

Fair Campaign Practices Commission

## AGENDA FOR OPEN GOVERNMENT COMMISSION

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

Civic Center  
2180 Milvia St.  
Cypress Room (1<sup>st</sup> Floor)

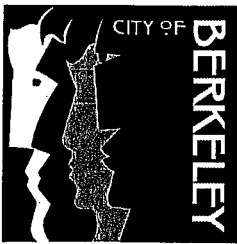
Regular Meeting  
**March 21, 2019**  
**8:00 p.m.**

Secretary: Emmanuelle Soichet, Deputy City Attorney

### The Commission may act on any item on this agenda

1. Call to Order 8:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
5. Approval of minutes for the October 18, 2018 regular meeting.
6. Draft Council item regarding submission of revised or supplemental agenda material submitted by D. Metzger; discussion and possible action.
7. Proposed changes to the 2018 Annual Report under Berkeley Municipal Code 2.06.190.C submitted by B. Smith; discussion and possible action.
8. Proposals submitted by The ProDemocracy Project; discussion and possible action.
9. Information report regarding City Council budget referral regarding good government ombudsman.
10. Annual election of Chair and Vice Chair; discussion and possible action.
11. Adjournment.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. ~~If you do not want your contact information included in the public record, please do not include that information in your communication.~~ Please contact the secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4<sup>th</sup> Fl., Berkeley, CA.



Open Government Commission

## DRAFT MINUTES

North Berkeley Senior Center  
1901 Hearst Avenue  
Classroom C (Upstairs)

Regular Meeting  
**October 18, 2018**  
8:00 p.m.

Members Present: Brad Smith, Dean Metzger, Emma Soichet, Brian Tsui, Mark McLean

Members Absent: Greg Harper (leave of absence), Patrick O'Donnell, Daniel Saver (leave of absence)

Also Present: Jessica Mar, Secretary/Deputy City Attorney  
Leslie Rome, Assistant Management Analyst, City Clerk's Office

1. **Call to Order**

Chair called the meeting to order at 8:25 p.m.

2. **Roll Call**

Roll call taken.

*Motion to temporarily adjourn the meeting at 8:26 p.m. (M/S/C: Soichet/Tsui; Ayes: Smith, Metzger, McLean, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

-----Chair reconvened the Commission at 10:18 p.m.-----

3. **Public Comment (items not on agenda)**

No public comment on matters not on agenda. 1 member of the public in attendance.

4. **Reports**

a. Report from Chair.

i. Chair had no report.

b. Report from Lobbyist Registration Subcommittee Chair.

i. Subcommittee Chair reported that the Lobbyist Registration and Revolving Door Ordinances passed.

5. **Approval of minutes for the September 20, 2018 regular meeting**

a. Public comment: no speakers.

b. Commission discussion and action.

*Motion to approve the revised minutes for the September 20, 2018 meetings (M/S/C: Tsui/Smith; Ayes: Smith, Metzger, McLean, Tsui; Noes: None; Abstain: Soichet; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

6. **Draft Council item regarding submission of revised or supplemental agenda material; discussion and possible action.**

Public Comment: no public comment.  
Commission discussion and action:

*Motion to continue the item to the next meeting (M/S/C: Smith/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence).*

7. **Response to request for information regarding information request regarding Customer Relations Management Software entry fields; discussion and possible action.**

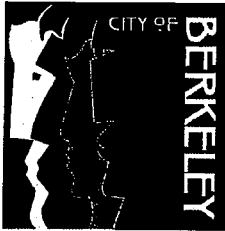
- a. Public comment: no speakers.
- b. Commission discussion and action.

*No action taken.*

8. Adjournment.

*Motion to adjourn (M/S/C: Smith/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence).*

The meeting adjourned at 10:42 p.m.



Open Government Commission

**DATE:** November 15, 2018

**TO:** OPEN GOVERNMENT COMMISSION

**FROM:** JESSICA MAR, OGC Secretary *JM 11/16*

**SUBJECT:** Submission from Dean Metzger regarding Amending the Commissioners' Manual regarding Submission of Revised or Supplemental Agenda Material

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**Background:**

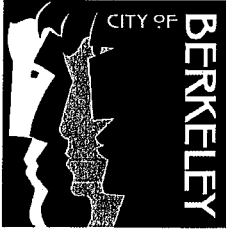
At its January 18, 2018 meeting, the Commission took the following action:

*Motion to request Chair present recommendations at a future meeting on possible changes to City process to provide for more transparency around late submissions by Commissioners. (M/S/C: Soichet/O'Donnell; Ayes: Smith, Callahan, McLean, O'Donnell, Soichet, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Harper (excused), Metzger (excused).)*

Former Chair Brad Smith presented recommendations to the Commission at the February 15, 2018. He submitted revised recommendations for the March 15, 2018 meetings.

At the August 16, 2018 meeting, the Commission sent the recommendation back to Chair Metzger to draft a recommendation based on existing language in the Commissioners Manual (2018). At the September 20, the Commission sent the item back to the Chair for further revisions. At the October 18, 2018 meeting, the Commission held the item over to its next meeting.

The documents submitted by Chair Metzger to the Commission are attached.



Open Government Commission

CONSENT CALENDAR  
[Meeting Date]

To: Honorable Mayor and Members of the City Council  
From: Open Government Commission  
Submitted by: Dean Metzger, Chair, Open Government Commission  
Subject: Amending the Commissioners' Manual Regarding Submission of Revised or Supplemental Agenda Material

RECOMMENDATION

Adopt a resolution revising the Commissioners' Manual to:

require Commissioners and board members be subject to the same procedures as the general public.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At its January 18, 2018 meeting the Open Government Commission reviewed a complaint alleging violation of the Open Government Ordinance and Brown Act at the November 15, 2017 Planning Commission meeting. The complainant alleged, and it was not disputed, that a Planning Commissioner used a memo that was not part of the public packet. It was handed out to the Commission members at the meeting with a copy placed in a binder. The memo, unavailable to the public except for the copy in the binder, was used as the basis for much of the discussion. It became difficult for the public to follow the discussion without ready access to the document. While the Open Government Commission found no violation of the Open Government Ordinance or Brown Act, it was concerned about the difficulty the public had following a discussion among commission members without access to the documents that informed their discussion.

The juxtaposition of the complaint suggested to the Commission members that a requirement to create more transparent discussion of items on the City's commissions and boards by ) providing the public with the same material available to members of the commission and/or board.

At its , October 18, 2018 meeting the Open Government Commission voted to recommend to Council the adoption of a resolution to add the following revision to Chapter V. Commission Procedures, Section E Administrative Procedures to the Commissioners' Manual:

Submission of Supplemental and Revised Agenda Material after the agenda and packet have been distributed and at or before the meeting.

## E. ADMINISTRATIVE PROCEDURES

### Commission and Board Documents

The agenda packet for a commission or board meeting contains the agenda, reports related to agenda items, and communications from the public received prior to the distribution of the agenda packet.

All writings or documents, including communications from the public, Commissioners and Board Members that are related to any item on an agenda and distributed to a majority of the commission or board members after the agenda packet is distributed, but before or at the meeting must be made available for public inspection at the time the writing or document is distributed to a majority of the commission or board at a designated location identified on the agenda. The commission or board secretary maintains a public viewing binder for these documents.

All writings or documents, including communications from the public, that are distributed to a majority of the commission or board members at the commission or board meeting must be made available for public inspection as quickly as possible. Members of the public submitting written communications at commission or board meetings should be encouraged to bring enough copies for all commissioners and board members, staff and at least five additional copies for members of the public (15 copies total, for most commissions and boards). The secretary is not required to immediately make copies of documents provided at the meeting when adequate copies are not provided by the submitting individual. Documents distributed at the meeting will be available in the public viewing binder the next business day

MEETING DATE

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(M/S/C: ; Ayes: ; Noes: ; Abstain: ; Absent: ).

BACKGROUND

See above.

ENVIRONMENTAL SUSTAINABILITY

No impact on environmental sustainability.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Not relevant for CEQA review.

RATIONAL FOR RECOMMENDATION

Berkeley Municipal Code 2.06.190(A)(1)(d) states the Open Government Commission shall advise the City Council of its opinion, conclusion or recommendation as to any complaint.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSONS

Dean Metzger, Chair, Open Government Commission (510) 549-0379  
Secretary, Open Government Commission, City Attorney's Office (510) 981-6950

**Model rewrite of Section 1 of the 2017 ANNUAL REPORT  
UNDER BMC SECTION 2.06.190.C for the 2018 Annual Report**

**1. The Number of Public Records Act Requests Received by the City; the Average Length of Time Taken to Respond to Public Records Act Requests; and the Approximate Number of Pages Produced in Response to Public Records Act Requests**

In order to capture and record the information required by Section 2.06.190.C, staff continued to utilize the Customer Relations Management (CRM) module software. There are currently 54 designated staff in 16 departments that use CRM to track PRA requests. In order to more accurately access the response to PRA requests, the requests are divided into two groups: (1) those requests answered the same day they are received and (2) those requests answered in two or more days after the information has been located, copied and provided to the person requesting the information. As shown in **Table 1**, there were 4,833 PRA requests for information (all in the Police Department) answered on the day the information was requested and 950 PRA requests answered two or more days after the information was requested for a total of 5,783 PRA requests in 2017. Of all PRA requests, 16.4 percent (950 requests) took two or more days to answer.

[Table 1 About Here]

For each of the 5,783 PRA requests, 15 data fields are completed. The majority of the PRA requests in the Police Department are fulfilled the same day the request is made and entered in batches into the CRM module software. The remaining PRA requests are entered into the CRM module software one at a time over the time period documents are being collected to fulfill the PRA request. In addition to the 15 data fields, staff updates the record several times based on the status of the request. This includes the date of the initial response, any documents obtained and paid for, as well as uploading the request letter when appropriate. The IT Department and City Attorney staff conducted follow-up training for designated staff in every department.

There was a total of 4,833 PRA requests fulfilled by the Police Department on the same day they were received. **Table 1** provides a breakdown of the 950 PRA requests that took two or more days by the 16 departments in addition to a category ("Multi-Department") of PRA requests that extend across more than one department. Of the 950 PRA requests received, 92.3 percent were fulfilled within the required time period (either 10 days or, with an extension, 24 days). Seventy-three (73) PRA requests (7.7 percent) taking two or more days to fulfill were completed outside the required time frame. A percentage of late responses by department is included in **Table 1**. All PRA requests provided on the same day were fulfilled within the required time period. Ninety-nine percent of all 5,783 PRA requests were fulfilled within the required time period.



A list of the 73 past due responses is included as **Attachment A** of this report. The late responses were primarily due to staff error, underscoring the need for ongoing staff training. Other factors include the due date falling on a City Reduced Service Day, the complexity of the request, the need for data from multiple departments, and the staff member verbalizing a time extension to the requesting party, but not noting it in the system. Other causes for late responses may be delays in processing, obtaining signatures, or key staff being out of the office.

The median time to respond to the 950 PRA requests that took two or more days was 6 days. The median response time for PRA requests is provided for the 16 departments plus requests across multiple departments in **Table 1**.

The City received \$17,984.50 in reimbursement during this period, primarily from charges of \$0.10 per page. Approximately 54,301 pages of documents were produced in paper and electronic form. [If possible, it would be good to have estimates for information provided as hardcopy and in electronic form. If all the reimbursement money went for hardcopies, that would buy 179,845 hardcopies, which suggests to me that most of our requests are filed electronically.] The City does not receive reimbursement for the many responsive documents provided in electronic format, as well as the documents made available for review for which copies were not requested. It also does not include the instances wherein the requester did not follow up to obtain the previously requested documents. The total number of reported staff hours spent on responding to PRA requests, including the time [x] of the paralegal in the City Attorney's Office who has been responsible for coordinating all multi-departmental PRA requests was 432 [+x].

[This is a summary of the previous year.] The PRA numbers from the 2017 are included in **Table 2**. Of the 950 PRA requests taking two or more days, approximately 92.3 percent were fulfilled within the required time period (either 10 days or, with an extension, 24 days). 73 PRA requests, or 7.7 percent of PRA requests taking two or more days were fulfilled outside the required time frame with a median time to respond of 6 days. Ninety-nine percent of all PRA requests were fulfilled within the required time frame.

[It's likely that some PRA requests in departments other than the Police Department are also fulfilled on the same day the request is made. These requests would be recorded in the "Number Provided on Same day" column.]

Table 1 Public Record Act (PRA) Requests in 2017 by Department

	Total		Two or more Days			
	Number of Requests	Number Provided on Same Day	Number	# of Late Responses	% of Late Responses	Median # of Days Late
<b>TOTAL</b>	5,783	4,833	950	73	7.7%	6
City Attorney	13		13	0	0.0%	0
City Auditor	1		1	0	0.0%	0
City Clerk	66		66	1	0.2%	3
City Manager	16		16	1	6.3%	5
Finance	50		50	10	20.0%	52
Fire Department	63		63	6	9.5%	2
Health Housing & Comm. Services	8		8	2	25.0%	5
Human Resources	22		22	1	4.5%	14
Information Technology	4		4	0	0.0%	0
Library	3		3	0	0.0%	0
Parks	16		16	0	0.0%	0
Planning	173		173	9	5.2%	3
Police	4,933	4,833	100 <sup>1</sup>	27	27.0%	7
Police Review Commission	1		1	0	0.0%	0
Public Works	278		278	8	2.9%	16
Rent Board	51		51	2	3.9%	5
Multi-Department	85		85	6	7.1%	16

Source: Customer Relations Management module software.

<sup>1</sup> Estimate; number of Police Department Single PRA requests is 100 or less.

[The figures should be centered in the column with the decimal (or implied decimal) points aligned, but EXCEL from MAC, which I use, only has left indenting. The PC version has right indenting needed to align the decimal points.]

**DATE:** November 15, 2018  
**TO:** Open Government Commission  
**FROM:** Brad Smith  
**SUBJECT:** Suggested Changes to the 2018 Annual Report under BMC 2.06.190.C

Since preparation of the 2015 Annual Report in 2016, the OGC has requested a presentation in the Annual Report that separates PRA requests handled on the same day a request is made from those that will take longer (up to 10 days or, with an extension, 24 days). The OGC has been informed that most PRA requests in the Police Department (4,833 out of 4,933) are responded to on the same day by immediately providing the requested information or a link to it. The data for these PRA requests are entered into the Customer Relations Management module software in batches, a different process than for PRA requests taking two or more days. The attached re-write of Section 1 has been prepared in the hope that it answers the questions and concerns raised by Commission members about the previous draft.

I propose moving that staff take into consideration the attached draft of Section 1 (including Table 1) when preparing the 2018 Annual Report under BMC 2.06.190.C.

# Pro Democracy Project

The Berkeley City Council has been structured against the public/people having a voice in policy-making. At present, in the four areas listed below, City Council gives procedure priority over people.

**This is a form of silencing.**

We propose that people be given priority over procedure. Below are suggestions for restructuring City Council meetings.

## **1- Allow the public to control the order of the Action Agenda:**

**The problem:** In general, items concerning the well-being of the people, or impositions on neighborhoods by business or corporate interests, are left for late in the session while business or administrative issues are considered first. This results in many people who are concerned about an issue eventually going home. Often those that wait until after 11 pm find the item postponed to the next meeting. This tactic discourages public input - a way of silencing the people.

**The solution:** A poll of the public during the ceremonial and the consent agenda can be used to determine the action calendar agenda order so that items with the highest public interest go first.

## **2- Give back to the people the ability to move items off the Consent Calendar**

**The problem:** The Consent Calendar contains items about which there is general agreement among Council members. But if people wish to have those issues discussed, they need to have the ability to place them on the Action calendar. In the past, they had that ability. Council amended its own rules to disallow non-councilmembers from remove items from Consent.

**The Solution:** Rescind the resolution that removed the people's ability to intervene in the Consent Calendar, and regain at least that minimal amount of influence over the agenda.

## **3- Don't reduce the allocated time to speakers when public participation increases**

**The Problem:** When a large number of speakers are present, the time allocated to an individual speaker is reduced from 2 minutes to 1 minute. These are the issues that the public cares the most about. One minute is not enough to present a coherent and cohesive argument on a complex question. It is a way of silencing the people.

**The Solution:** When more than 10 people show up, increase the time per individual to 3 minutes, with a maximum of 6 minutes per speaker.

#### **4- Change the procedure for Action Item discussion to create a Public-Council dialogue**

**The Problem:** For each Council agenda item, public comment comes first, and then council discusses the item and its issues. That means that the public speaks into a vacuum, addressing the issue from perspectives that are necessarily disengaged from councilmembers.

**The Solution:** Reverse the order of speaking with all Council members first addressing the item and providing their perspective. Then open the meeting to Public Comment, allowing the public to respond to the Council's thinking, offering suggestions to augment that thinking or to address misinterpretations. The Council would then debate that input a second time before a vote. Thus, a form of dialogue between councilmembers and the people could occur.

For More information, contact us:

Pro Democracy Project  
PO Box 11842 Berkeley, CA 94712  
<http://berkeleynativesun.com/>  
[jpmcfadden925@yahoo.com](mailto:jpmcfadden925@yahoo.com)

# The ProDemocracy Project

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## Ombudsman

### Berkeley needs an ombudsperson

"Ombudsman" is a Swedish word that means independent advocate or agent for the people with respect to organizations or institutions. S/he would be an impartial person who could investigate complaints, recommend resolutions, but not judge a case.

#### **What an Ombudsperson would do:**

- 1- Receive ethics complaints about city staff, police, councilmembers, etc. from residents, and have the power to bring those complaints to council's attention.
- 2- Be an advocate or special conduit for residents or neighborhood groups in dealing with bureaucratic attitudes and procedures, cutting through red tape and lobbying procedures.
- 3- Introduce political and economic issues brought by residents into council agendas.
- 4- Assist constituents in finding and using the proper channels or procedures for obtaining city services, and assist in finding out about services.

#### **Why do we need an Ombudsperson?**

In Berkeley, the people do not have a voice in policy-making. We are only given moments of public comment, which are monologues thrown in the air, where policy-making requires dialogue. Time limits become forms of silencing the people. Important issues (like industrial and highway pollution, police harassment, rental dislocations, etc.) require dialogue in Council with the people. And we have no say in what goes on the Consent Calendar.

The ombudsperson could be an adjunct to an Ethics Commission. They would be officials who could substitute themselves for due process when it is withheld.

Due process is an equalizing procedure between individuals and institutions. It is the main way individuals can argue against domination by institutions (government agencies, police, landlords, etc.)

#### **The ProDemocracy Project**

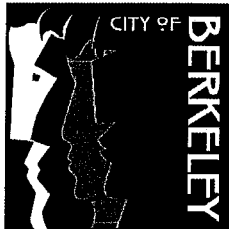
To initiate a movement to restructure City Council so that it becomes the true policy-making body of and for the people of Berkeley.

Our next meeting will be on February 3, 2019, at 3 pm, at Leila's Café,  
At San Pablo and Francisco St.

Contact us at: PO Box 11842, Berkeley. 510-845-8634 <http://berkeleynativesun.com/jpmcfadden925@yahoo.com>

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***The Fundamental Principle of Democracy – Those who will be affected by a policy should be able to participate in making the policy that will affect them.***



Kate Harrison  
Councilmember District 4

CONSENT CALENDAR  
March 26<sup>th</sup>, 2019

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kate Harrison  
Subject: Budget Referral: Good Government Ombudsman

RECOMMENDATION

Refer to the 2019/2020 budget process to establish a Good Government Ombudsman to facilitate enforcement of Berkeley's good government laws through the City Clerk and City Attorney's Office.

BACKGROUND

Representative democracy requires transparency and accountability. In the post-Citizens United<sup>1</sup> landscape, big money<sup>2</sup> and lobbyists<sup>3</sup> can have an outsized effect on government undertakings. The people of Berkeley have enacted a series of reforms to support these values beginning with the Berkeley Election Reform Act of 1974, a ballot measure that passed overwhelmingly, which limited the amount of campaign contributions, among other reforms.

To promote the highest possible standard of ethical accountability, integrity, and independence among City employees and elected officials, Berkeley has a suite of "good governance" laws -- the Berkeley Election Reform Act (1974), the Open Government Ordinance (2010), the Revolving Door Ordinance (2016), the Fair Elections Act of 2016 (Public Financing), and the Lobbyist Ordinance (2018).

Per a City Manager memo dated November 20<sup>th</sup>, 2018, the City Clerk's office is currently staffed to adequately enforce the Berkeley Election Reform Act, the Open Government Ordinance, and the Revolving Door Ordinance, but the mandate created by Public Financing and the Lobbyist Ordinance are infeasible with current staffing levels and would require an additional 1.0 FTE, designated as a Deputy City Attorney II, for full enforcement of the suite of good government laws including the Lobbyist Ordinance.

The Fair Elections Act of 2016 established a public financing program to reduce the influence of private campaign contributions and ensure that personal wealth is not a

<sup>1</sup> <https://www.law.cornell.edu/supct/html/08-205.ZS.html>

<sup>2</sup> <https://citizenstakeaction.org/the-problem/>

<sup>3</sup> <https://www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/>

barrier to becoming an elected official. In two election cycles the Fair Elections Act has already proven effective at achieving these political goals, but the filing demands on the City Clerk's Office are burdensome and require more staff. Thus far the Fair Elections Act has been enforced with existing staff because it is applicable only during election years, but the City Clerk's Office will require more staff.

The Berkeley City Council passed the Lobbyist Ordinance on October 2<sup>nd</sup> 2018 with the intention of the City registering all lobbyists, providing ethics training, and maintaining quarterly reports. Thus far enforcement has been infeasible because of lack of staff.

Berkeley should invest in the principles of accountability by allocating funding for the 1.0 FTE the City Attorney office requires to enforce the laws Berkeley has already passed.

#### FISCAL IMPACTS OF RECOMMENDATION

Per City Manager memo, approximately \$240,000 annually.

#### ENVIRONMENTAL SUSTAINABILITY

Consistent with Berkeley's climate and sustainability goals.

#### CONTACT PERSON

Kate Harrison, Berkeley City Councilmember, (510) 981-7140

#### ATTACHMENTS

1: Fiscal and Administrative Impacts of the Lobbyist Ordinance