item using track changes formatting. The material may be considered only if the City Council, by a two-thirds roll call vote, makes a factual determination that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of the material. Supplemental and revised material must be distributed and a factual determination made prior to the commencement of public comment on the agenda item in order for the material to be considered.

**5. Scheduling a Presentation.**

Presentations from staff are either submitted as an Agenda Item or are requested by the City Manager. Presentations from outside agencies and the public are coordinated with the Mayor's Office. The Agenda & Rules Committee may adjust the schedule of presentations as needed to best manage the Council Agenda.

Commented [NML24]: Reflects current practice, which is much less formal than deleted text.

~~Any request for a presentation to the Council will be submitted as an agenda item and follow the time lines for submittal of agenda reports. The agenda item should include general information regarding the purpose and content of the presentation; information on the presenters; contact information; and the length of the presentation. The request may state a preference for a date before the Council. The Agenda Committee will review the request and recommend a presentation date and allotted time based on the Council's schedule.~~

~~The City Clerk will notify the presenters of the date and time of the presentation and will coordinate use of any presentation equipment and receipt of additional written material.~~

**D. Packet Preparation and Posting**

**1. Preparation of the Packet.**

Not later than the thirteenth day prior to said meeting, the City Clerk shall prepare the packet, which shall include the agenda plus all its corresponding duplicated agenda items. No item shall be considered if not included in the packet, except as provided for in Section III.C.4 and Section III.D.4. Reports carried over, as Continued Business or Old Business need not be reproduced again.

Commented [NML25]: Inconsistent with OGO

**2. Distribution and Posting of Agenda.**

- a) The City Clerk shall post each agenda of the City Council regular meeting no later than 11 days prior to the meeting and shall post each agenda of a special meeting at least 24 hours in advance of the meeting in the official bulletin board. The City Clerk shall maintain an affidavit indicating the location, date and time of posting each agenda.
- b) The City Clerk shall also post agendas and annotated agendas of all City Council meetings and notices of public hearings on the City's website.
- c) No later than 11 days prior to a regular meeting, copies of the agenda shall be mailed by the City Clerk to any resident of the City of Berkeley who so requests in writing. Copies shall also be available free of charge in the City Clerk Department.

**3. Distribution of the Agenda Packet.**

The Agenda Packet shall consist of the Agenda and all supporting documents for agenda items. No later than 11 days prior to a regular meeting, the City Clerk shall:

- a) distribute the Agenda Packet to each member of the City Council;
- b) post the Agenda Packet to the City's website;
- c) place copies of the Agenda Packet in viewing binders in the office of the City Clerk and in the main branch of the Berkeley Public Library; and
- d) make the Agenda Packet available to members of the press.

**4. Failure to Meet Deadlines.**

- a) The City Clerk shall not accept any agenda item or revised agenda item after the deadlines established.
- b) Matters not included on the published agenda may be discussed and acted upon as otherwise authorized by State law or providing the Council finds one of the following conditions is met:
  - A majority of the Council determines that the subject meets the criteria of "Emergency" as defined in Section III.B.5.
  - Two thirds of the Council determines that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the posting of the agenda as required by law.
- c) Matters listed on the printed agenda but for which supporting materials are not received by the City Council on the eleventh day prior to said meeting as part of the agenda packet, shall not be discussed or acted upon.

**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, [Comments from the City Auditor, Non-Agenda](#) Public Comment)
2. Consent Calendar
3. Action Calendar
  - a) Appeals
  - b) Public Hearings
  - c) Continued Business
  - d) Old Business
  - e) New Business

Commented [NML26]: Edits to reflect current order

~~f) Referred Items~~

4. Information Reports

~~4.5. Non-Agenda Public Comment~~

~~5.6. Adjournment Communications~~

~~6.7. Communications Adjournment~~

Action items may be reordered at the discretion of the Chair with the consent of Council.

The ~~Agenda Committee~~ Agenda & Rules Committee shall have the authority to reorder the items on the Action Calendar regardless of the default sequence prescribed in this section.

**F. Closed Session Documents**

This section establishes a policy for the distribution of, and access to, confidential closed session documents by the Mayor and Members of the City Council.

1. Confidential closed session materials shall be kept in binders numbered from one to nine and assigned to the Mayor (#9) and each Councilmember (#1 to #8 by district). The binders will contain confidential closed session materials related to Labor Negotiations, Litigation, and Real Estate matters.
2. The binders will be maintained by City staff and retained in the Office of the City Attorney in a secure manner. City staff will bring the binders to each closed session for their use by the Mayor and Councilmembers. At other times, the binders will be available to the Mayor and Councilmembers during regular business hours for review in the City Attorney's Office. The binders may not be removed from the City Attorney's Office or the location of any closed session meeting by the Mayor or Councilmembers. City staff will collect the binders at the end of each closed session meeting and return them to the City Attorney's Office.
3. Removal of confidential materials from a binder is prohibited.
4. Duplication of the contents of a binder by any means is prohibited.
5. Confidential materials shall be retained in the binders for at least two years.
6. This policy does not prohibit the distribution of materials by staff to the Mayor and Councilmembers in advance of a closed session or otherwise as needed, but such materials shall also be included in the binders unless it is impracticable to do so.

G. Regulations Governing City Council Policy Committees

**1A. Legislative Item Process**

All agenda items begin with submission to the ~~Agenda Committee~~Agenda & Rules Committee.

**Full Council Track**

Items under this category are exempt from ~~Agenda Committee~~Agenda & Rules Committee discretion to refer them to a policy committee. Items in this category may be submitted for the agenda of any scheduled regular meeting pursuant to established deadlines (same as existing deadlines). Types of Full Council Track items are listed below.

- a. Items submitted by the City Manager and City Auditor
- b. Items submitted by Boards and Commissions
- c. Resolutions on Legislation and Electoral Issues relating to Outside Agencies/Jurisdictions
- d. Position Letters and/or Resolutions of Support/Opposition
- e. Donations from Councilmember District Office Budgets
- f. Referrals to the Budget Process
- g. Proclamations
- h. Sponsorship of Events
- i. Information Reports
- j. Presentations from Outside Agencies and Organizations
- k. Ceremonial Items
- ~~k.l. Committee~~ and Regional Body Appointments

Commented [NML27]: Regulations from the Policy Committee resolution are inserted in red text; changes to the resolution language are in track changes

Commented [NML28]: Clarification

Commented [NML29]: Standard administrative item

Notwithstanding the exemption stated above, the ~~Agenda Committee~~Agenda & Rules Committee, at its discretion, may route a Full Council Track item submitted by a Councilmember to a policy committee if the item has 1) a significant lack of background or supporting information, or 2) significant grammatical or readability issues.

The ~~Agenda Committee~~Agenda & Rules Committee has discretion to determine if an item falls under a Full Council Track exception or if it will be processed as a Policy Committee Track item.

**Policy Committee Track**

Items submitted by Councilmembers with moderate to significant administrative, operational, budgetary, resource, or programmatic impacts will go first to the ~~Agenda Committee~~Agenda & Rules Committee on a draft City Council agenda (on a list).

Commented [NML30]: Clarification

The ~~Agenda Committee~~Agenda & Rules Committee must refer an item to a policy committee at the first meeting that the item appears before the ~~Agenda Committee~~Agenda

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& Rules Committee. The ~~Agenda Committee~~ Agenda & Rules Committee may only assign the item to a single policy committee.

For a Policy Committee Track item, the ~~Agenda Committee~~ Agenda & Rules Committee, at its discretion, may either route item directly to 1) the agenda currently under consideration, 2) one of the next three full Council Agendas (based on completeness of the item, lack of potential controversy, minimal impacts, etc.), or 3) to a policy committee.

#### Time Critical Track

A Time Critical item is defined as a matter that is considered urgent by the sponsor and that has a deadline for action that is prior to the next meeting of the Council and for which a report prepared by the Mayor or ~~Council member~~ council member is received by the City Clerk after established deadlines and is not included on the ~~Agenda Committee~~ Agenda & Rules Committee's published agenda.

The ~~Agenda Committee~~ Agenda & Rules Committee retains final discretion to determine the time critical nature of an item.

- a) Time Critical items submitted on the Full Council Track deadlines, that would otherwise be assigned to the Policy Committee Track, may bypass policy committee review if determined to be time critical. If such an item is deemed not to be time critical, it will be referred to a Policy Committee.
- b) Time Critical items on the Full Council Track or Policy Committee Track that are submitted at a meeting of the ~~Agenda Committee~~ Agenda & Rules Committee may go directly on a council agenda if determined to be time critical.

#### **B2. Council Referrals to Committees**

The full Council may refer any agenda item to a policy committee by majority vote.

#### **3. Participation Rules for Policy Committees Pursuant to the Brown Act**

- a. The quorum of a three-member policy committee is always two members. A majority vote of the committee (two 'yes' votes) is required to pass a motion.
- b. Two policy committee members may not discuss any item within the committee's subject matter jurisdiction outside of an open and noticed meeting.
- c. Notwithstanding paragraph (b) above, two members of a policy committee may co-author an item provided that one of the authors will not serve as a committee member for consideration of the item, and shall not participate in the committee's discussion of, or and action on the item. For purposes of the item, the appointed alternate will serve as a committee member in place of the non-participating co-author.

Commented [NML31]: New requirements due to re-evaluation of Brown Act applicability to policy committees

- d. All three members of a policy committee may not be co-authors of an item that will be heard by the committee.
- e. Only one co-author who is not a member of the policy committee may attend the committee meeting to participate in discussion of the item.
- f. If two or more non-committee members are present for any item or meeting, then all non-committee members may act only as observers and may not participate in discussion. If an author is present to participate in the discussion of their item, no other councilmembers may attend as observers.
- g. An item may be considered by only one policy committee before it goes to the full Council.

**C4. Functions of the Committees**

Committees shall have the following qualities/components:

- a. All committees are Brown Act bodies with noticed public meetings and public comment. Regular meeting agendas will be posted at least 72 hours in advance of the meeting.
- b. Minutes shall be available online.
- c. Committees shall adopt regular meeting schedules, generally meeting once or twice per month; special meetings may be called when necessary, in accordance with the Brown Act.
- d. Generally, meetings will be held at 2180 Milvia Street in publicly accessible meeting rooms that can accommodate the committee members, public attendees, and staff.
- e. Members are recommended by the Mayor and approved by the full Council no later than January 31 of each year. Members continue to serve until successors are appointed and approved.
- f. Chairs are elected by the Committee at the first regular meeting of the Committee after the annual approval of Committee members by the City Council. In the absence of the Chair, the committee member with the longest tenure on the Council will preside.
- f.g. The Chair, or a quorum of the Committee may call a meeting or cancel a meeting of the Policy Committee.
- g.h. Committees will review items for completeness in accordance with Section III.B.2 of the City Council Rules of Procedure and Order and alignment with Strategic Plan goals.
- i. Reports leaving a policy committee must adequately include budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.
- h.j. No final action may be taken on an item for which revised or supplemental materials were submitted at the meeting. Per Brown Act regulations, any such materials must

Commented [NML32]: Clarification of authority; reflects Charter

Commented [NML33]: Added for transparency and to avoid violations arising from submission of materials only tangentially related to the agendized items

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be direct revisions or supplements to the item that was published in the agenda packet.

Items referred to a policy committee from the ~~Agenda Committee~~Agenda & Rules Committee or from the City Council must be agendized for a committee meeting within 60 days of the referral date.

Within 120 days of the referral date, the committee must vote to either (1) accept the author's request that the item remain in committee until a date certain (more than one extension may be requested by the author); or (2) send the item to the ~~Agenda Committee~~Agenda & Rules Committee to be placed on a Council Agenda with a Committee recommendation consisting of one of the four options listed below.

1. Positive Recommendation (recommending Council pass the item as proposed),
2. Qualified Positive Recommendation (recommending Council pass the item with some changes),
3. Qualified Negative Recommendation (recommending Council reject the item unless certain changes are made) or
4. Negative Recommendation (recommending the item not be approved).

The Policy Committee's ~~will include their~~ recommendation will be included in a ~~new~~separate section of the report template for that purpose.

A Policy Committee may not refer an item under its consideration to a city board or commission.

Commented [NML34]: Clarification of authority. Commissions are advisory to the Full Council

The original Council author of an item referred to a Policy Committee is responsible for revisions and resubmission of the item back to the full Council. Items originating from the City Manager are revised and submitted by the appropriate city staff. Items from Commissions are revised and resubmitted by the members of the Policy Committee. Items and Recommendations originating from the policy committee are submitted to the agenda process by the members of the committee.

Commented [NML35]: Clarification of responsibility for shepherding items through process

A policy committee may refer an item to another policy committee for review. The total time for review by all policy committees is limited to the initial 120-day deadline.

Commented [NML36]: Inconsistent with Brown Act – review by two committees would result in an illegal serial meeting

If a policy committee does not take final action by the 120-day deadline, the item is returned to the ~~Agenda Committee~~Agenda & Rules Committee and appears on the next available Council agenda. The ~~Agenda Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the next Council agenda. Items appearing on a City Council agenda due to lack of action by a policy committee may not be

Commented [NML37]: Closes "endless loop" loophole



referred to a policy committee and must remain on the full Council agenda for consideration.

Non-legislative or discussion items may be added to the Policy Committee agenda by members of the Committee with the concurrence of a quorum of the Committee. These items are not subject to the 120-day deadline for action.

Commented [NML38]: Clarification

Once the item is voted out of a policy committee, the final item will be resubmitted to the agenda process by the author, and it will return to the Agenda Committee~~Agenda & Rules Committee~~ on the next available agenda. The ~~Agenda Committee~~Agenda & Rules Committee may leave the item on the agenda under consideration or place it on the following Council agenda. Only items that receive a Positive Recommendation can be placed on the Consent Calendar.

Commented [NML39]: Clarification

The lead author may request expedited committee review for items referred to a committee. Criteria for expedited review is generally to meet a deadline for action (e.g. grant deadline, specific event date, etc.). If the committee agrees to the request, the deadline for final committee action is 45 days from the date the item first appeared on the committee agenda.

**5D. Number and Make-up of Committees**

Six committees are authorized, each comprised of three ~~Ce~~councilmembers with a fourth Councilmember appointed as an alternate. Each Councilmember and the Mayor will serve on two committees. The committees are as follows:

Commented [NML40]: This will allow two members of a policy committee to co-author an item. The Alternate will substitute for one of the co-authors while the item is heard by the policy committee.

1. Agenda and Rules Committee
2. Budget and Finance Committee
3. Facilities, Infrastructure, Transportation, Environment, and Sustainability
4. Health, Life Enrichment, Equity, and Community
5. Land Use, Housing, and Economic Development
6. Public Safety

The ~~Agenda Committee~~Agenda & Rules Committee shall establish the policy committee topic groupings, and may adjust said groupings periodically thereafter in order to evenly distribute expected workloads of various committees.

All standing policy committees of the City Council are considered "legislative bodies" under the Brown Act and must conduct all business in accordance with the Brown Act.

Commented [NML41]: Clarification

**6E. Role of City Staff at Committee Meetings**

Committees will be staffed by appropriate City Departments and personnel. As part of the committee process, staff will undertake a high-level, preliminary analysis of potential legal issues, costs, timelines, and staffing demands associated with the item. Staff analysis at

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the Policy Committee level is limited to the points above as the recommendation, program, or project has not yet been approved to proceed by the full Council.

## 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, 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 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.

#### 1. Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar," 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. No additional items can be moved onto the Consent Calendar once public comment has commenced.

At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or 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 and public comment and action on consent items, 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.](#)

**3. 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.

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 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.

Commented [NML42]: Reflects existing due process standards

**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.

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 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.

~~According to the current Rules and Procedures 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 Committee~~ 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.

**5. 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.

**B. Consent Calendar**

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, ~~C~~ouncilmembers, 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.

#### IV. CONDUCT OF MEETING

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It is the policy of the Council that ~~C~~eouncilmembers 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.

#### C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of any ~~Councilmember~~council member shall be added to the appropriate section of ~~the Reports for Action~~ Calendar and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of any ~~Councilmember~~council member a Report for Information may be acted upon by the Council.

#### D. Communications

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications." \_

All such communications must have been received by the City Clerk no later than 5:00 p.m. fifteen days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. A ~~Councilmember~~council member may refer a communication to ~~staff~~ the City Manager for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

Communications related to an item on the agenda that are received after 5:00 p.m. fifteen days before the meeting are published as provided for in Chapter III.C.4.

Commented [NML43]: Clarification per OGO

#### E. Public Hearings for Land Use, Zoning, Landmarks, and Public Nuisance Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to public presentations. Staff shall introduce the public hearing item and present their comments.

Following any staff presentation, each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Members shall also submit a report of such contacts in writing prior to the commencement of the hearing. Such reports shall include a brief statement describing the name, date, place, and content of the contact. Written reports shall be available for public review

in the office of the City Clerk prior to the meeting and placed in a file available for public viewing at the meeting.

This is followed by five-minute presentations each by the appellant and applicant. Where the appellant is not the applicant, the appellants of a single appeal collectively shall have five minutes to comment and the applicant shall have five minutes to comment. If there are multiple appeals filed, each appellant or group of appellants shall have five minutes to comment. Where the appellant is the applicant, the applicant/appellant shall have five minutes to comment and the persons supporting the action of the board or commission on appeal shall have five minutes to comment. In the case of a public nuisance determination, the representative(s) of the subject property shall have five minutes to present.

Commented [NML44]: Same as above

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. Any person that addressed the Council during one of the five-minute periods may not speak again during the public comment period on the appeal. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Commented [NML45]: Current practice. Matches existing language for appeals above.

**F. Work Sessions**

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a work session item will be scheduled on a subsequent agenda under the Action portion of the Council agenda.

In general, public comment at Council work sessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute. Persons who spoke during the prior public comment time may be permitted to speak again.

**G. Public Discussions**

Commented [NML46]: Unnecessary. A "public discussion" must still occur at a noticed meeting which is regulated by the Brown Act, OGO, and this document.

#### IV. CONDUCT OF MEETING

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~~The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.~~

#### H. Protocol

People addressing the Council may first give their name in an audible tone of voice for the record. All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the Presiding Officer. No question shall be asked of a ~~Councilmember~~council member except through the Presiding Officer.



## V. PROCEDURAL MATTERS

### A. Persons Authorized to Sit at Tables

No person, except City officials, their representatives and representatives of boards and commissions shall be permitted to sit at the tables in the front of the Council Chambers without the express consent of the Council.

### B. Decorum

No person shall disrupt the orderly conduct of the Council meeting. Prohibited disruptive behavior includes but is not limited to shouting, making disruptive noises, such as boos or hisses, creating or participating in a physical disturbance, speaking out of turn or in violation of applicable rules, preventing or attempting to prevent others who have the floor from speaking, preventing others from observing the meeting, entering into or remaining in an area of the meeting room that is not open to the public, or approaching the Council Dais without consent. Any written communications addressed to the Council shall be delivered to the City Clerk for distribution to the Council. ~~message to or contact with any member of the Council while the Council is in session shall be through the City Clerk.~~

Commented [NML47]: Clarification that Clerk forwards written communications only, not verbal messages

### C. Enforcement of Decorum

When the public demonstrates a lack of order and decorum, the presiding officer shall call for order and inform the person(s) that the conduct is violating the Rules of Order and Procedure and provide a warning to the person(s) to cease the disruptive behavior. Should the person(s) fail to cease and desist the disruptive conduct, the presiding officer may call a five (5) minute recess to allow the disruptions to cease.

If the meeting cannot be continued due to continued disruptive conduct, the presiding officer may have any law enforcement officer on duty remove or place any person who violates the order and decorum of the meeting under arrest and cause that person to be prosecuted under the provisions of applicable law.

### D. Precedence of Motions

When a question is before the Council, no motion shall be entertained except:

1. To adjourn,
2. To fix the hour of adjournment,
3. To lay on the table,
4. For the previous question,
5. To postpone to a certain day,
6. To refer,
7. To amend,
8. To substitute, and

9. To postpone indefinitely.

These motions shall have precedence in order indicated. Any such motion, except a motion to ~~adjourn~~, amend, or substitute, shall be put to a vote without debate.

Commented [NML48]: Motion to adjourn is not debatable pursuant to Roberts Rules

**E. Roberts Rules of Order**

Roberts Rules of Order have been adopted by the City Council and apply in all cases except the precedence of motions in Section V.D shall ~~supercede~~supersede.

**F. Rules of Debate**

**1. Presiding Officer May Debate.**

The presiding officer may debate from the chair; subject only to such limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges as a member of the Council by reason of that person acting as the presiding officer.

**2. Getting the Floor - Improper References to be avoided.**

Members desiring to speak shall address the Chair, and upon recognition by the presiding officer, shall confine themselves to the question under debate.

**3. Interruptions.**

A member, once recognized, shall not be interrupted when speaking unless it is to call a member to order, or as herein otherwise provided. If a member, while speaking, were called to order, that member shall cease speaking until the question of order is determined, and, if in order, the member shall be permitted to proceed.

**4. Privilege of Closing Debate.**

The ~~Councilmember~~council member moving the adoption of an ordinance or resolution shall have the privilege of closing the debate. When a motion to call a question is passed, the ~~Councilmember~~council member moving adoption of an ordinance, resolution or other action shall have three minutes to conclude the debate.

**5. Motion to Reconsider.**

A motion to reconsider any action taken by the Council may be made only during the same session on the day such action is taken. It may be made either immediately during the same session, or at a recessed or adjourned session thereof. Such motion must be made ~~and seconded~~ by a member one of the prevailing sides, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or other motion at a subsequent meeting of the Council.

Commented [NML49]: Must happen at the same meeting, not just the same day.

Commented [NML50]: Inconsistent with Roberts Rules. Requiring a seconder to be on the prevailing side could infringe on a single member's right to reconsider their vote.

**6. Repeal or Amendment of Action Requiring a Vote of Two-Thirds of Council, or Greater.**

Any ordinance or resolution which is passed and which, as part of its terms, requires a vote of two-thirds of the Council or more in order to pass a motion pursuant to such an ordinance or resolution, shall require the vote of the same percent of the Council to repeal or amend the ordinance or resolution.

**G. Debate Limited**

1. ~~Except as provided in Section V.F.b hereof, e~~ Consideration of each matter coming before the Council shall be limited to 20 minutes from the time the matter is first taken up, at the end of which period consideration of such matter shall terminate and the matter shall be dropped to the foot of the agenda, immediately ahead of ~~Good of the City Information Reports~~; provided that either of the following two not debatable motions shall be in order:
  - a) A motion to extend consideration which, if passed, shall commence a new twenty-minute period for consideration; or
  - b) If there are one or more motions on the floor, the previous question, which, if passed, shall require an immediate vote on pending motions.
2. The time limit set forth in subparagraph ~~a-1~~ hereof shall not be applicable to any public hearing, public discussion, Council discussion or other especially set matter for which a period of time has been specified (in which case such specially set time shall be the limit for consideration) or which by applicable law (e.g. hearings of appeals, etc.), the matter must proceed to its conclusion.
3. In the interest of expediting the business of the City, failure by the Chair or any ~~Councilmember~~ council member to call attention to the expiration of the time allowed for consideration of a matter, by point of order or otherwise, shall constitute unanimous consent to the continuation of consideration of the matter beyond the allowed time; provided, however, that the Chair or any ~~Councilmember~~ council member may at any time thereafter call attention to the expiration of the time allowed, in which case the Council shall proceed to the next item of business, unless one of the motions referred to in ~~subparagraph Section a-4D~~ hereof is made and is passed.

**H. Motion to Lay on Table**

A motion to lay on the table shall preclude all amendments or debate of the subject under consideration. If the motion shall prevail, the consideration of the subject may be resumed only upon a motion of a member voting with the majority and with consent of two-thirds of the members present.

**I. Division of Question**

If the question contains two or more propositions, which can be divided, the presiding officer may, and upon request of a member shall, divide the same.

**J. Addressing the Council**

~~Any person desiring to address the Council shall first secure the permission of the presiding officer to do so.~~ Under the following headings of business, unless the presiding officer rules otherwise, any ~~qualified and~~ interested person shall have the right to address the Council in accordance with the following conditions and upon obtaining recognition by the presiding officer:

**1. Written Communications.**

Commented [NML51]: Exactly restated later in same paragraph

Commented [NML52]: Not sure what could be meant by "qualified"

Interested parties or their authorized representatives may address the Council ~~by in the form of~~ written communications in regard to matters of concern to them ~~by submitting their written communications at the meeting, or prior to the meeting pursuant to the deadlines in Chapter III.C.4.~~

~~Communications pertaining to an item on the agenda which are received by the City Clerk after the deadline for inclusion in the Council Agenda packet and through 5:00 p.m. seven calendar days prior to the meeting shall be compiled into a supplemental communications packet. The supplemental communications packet shall be made available to the City Council, public and members of the press no later than five days prior to the meeting.~~

~~Communications received by the City Clerk after the aforementioned deadline and by noon on the day of a Council meeting shall be duplicated by the City Clerk and submitted to the City Council at the meeting if related to an item which is on the agenda for that meeting. Communications submitted at the Council meeting will be included in the public viewing binder and in the Clerk Department the day following the meeting.~~

Commented [NML53]: Described elsewhere and unnecessary here.

**2. Public Hearings.**

Interested persons or their authorized representatives may address the Council by reading protests, petitions, or communications relating to matters then under consideration.

**3. Public Comment.**

Interested persons may address the Council on any issue concerning City business during the period assigned to Public Comment.

**K. Addressing the Council After Motion Made**

When a motion is pending before the Council, no person other than a ~~Councilmember~~council member shall address the Council without first securing the permission of the presiding officer or Council to do so.

## VI. FACILITIES

### A. Council Chamber Capacity

~~Council Chamber~~ Attendance at council meetings shall be limited to the posted seating capacity of the meeting location~~thereof~~. Entrance to the ~~City Hall~~ meeting location will be appropriately regulated by the City Manager on occasions when ~~the Council Chamber~~ capacity is likely to be exceeded. While the Council is in session, members of the public shall not remain standing in the ~~Council Chamber~~ meeting room except to address the Council, and sitting on the floor shall not be permitted. ~~The Council proceedings may be conveyed by loudspeaker to those who have been unable to enter the Council Chambers.~~

Commented [NML54]: Updated to reflect new locations of meetings and to not be as specific with regards to meeting locations

### B. Alternate Facilities for Council Meetings

The City Council shall approve in advance a proposal that a Council meeting be held at a facility other than the ~~City Council Chambers~~ School District Board Room.

If the City Manager has reason to anticipate that the attendance for a meeting will be substantially greater than the capacity of the ~~City Council Chambers~~ Board Room and insufficient time exists to secure the approval of the City Council to hold the meeting at an alternate facility, the City Manager shall make arrangements for the use of a suitable alternate facility to which such meeting may be recessed and moved, if the City Council authorizes the action.

If a suitable alternate facility is not available, the City Council may reschedule the matter to a date when a suitable alternate facility will be available.

Alternate facilities are to be selected from those facilities previously approved by the City Council as suitable for meetings away from the ~~City Council Chambers~~ Board Room.

### C. Signs, Objects, and Symbolic Materials

Objects and symbolic materials such as signs which do not have sticks or poles attached or otherwise create any fire or safety hazards will be allowed within the ~~Council Chamber~~ meeting location during Council meetings.

### D. Fire Safety

Exits shall not be obstructed in any manner. Obstructions, including storage, shall not be placed in aisles or other exit ways. Hand carried items must be stored so that such items do not inhibit passage in aisles or other exit ways. Attendees are strictly prohibited from sitting in aisles and/or exit ways. Exit ways shall not be used in any way that will present a hazardous condition.

### E. Overcrowding

Admittance of persons beyond the approved capacity of a place of assembly is prohibited. When the ~~Council Chambers~~ meeting location has ~~have~~ reached the posted maximum capacity, additional attendees shall be directed to the designated overflow area.

## APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

### Purpose

To establish a uniform policy regarding the naming and renaming of existing and future parks, streets, pathways and other public facilities.

### Objective

A. To ensure that naming public facilities (such as parks, streets, recreation facilities, pathways, open spaces, public building, bridges or other structures) will enhance the values and heritage of the City of Berkeley and will be compatible with community interest.

### Section 1 – Lead Commission

The City Council designates the following commissions as the 'Lead Commissions' in overseeing, evaluating, and ultimately advising the Council in any naming or renaming of a public facility. The lead commission shall receive and coordinate comment and input from other Commissions and the public as appropriate.

#### Board of Library Trustees

Parks and Recreation Commission –Parks, recreation centers, camps, plazas and public open spaces

Public Works Commission –Public buildings (other than recreation centers), streets and bridges or other structures in the public thoroughfare.

Waterfront Commission –Public facilities within the area of the City known as the Waterfront, as described in BMC 3.36.060.B.

### Section 2 – General Policy

- A. Newly acquired or developed public facilities shall be named immediately after acquisition or development to ensure appropriate public identity.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. Public facilities that are renamed must follow the same criteria for naming new facilities. In addition, the historical significance and geographical reference of the established name should be considered when weighing and evaluating any name change.
- D. The City encourages the recognition of individuals for their service to the community in ways that include the naming of activities such as athletic events, cultural presentations, or annual festivals, which do not involve the naming or renaming of public facilities.
- E. Unless restricted by covenant, facilities named after an individual should not necessarily be considered a perpetual name.

### Section 3 – Criteria for Naming of Public Facilities

When considering the naming of a new public facility or an unnamed portion or feature within an already named public facility (such as a room within the facility or a feature within an established park), or, the renaming of an existing public facility the following criteria shall be applied:

- A. Public Facilities are generally easier to identify by reference to adjacent street names, distinct geographic or environmental features, or primary use activity. Therefore, the preferred practice is to give City-owned property a name of historical or geographical significance and to retain these names.
- B. No public facility may be named for a living person, but this policy can be overridden with a 2/3 vote of the City Council.
- C. The naming of a public facility or any parts thereof in recognition of an individual posthumously may only be considered if the individual had a positive effect on the community and has been deceased for more than 1 year.
- D. When a public facility provides a specific programmatic activity, it is preferred that the activity (e.g. skateboard park, baseball diamond) be included in the name of the park or facility.
- E. When public parks are located adjacent to elementary schools, a name that is the same as the adjacent school shall be considered.
- F. When considering the renaming of an existing public facility, in addition to applying criteria A-E above, proper weight should be given to the fact that: a name lends a site or property authenticity and heritage; existing names are presumed to have historic significance; and historic names give a community a sense of place and identity, continuing through time, and increases the sense of neighborhood and belonging.

#### Section 4 –Naming Standards Involving a Major Contribution

When a person, group or organization requests the naming or renaming of a public facility, all of the following conditions shall be met:

- A. An honoree will have made a major contribution towards the acquisition and/or development costs of a public facility or a major contribution to the City.
- B. The honoree has a record of outstanding service to their community
- C. Conditions of any donation that specifies that name of a public facility, as part of an agreement or deed, must be approved by the City Council, after review by and upon recommendation of the City Manager.

#### Section 5 –Procedures for Naming or Renaming of Public Facilities

- A. Any person or organization may make a written application to the City Manager requesting that a public facility or portion thereof, be named or renamed.
  - 1. Recommendations may also come directly of the City Boards or Commissions, the City Council, or City Staff.
- B. The City Manager shall refer the application to the appropriate lead commission as defined in Section 1 of the City's policy on naming of public facilities, for that commission's review, facilitation, and recommendation of disposition.
  - 1. The application shall contain the name or names of the persons or organization making the application and the reason for the requested naming or renaming.
- C. The lead commission shall review and consider the application, using the policies and criteria articulated to the City Policy on Naming and Renaming to make a recommendation to Council.
  - 1. All recommendations or suggestion will be given the same consideration without regard to the source of the nomination
- D. The lead commission shall hold a public hearing and notify the general public of any discussions regarding naming or renaming of a public facility.



APPENDIX A. POLICY FOR NAMING AND RENAMING PUBLIC FACILITIES

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1. Commission action will be taking at the meeting following any public hearing on the naming or renaming.
- E. The commission's recommendation shall be forwarded to Council for final consideration.

The City of Berkeley Policy for Naming and Renaming Public Facilities was adopted by the Berkeley City Council at the regular meeting of January 31, 2012.

## APPENDIX B. GUIDELINES FOR DEVELOPING AND WRITING COUNCIL AGENDA ITEMS

These guidelines are derived from the requirements for Agenda items listed in the Berkeley City Council Rules of Procedure and Order, Chapter III, Sections B(1) and (2), reproduced below. In addition, Chapter III Section C(1)(a) of the Rules of Procedure and Order allows the [Agenda Committee](#) ~~Agenda & Rules Committee~~ to request that the author of an item provide “additional analysis” if the item as submitted evidences a “significant lack of background or supporting information” or “significant grammatical or readability issues.”

These guidelines provide a more detailed and comprehensive overview of elements of a complete Council item. While not all elements would be applicable to every type of Agenda item, they are intended to prompt authors to consider presenting items with as much relevant information and analysis as possible.

Chapter III, Sections (B)(1) and (2) of Council Rules of Procedure and Order:

2. Agenda items shall contain all relevant documentation, including the following as Applicable:
  - a. A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested;
  - b. Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information;
  - c. Recommendation of the City Manager, if applicable (these provisions shall not apply to Mayor and Council items.);
  - d. Fiscal impacts of the recommendation;
  - e. A description of the current situation and its effects;
  - f. Background information as needed;
  - g. Rationale for recommendation;
  - h. Alternative actions considered;
  - i. For awards of contracts; the abstract of bids and the Affirmative Action Program of the low bidder in those cases where such is required (these provisions shall not apply to Mayor and Council items.);
  - j. Person or persons to contact for further information, with telephone number. If the author of any report believes additional background information, beyond the basic report, is necessary to Council understanding of the subject, a separate compilation of such background information may be developed and copies will be available for Council and for public review in the City Clerk Department, and the City Clerk shall provide limited distribution of such background information depending upon quantity of pages to be duplicated. In such case the agenda item distributed with the packet shall so indicate.

Guidelines for City Council Items:

1. Title
  2. Consent/Action/Information Calendar
  3. Recommendation
  4. Summary Statement/Current situation and its effects
  5. Background
  6. Review of Existing Plans, Programs, Policies and Laws
  7. Actions/Alternatives Considered
  8. Consultation/Outreach Overview and Results
  9. Rationale for Recommendation
  10. Implementation, Administration and Enforcement
  11. Environmental Sustainability
  12. Fiscal Impacts
  13. Outcomes and Evaluation
  14. Contact Information
  15. Attachments/Supporting Materials
- 

**1. Title**

A descriptive title that adequately informs the public of the subject matter and general nature of the item or report and action requested.

**2. Consent/Action/Information Calendar**

Whether the matter is to be presented on the Consent Calendar or the Action Calendar or as a Report for Information.

**3. Recommendation**

Clear, succinct statement of action(s) to be taken. Recommendations can be further detailed within the item, by specific reference.

Common action options include:

- Adopt first reading of ordinance
- Adopt a resolution
- Referral to the City Manager (City Manager decides if it is a short term referral or is placed on the RRV ranking list)
- Direction to the City Manager (City Manager is directed to execute the recommendation right away, it is not placed on any referral list)
- Referral to a Commission or to a Standing or Ad Hoc Council Committee
- Referral to the budget process
- Send letter of support
- Accept, Approve, Modify or Reject a recommendation from a Commission or Committee
- Designate members of the Council to perform some action

**4. Summary Statement/ “Current situation and its effects”**

A short resume of the circumstances that give rise to the need for the recommended action(s).

- Briefly state the opportunity/problem/concern that has been identified, and the proposed solution.
- Example (fictional):  
*Winter rains are lasting longer than expected. Berkeley’s winter shelters are poised to close in three weeks, but forecasts suggest rain for another two months. If they do not remain open until the end of the rainy season, hundreds of people will be left in the rain 24/7. Therefore, this item seeks authorization to keep Berkeley’s winter shelters open until the end of April, and refers to the Budget Process \$40,000 to cover costs of an additional two months of shelter operations.*

**5. Background**

A full discussion of the history, circumstances and concerns to be addressed by the item.

- For the above fictional example, Background would include *information and data about the number and needs of homeless individuals in Berkeley, the number and availability of permanent shelter beds that meet their needs, the number of winter shelter beds that would be lost with closure, the impacts of such closure on this population, the weather forecasts, etc.*

**6. Review of Existing Plans, Programs, Policies and Laws**

Review, identify and discuss relevant/applicable Plans, Programs, Policies and Laws, and how the proposed actions conform with, compliment, are supported by, differ from or run contrary to them. What gaps were found that need to be filled? What existing policies, programs, plans and laws need to be changed/supplemented/improved/repealed? What is missing altogether that needs to be addressed?

Review of all pertinent/applicable sections of:

- The City Charter
- Berkeley Municipal Code
- Administrative Regulations
- Council Resolutions
- Staff training manuals

Review of all applicable City Plans:

- The General Plan
- Area Plans
- The Climate Action Plan
- Resilience Plan
- Equity Plan

- Capital Improvements Plan
- Zero Waste Plan
- Bike Plan
- Pedestrian Plan
- Other relevant precedents and plans

Review of the City's Strategic Plan

Review of similar legislation previously introduced/passed by Council

Review of County, State and Federal laws/policies/programs/plans, if applicable

#### **7. Actions/Alternatives Considered**

- What solutions/measures have **other jurisdictions** adopted that serve as models/cautionary tales?
- What solutions/measures are recommended by **advocates, experts, organizations**?
- What is the range of actions considered, and what are some of their major pros and cons?
- Why were other solutions not as feasible/advisable?

#### **8. Consultation/Outreach Overview and Results**

- Review/list external and internal stakeholders that were consulted
  - **External:** constituents, communities, neighborhood organizations, businesses and not for profits, advocates, people with lived experience, faith organizations, industry groups, people/groups that might have concerns about the item, etc.
  - **Internal:** staff who would implement policies, the City Manager and/or deputy CM, Department Heads, City Attorney, Clerk, etc.
- What reports, articles, books, websites and other materials were consulted?
- What was learned from these sources?
- What changes or approaches did they advocate for that were accepted or rejected?

#### **9. Rationale for Recommendation**

A clear and concise statement as to whether the item proposes actions that:

- Conform to, clarify or extend existing Plans, Programs, Policies and Laws
- Change/Amend existing Plans, Programs, Policies and Laws in **minor** ways
- Change/Amend existing Plans, Programs, Policies and Laws in **major** ways
- Create an exception to existing Plans, Programs, Policies and Laws
- Reverse/go contrary to or against existing Plans, Programs, Policies and Laws

Argument/summary of argument in support of recommended actions. The argument likely has already been made via the information and analysis already presented,

but should be presented/restated/summarized. Plus, further elaboration of terms for recommendations, if any.

**10. Implementation, Administration and Enforcement**

Discuss how the recommended action(s) would be implemented, administered and enforced. What staffing (internal or via contractors/consultants) and materials/facilities are likely required for implementation?

**11. Environmental Sustainability**

Discuss the impacts of the recommended action(s), if any, on the environment and the recommendation's positive and/or negative implications with respect to the City's Climate Action, Resilience, and other sustainability goals.

**12. Fiscal Impacts**

Review the recommended action's potential to generate funds or savings for the City in the short and long-term, as well as the potential direct and indirect costs.

**13. Outcomes and Evaluation**

State the specific outcomes expected, if any (i.e., "*it is expected that 100 homeless people will be referred to housing every year*") and what reporting or evaluation is recommended.

**14. Contact Information**

**15. Attachments/Supporting Materials**

# City Manager Evaluation RFP Follow-up

Agenda and Rules Committee - Timeline Discussion

September 16, 2019

Submitted by: Dee Williams-Ridley

# Original RFP Process Timeline

Scope of Work Defined

RFP Finalized & Issued

Questions Due From Bidders

Complete Selection Process

Process Contract

Consultant Begins Project

July 8, 2019

August 1, 2019

August 8, 2019




Sept. 9, 2019

Sept. 30, 2019

October 15, 2019



# Revised RFP Process Indicates areas where process timeline can be reduced)

- Issue RFP to Potential Bidders Wednesday, August 14, 2019
- Questions Due Friday, August 30, 2019
-  Proposals Due from Potential Bidders Thursday, September 19, 2019
-  Complete Selection Process Tuesday, October 15, 2019
-  Council Approval of Contract (over \$50k) Tuesday, November 12, 2019
- Award of Contract Friday, November 15, 2019
- Sign and Process Contract Friday, November 22, 2019
- Notice to Proceed Monday, November 25, 2019

# Agenda & Rules Committee - Responsibilities

- Reviewed & Approved Scope of Work
- Review Proposals
- Recommend Selected Vendor to Council
- Staff will draft Contract
- Council Approval



Finance Department  
General Services Division

**REQUEST FOR PROPOSALS (RFP)**  
**Specification No. 20-11354-C**  
**FOR**  
**City Manager Performance Assessment**  
**PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals to assist and inform the City Council and City Manager in an evaluation assessment of the City Manager's performance. As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached).

**Proposals must be received no later than 2:00 pm, on Thursday, September 12, 2019.** All responses must be in a sealed envelope and have "City Manager Performance Assessment" and **Specification No. 20-11354-C** clearly marked on the **outer most mailing envelope**. Please submit one (1) unbound original, four (4) unbound copies and one (1) flash drive of the proposal as follows:

**Mail or Hand Deliver To:**  
City of Berkeley  
Finance Department/General Services Division  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

**For questions** concerning the anticipated work, or scope of the project, please **contact Dennis Dang Acting General Services Manager**, via email at [DDang@cityofberkeley.info](mailto:DDang@cityofberkeley.info) no later than **Thursday, August 23, 2019**. Answers to questions will **not** be provided by telephone or email. Rather, answers to all questions or any addenda will be **posted** on the City of Berkeley's site at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>. It is the vendor's responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

We look forward to receiving and reviewing your proposal.

Sincerely,

  
Dennis Dang  
Acting General Services Manager

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510.981.6903 Fax: 510.981.7390

E-mail: [finance@ci.berkeley.ca.us](mailto:finance@ci.berkeley.ca.us) Website: <http://www.ci.berkeley.ca.us/finance>

## **I. BACKGROUND**

On May 14, 2019 the City Council unanimously voted to have the City Manager issue a Request for Proposal (RFP) to contract with an experienced management consulting firm to assist and inform the City Council and City Manager in an evaluation assessment of the City Manager's performance. The Council also directed that the corresponding RFP be reviewed by the City Council Agenda and Rules Committee (Council Committee) prior to issuance. Additionally, the responses to the RFP will be reviewed by the Council Committee and the members of the Council Committee will make a recommendation for consultant selection to the entire City Council for approval. The City Council's intent is that this process begin shortly after approval of the Biennial Budget, and include a process for ongoing updates and the establishment of an evaluation schedule.

The City Council Agenda and Rules Committee met on July 8, 2019 and approved for the City Manager to release an RFP that included the below scope of work.

The last facilitated evaluation process of the prior City Manager was conducted in October of 2013. This process included an Ad Hoc Committee of the City Council and was facilitated by an experienced firm.

The City is committed to an evaluation process that encourages and compels the active participation and engagement of the full Council as well as that of the City Manager. Consequently, it is imperative that both the Council and City Manager jointly and collaboratively have input into the development of the performance criteria, goal setting, and the type of evaluation tool to be utilized.

The City Council's evaluation of the City Manager should be approached as part of an on-going process that proactively promotes a more thoughtful and effective decision-making body and responsive city management.

There are many tangible benefits to conducting an evaluation of the City Manager. The process is important and serves as an opportunity to promote and enhance communication between a council and city manager, establishes goals and objectives, sets expectations for the coming year, and improves how an organization functions.

The term of the contract is expected to begin shortly after conclusion of consultant selection and contract negotiation and end on July 30, 2021.

## **II. SCOPE OF SERVICES**

The City is seeking to award a contract with a consultant to (1) establish a two (2) phased process to conduct an initial facilitated feedback session between the City Council and City Manager, (2) develop in coordination with the Council and City Manager performance criteria and a performance tool for future performance reviews, (3) conduct a performance evaluation in coordination with the Council and City Manager a year after the establishment of performance expectations, and (4) establish a timeline and an annual evaluation schedule.

Proposed actions for the consultant include: creating a process for evaluations, developing a timeline and assigning responsibilities, developing and refining criteria, selecting procedures to evaluate performance, performing the evaluation, discussing the results, taking final action, and lastly evaluating the process.

Additionally, the City is looking for consultants to consider including (but not limited to) in the evaluation, consideration of ICMA's 14 points of City Manager Leadership:

1. Personal and Professional Integrity
2. Community Engagement
3. Equity and Inclusion
4. Staff Effectiveness
5. Personal Resiliency and Development
6. Strategic Leadership

7. Strategic Planning
8. Policy Facilitation and Implementation
9. Community and Resident Service
10. Service Delivery
11. Technological Literacy
12. Financial Management and Budgeting
13. Human Resources Management and Workforce Engagement
14. Communication and Information Sharing

When formulating the process for the City Manager's evaluation, the selected consultant should identify a regular date for evaluations during a time of year that is less busy than others, i.e., avoiding periods of budget preparation and elections.

The consultant will be expected to engage the Council both individually as well as a body on both the type of criteria used to evaluate the City Manager as well as the specific rating criteria. The City Manager is also expected to be included in the development of performance and rating criteria.

The consultant will conduct individual interviews with each Council Member, and randomly select members of the senior executive leadership team and or include as feedback, information gained from the City Manager's 360 evaluation – currently in progress. A 360 performance feedback process of the City Manager is expected for completion in August of 2019 and is being administered anonymously by the Center for Creative Leadership. This process includes a review by all members of the senior executive leadership team and direct reports to the City Manager and may include external partners. This process is for feedback only and is not part of a structured evaluation process of the City Manager. The 360 process is anonymous and all criteria has been measured and validated through the Center for Creative Leadership.

An executive summary of the completed performance evaluation will be provided by the consultant. An accompanying full report will include a future goals section, areas where improvement is needed, areas where performance is strong, and any other specific professional recommendations.

The consultant shall meet the number of times necessary to successfully engage the City Council and City Manager in this process.

Upon award of the contract the consultant shall immediately submit a timeline detailing the various process steps and project deliverables.

Deliverables should include but not limited to:

1. Timeline
2. A 2-phased process (Initial Feedback Session and an evaluation within a year following the development of performance criteria)
3. Performance Criteria
4. Evaluation Questionnaire/Tool
5. Engagement/Communication Plan
6. Executive Summary and Full Report
7. Performance Goals and Feedback
8. Inclusion of 360 Performance Feedback Trends (City Manager to determine)
9. Annual Process

1 Dover First, A Handbook for Evaluating the City Manager [Online] Available: <https://www.dover.nh.gov/Assets/government/city-operations/2document/executive/city-anager/evaluationprocess/Handbook%20for%20Evaluating%20the%20City%20Manager.pdf>

2 ICMA, Practices of Effective Local Government Leadership, [Online] Available: <https://icma.org/practices-effective-local-government-leadership>

### **III. SUBMISSION REQUIREMENTS**

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point.

1. **Contractor Identification:**

Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number.

2. **Client References:**

Provide a minimum of **five (5)** client references. References should be California cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

3. **Price Proposal:**

The proposal shall include pricing for all services. Pricing shall be all inclusive unless indicated otherwise on a separate pricing sheet. The Proposal shall itemize all services, including hourly rates for all professional, technical and support personnel, and all other charges related to completion of the work shall be itemized.

4. **Contract Terminations:**

**If your organization has had a contract terminated in the last five (5) years, describe such incident.** Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

### **IV. SELECTION CRITERIA**

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. References 20%
2. Costs 30%
3. Public Sector Experience Conducting City Manager Performance Reviews: 50%

The City Council Agenda and Rules Committee (Council Committee) will review all bidder responses and the Council Committee will forward their recommendation for consultant selection to the entire City Council for approval.

## V. PAYMENT

Invoices: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley  
Accounts Payable  
PO Box 700  
Berkeley, CA 94701  
**Attn: Office of the City Manager**

Payments: The City will make payment to the vendor within 30- days of receipt of a correct and complete invoice.

## VI. CITY REQUIREMENTS

### A. Non-Discrimination Requirements:

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal**

### B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

### C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

### D. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

**E. Berkeley Living Wage Ordinance:**

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The Living Wage rate is currently \$14.97 (if medical benefits are provided) or \$17.45 (if medical benefits are not provided). The Living Wage rate is adjusted automatically effective June 30<sup>th</sup> of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

**F. Berkeley Equal Benefits Ordinance:**

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

**G. Statement of Economic Interest:**

The City's Conflict of Interest Code designates "consultants" as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

**VII. OTHER REQUIREMENTS**

**A. Insurance**

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

**B. Worker's Compensation Insurance:**

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

**C. Business License**

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300).



Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

**D. Recycled Paper**

**All reports to the City shall be on recycled paper that contains at least 50% recycled product** when such paper is available at a cost of not greater than ten percent more than the cost of virgin paper, and when such paper is available at the time it is required. If recycled paper is not available the Contractor shall use white paper. Written reports or studies shall be *printed on both sides of the page* whenever practical.

**E. State Prevailing Wage:**

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories, when employed for any “work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work,” constitute a “Public Work” within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages.

Wage information is available through the California Division of Industrial Relations web site at: [http://www.dir.ca.gov/OPRL/statistics\\_and\\_databases.html](http://www.dir.ca.gov/OPRL/statistics_and_databases.html)

**VIII. SCHEDULE (dates are subject to change)**

- |                                                                    |            |
|--------------------------------------------------------------------|------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders:           | 8/14/2019  |
| <input type="checkbox"/> Questions Due                             | 8/23/2019  |
| <input type="checkbox"/> Proposals Due from Potential Bidders      | 9/12/2019  |
| <input type="checkbox"/> Complete Selection Process                | 10/15/2019 |
| <input type="checkbox"/> Council Approval of Contract (over \$50k) | 11/12/2019 |
| <input type="checkbox"/> Award of Contract                         | 11/15/2019 |
| <input type="checkbox"/> Sign and Process Contract                 | 11/22/2019 |
| <input type="checkbox"/> Notice to Proceed                         | 11/25/2019 |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

**Attachments:**

- |                                                 |              |
|-------------------------------------------------|--------------|
| • Check List of Required items for Submittal    | Attachment A |
| • Non-Discrimination/Workforce Composition Form | Attachment B |
| • Nuclear Free Disclosure Form                  | Attachment C |
| • Oppressive States Form                        | Attachment D |

- Living Wage Form
- Equal Benefits Certification of Compliance
- Right to Audit Form
- Insurance Endorsement

Attachment E  
Attachment F  
Attachment G  
Attachment H

## ATTACHMENT A

### CHECKLIST

- Proposal describing service (one (1) unbound original, four (4) copies and one (1) flash drive)
- Contractor Identification and Company Information
- Client References
- Costs proposal by task, type of service & personnel
- The following forms, completed and **signed in blue ink** (attached):
  - Non-Discrimination/Workforce Composition Form Attachment B
  - Nuclear Free Disclosure Form Attachment C
  - Oppressive States Form Attachment D
  - Living Wage Form (*may be optional*) Attachment E
  - Equal Benefits Ordinance Certification of Compliance (EBO-1) Attachment F

### **ADDITIONAL SUBMITTALS REQUIRED FROM SELECTED VENDOR AFTER COUNCIL APPROVAL TO AWARD CONTRACT.**

- Provide **original-signed in blue ink** Evidence of Insurance
  - Auto
  - Liability
  - Worker's Compensation
- Right to Audit Form Attachment G
- Commercial General & Automobile Liability Endorsement Form Attachment H
- Berkeley Business License

**For informational purposes only: Sample of Personal Services Contract can be found on the City's website on the current bid and proposal page at the top of the page.**

**NON-DISCRIMINATION/WORKFORCE COMPOSITION FORM FOR NON-CONSTRUCTION CONTRACTS**

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract:

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Business Lic. #: \_\_\_\_\_

| Occupational Category:<br>_____<br>(See reverse side for explanation of terms) | Total Employees |      | White Employees |      | Black Employees |      | Asian Employees |      | Hispanic Employees |      | Other Employees |      |
|--------------------------------------------------------------------------------|-----------------|------|-----------------|------|-----------------|------|-----------------|------|--------------------|------|-----------------|------|
|                                                                                | Female          | Male | Female          | Male | Female          | Male | Female          | Male | Female             | Male | Female          | Male |
| Official/Administrators                                                        |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Professionals                                                                  |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Technicians                                                                    |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Protective Service Workers                                                     |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Para-Professionals                                                             |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Office/Clerical                                                                |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Skilled Craft Workers                                                          |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Service/Maintenance                                                            |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Other (specify)                                                                |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |
| Totals:                                                                        |                 |      |                 |      |                 |      |                 |      |                    |      |                 |      |

Is your business MBE/WBE/DBE certified? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, by what agency? \_\_\_\_\_

If yes, please specify: Male: \_\_\_\_\_ Female: \_\_\_\_\_ Indicate ethnic identifications: \_\_\_\_\_

Do you have a Non-Discrimination policy? Yes: \_\_\_\_\_ No: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

City of Berkeley Contract Compliance Officer

## Occupational Categories

**Officials and Administrators** - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

**Professionals** - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

**Technicians** - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

**Protective Service Workers** - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

**Para-Professionals** - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Transporters" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

**Office and Clerical** - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

**Skilled Craft Workers** - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

**Service/Maintenance** - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

**CITY OF BERKELEY**  
**Nuclear Free Zone Disclosure Form**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity: \_\_\_\_\_

Contract Description/Specification No: **City Manager Performance Assessment/20-11354**

**Attachment C**

**CITY OF BERKELEY**  
**Oppressive States Compliance Statement**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham and U-Tsang**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity: \_\_\_\_\_

Contract Description/Specification No: **City Manager Performance Assessment/20-11354**

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF BERKELEY**  
**Living Wage Certification for Providers of Services**

**TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.**

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

**Section I.**

**1. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS**

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

If **no**, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If **yes**, please continue to question **1(b)**.

b. Do you have six (6) or more employees, including part-time and stipend workers?

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

If you have answered, "**YES**" to questions **1(a)** and **1(b)** this contract **IS** subject to the LWO. If you responded "NO" to **1(b)** this contract IS NOT subject to the LWO. **Please continue to Section II.**

**2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.**

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question **2(b)**.

b. Do you have six (6) or more employees, including part-time and stipend workers?

**YES** \_\_\_\_\_ **NO** \_\_\_\_\_

If you have answered, "**YES**" to questions **2(a)** and **2(b)** this contract **IS** subject to the LWO. If you responded "NO" to **2(b)** this contract IS NOT subject to the LWO. **Please continue to Section II.**

**Section II**

**Please read, complete, and sign the following:**

THIS CONTRACT **IS** SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT **IS NOT** SUBJECT TO THE LIVING WAGE ORDINANCE.

**Attachment E**



The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Business Entity: \_\_\_\_\_

Contract Description/Specification No: **City Manager Performance Assessment/20-11354**

**Section III**

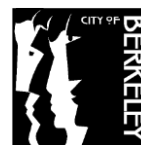
- 
- **\*\* FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY \*\***

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

\_\_\_\_\_  
Department Name

\_\_\_\_\_  
Department Representative

To be completed by  
 Contractor/Vendor



**Form EBO-1  
 CITY OF BERKELEY**

**CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE**

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

**SECTION 1. CONTRACTOR/VENDOR INFORMATION**

|                 |       |             |      |
|-----------------|-------|-------------|------|
| Name:           |       | Vendor No.: |      |
| Address:        | City: | State:      | ZIP: |
| Contact Person: |       | Telephone:  |      |
| E-mail Address: |       | Fax No.:    |      |

**SECTION 2. COMPLIANCE QUESTIONS**

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.  
 Yes  No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?  
 Yes  No  
 If "Yes," continue to Question C.  
 If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? .....  Yes  No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? .....  Yes  No

**If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E. If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.**

- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? .....  Yes  No

**If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)  
If you answered "No," continue to Section 3.**

**SECTION 3. PROVISIONAL COMPLIANCE**

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
  - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
  - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
  - Upon expiration of the contractor's current collective bargaining agreement(s).

B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?\* .....  Yes  No

\* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

**SECTION 4. REQUIRED DOCUMENTATION**

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

**SECTION 5. CERTIFICATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(State) (City)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal ID or Social Security Number

**FOR CITY OF BERKELEY USE ONLY**

- Non-Compliant (The City may not do business with this contractor/vendor)
- One-Person Contractor/Vendor                       Full Compliance                       Reasonable Measures
- Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_
- Staff Name(*Sign and Print*): \_\_\_\_\_ Date: \_\_\_\_\_

**Attachment F**

**CITY OF BERKELEY**  
**Right to Audit Form**

The contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to/any findings before a final audit report is filed.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

Contract Description/Specification No: **City Manager Performance Assessment/20-11354**

Please direct questions regarding this form to the Auditor's Office, at (510) 981-6750.

**Attachment G**

**CITY OF BERKELEY**  
**Commercial General and Automobile Liability Endorsement**

The attached Certificates of Insurance are hereby certified to be a part of the following policies having the following expiration dates:

| Policy No. | Company Providing Policy | Expir. Date |
|------------|--------------------------|-------------|
| _____      | _____                    | _____       |
| _____      | _____                    | _____       |
| _____      | _____                    | _____       |
| _____      | _____                    | _____       |

The scope of the insurance afforded by the policies designated in the attached certificates is not less than that which is afforded by the Insurance Service Organization's or other "Standard Provisions" forms in use by the insurance company in the territory in which coverage is afforded.

Such Policies provide for or are hereby amended to provide for the following:

- The named insured is \_\_\_\_\_.
- CITY OF BERKELEY ("City") is hereby included as an additional insured with respect to liability arising out of the hazards or operations under or in connection with the following agreement:  
\_\_\_\_\_.

The insurance provided applies as though separate policies are in effect for both the named insured and City, but does not increase the limits of liability set forth in said policies.

- The limits of liability under the policies are not less than those shown on the certificate to which this endorsement is attached.
- Cancellation or material reduction of this coverage will not be effective until thirty (30) days following written notice to \_\_\_\_\_, Department of \_\_\_\_\_, Berkeley, CA.
- This insurance is primary and insurer is not entitled to any contribution from insurance in effect for City.

The term "City" includes successors and assigns of City and the officers, employees, agents and volunteers.

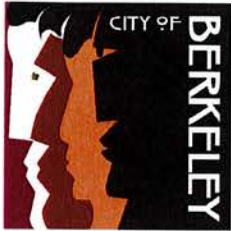
\_\_\_\_\_  
Insurance Company

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature of Underwriter's  
Authorized Representative

Contract Description/Specification No: **City Manager Performance Assessment/20-11354**

**Attachment H**



**Finance Department**  
Purchasing Division

**REQUEST FOR PROPOSALS (RFP)**  
**Specification No. 20-11354-C**  
**FOR**  
**City Manager Performance Assessment**  
**PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

**ADDENDUM "A"**  
8/16/2019

Dear Proposer:

This addendum is to inform all of the updated links to citation (1) and citation (2).

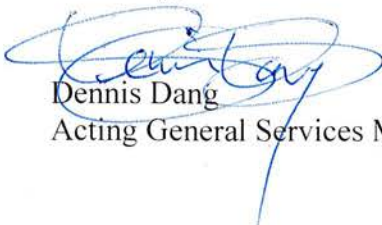
**Proposals/bids must be received no later than 2:00 pm, on Thursday, September 12, 2019.**  
All responses must be in a sealed envelope and have "**City Manager Performance Assessment**" and **Specification No. 20-11354-C** clearly marked on the **outer most mailing envelope.**

**Mail or Hand Deliver To:**  
City of Berkeley  
Finance Department/General Services Division  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Proposals/bids will not be accepted after the date and time stated above. Incomplete bids that do not conform to the requirements specified herein will not be considered.

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your response.

Sincerely,

  
Dennis Dang  
Acting General Services Manager

## **Addendum “A”**

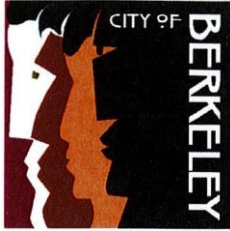
### Specification No. 20-11354-C City Manager Performance Assessment

The City of Berkeley has updated links regarding **Specification No. 20-11354-C**, City manager Performance Assessment. In an effort to provide the same information to all, listed below are the links to citation (1) and citation (2).

Citation 1.) Dover First, A Handbook for Evaluating the City Manager -  
<https://www.dover.nh.gov/Assets/government/city-operations/2document/executive/city-manager/evaluation-process/Handbook%20for%20Evaluating%20the%20City%20Manager.pdf>

Citation 2.) ICMA, Practices of Effective Local Government -  
<https://icma.org/sites/default/files/18-123%20ICMA%20Practices%20for%20Effective%20Local%20Government%20Leadership.pdf>

Except as provided herein all other terms and conditions remain unchanged.



Finance Department  
Purchasing Division

**REQUEST FOR PROPOSALS (RFP)  
Specification No. 20-11354-C  
FOR  
City Manager Performance Assessment  
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

**ADDENDUM "B"**

8/22/2019

Dear Proposer:

This addendum is to notify all of the change made to the **Questions Due** and the **Proposals Due from Potential Bidders** dates. All other dates remain unchanged. See updated schedule at the end of this document.

The **Questions Due** date has been changed from Friday, August 23, 2019 to **Friday, August 30, 2019**.

The **Proposals Due from Potential Bidders** date has been changed from Thursday, September 12, 2019 to **Thursday, September 19, 2019**.

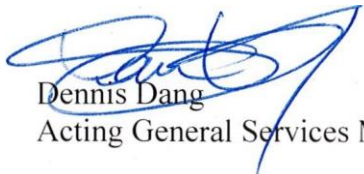
**Proposals must be received no later than 2:00 pm, on Thursday, September 19, 2019.** All responses must be in a sealed envelope and have "**City Manager Performance Assessment**" and **Specification No. 20-11354-C** clearly marked on the **outer most mailing envelope**.

**Mail or Hand Deliver To:**  
City of Berkeley  
Finance Department/General Services Division  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Proposals/bids will not be accepted after the date and time stated above. Incomplete bids that do not conform to the requirements specified herein will not be considered.

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your response.

Sincerely,

  
Dennis Dang  
Acting General Services Manager



**Addendum “B”**

Specification No. 20-11354-C  
City Manager Performance Assessment

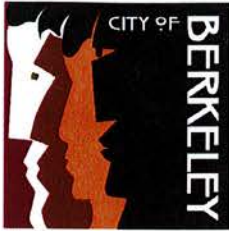
The City of Berkeley has updated the schedule for **Specification No.20-11354-C, City Manager Performance Assessment.**

In an effort to provide the same information to all, listed below is the updated schedule.

**VIII. SCHEDULE (dates are subject to change)**

- |                                                                    |                              |
|--------------------------------------------------------------------|------------------------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders            | Wednesday, August 14, 2019   |
| <input type="checkbox"/> Questions Due                             | Friday, August 30, 2019      |
| <input type="checkbox"/> Proposals Due from Potential Bidders      | Thursday, September 19, 2019 |
| <input type="checkbox"/> Complete Selection Process                | Tuesday, October 15, 2019    |
| <input type="checkbox"/> Council Approval of Contract (over \$50k) | Tuesday, November 12, 2019   |
| <input type="checkbox"/> Award of Contract                         | Friday, November 15, 2019    |
| <input type="checkbox"/> Sign and Process Contract                 | Friday, November 22, 2019    |
| <input type="checkbox"/> Notice to Proceed                         | Monday, November 25, 2019    |

Except as provided herein all other terms and conditions remain unchanged.



Finance Department  
Purchasing Division

**REQUEST FOR PROPOSALS (RFP)  
Specification No. 20-11354-C  
FOR  
CITY MANAGER PERFORMANCE ASSESSMENT**

**ADDENDUM "C"  
September 4, 2019**

Dear Proposer:

Questions received from proposers along with answers are attached.

**Proposals must be received no later than 2:00 p.m., on Thursday, September 19, 2019.** All responses must be in a sealed envelope and have "**City Manager Performance Assessment**" and **Specification No. 20-11354-C** clearly marked on the **outer most mailing envelope**.

**Mail or Hand Deliver To:**  
City of Berkeley  
Finance Department/General Services Division  
2180 Milvia Street, 3rd Floor  
Berkeley, CA 94704

Proposals/bids will not be accepted after the date and time stated above. Incomplete bids that do not conform to the requirements specified herein will not be considered.

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your response.

Sincerely,

Dennis Dang  
Acting General Services Manager

## Addendum “C”

### Questions and Answers for Specification No. 20-11354-C CITY MANAGER PERFORMANCE ASSESSMENT

The City of Berkeley has received questions from some potential respondents regarding **Specification No. 20-11354-C, City Manager Performance Assessment**. In an effort to provide the same information to all, listed below are the questions received to date, with responses from City staff.

- 1.Q. Would the city consider electronic submissions of the responses rather than paper?  
1.A. *No. The City is unable to accept electronic submissions.*
- 2.Q. Is there a limit in the number of pages for the response?  
2.A. *No, the City asks that proposals be concise and to the point.*
- 3.Q. The response requirements do not include a request for qualifications of assigned personnel? Would it be OK to include resumes of likely personnel to be assigned to this project if awarded?  
3.A. *Demonstration of “Public Sector Experience Conducting City Manager Performance Reviews” is an evaluation criteria. Yes, proposals may include likely personnel to be assigned.*
- 4.Q. Is it possible to include a company background and services in the section “Contractor Identification”?  
4.A. *Yes, referring to Attachment A, Contractor Identification and Company Information that would be the appropriate section for such information.*
- 5.Q. Will the results of the 2013 evaluation of the City Manager be available for review as part of this project?  
5.A. *Personnel records are generally not released; any action for release would require the involvement of the Human Resources department.*
- 6.Q. Would the organization that facilitated the 2013 review of the City Manager be eligible for responding to this RFP?  
6.A. *Yes.*
- 7.Q. How are travel and other expenses to be handled in the response? E.g. all-in hourly rate or separate actual (we can provide an estimate)?  
7.A. *The City requests that total proposed pricing be provided with supporting itemizations, rates, etc. that form the basis to support the proposed pricing.*
- 8.Q. During Phase 2 of the performance period, should we include the time required to review how the process worked and suggest improvements?  
8.A. *Respondents should include consideration for the entirety of tasks as described in Section II, Scope of Services.*

9.Q. Will we have access to confidentially interview the personnel that participated in the 360 feedback process)

9.A. *No.*

10.Q. Is there an estimate of how many times the City Manager and City Council can be engaged? Can engagement be via electronic collaboration or must it be in-person?

10.A. *Section II, Scope of Services states, "The consultant shall meet the number of times necessary to successfully engage the City Council and City Manager in this process."*

*The vendor is expected to meet with Council members and the City Manager; it's envisioned that ongoing engagement will be determined by existing circumstances at that time.*

11.Q. Is there a maximum budget that must be accommodated?

11.A. *The City will appropriate the necessary funding prior to contracting.*