



Office of the Mayor

CONSENT CALENDAR

December 19, 2017

To: Members of the City Council

From: Mayor Jesse Arreguín, Councilmembers Lori Droste, Susan Wengraf, and Sophie Hahn

Subject: Amending Open Government Ordinance Regarding Submission of Revised or Supplemental Agenda Material

RECOMMENDATION

1. Adopt an Ordinance amending Berkeley Municipal Code Section 2.06.070.E to require the submission of revised or supplemental agenda material by noon the day prior to the City Council meeting at which the item will be considered.
2. Adopt a Resolution revising the City Council Rules of Procedure and Order, Section III.4 to: a) require the submission of revised or supplemental agenda material by 12:00 p.m. the day prior to the City Council meeting at which the item will be considered; b) requiring that revised reports must reflect a comparison with the original item using track changes formatting; c) Requiring that copies of revised reports must be delivered to the City Clerk for distribution at the meeting.

BACKGROUND

In order for revisions or supplements to agenda items to be considered by the City Council, Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) requires that revisions or supplements be posted on the City's website no later than 5:00 p.m. on the fifth calendar day prior to the City Council meeting at which it is to be considered. Revisions submitted by this deadline are included in the Supplemental Communications and Reports Packet 1.

The City Council amended the Open Government Ordinance in 2016 to allow the submission of revisions or supplements by noon on the day of the Council meeting to be included in Supplemental Communications and Reports Packet 2 (Supplemental Packet 2). Items submitted by this deadline do not require a two-thirds vote of the Council to accept the late material for consideration.

Since the adoption of this new policy, the Mayor and Council have often submitted late revisions for Supplemental Packet 2. This packet is distributed to the Councilmembers the afternoon of the Council meeting. This does not provide adequate for the Council to review revised reports or supplemental materials. In addition, the public often is not aware that reports have been revised.

When discussion and action is taken on revised items at a Council meeting, it is difficult for the Council and public to have an informed discussion with last minute changes. In the spirit of transparency, and giving the Council and public adequate time to review changes to agenda items, the law should be revised to require submission of revised reports and supplemental material on the day prior to the Council meeting. This policy change will allow one full day for review of revised items.

The proposed revisions to the Open Government Ordinance and Council Rules of Procedure require the submission of revised reports and supplemental material for inclusion in Supplemental Packet 2 by noon on the day before the Council meeting it will be considered. Additionally, the revised Rules of Procedure require that any revisions must reflect a comparison with the original item using track changes formatting. To ensure that the Council and the public have any revisions before them, the revised Rules require that copies of revised reports must be delivered to the City Clerk for distribution at the meeting.

FINANCIAL IMPLICATIONS

Staff time will be required to implement the revised procedures.

CONTACT PERSON

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Lori Droste, Councilmember, District 8	510-981-7180
Susan Wengraf, Councilmember, District 6	510-981-7160

Attachments:

1. Ordinance Amending BMC Section 2.06.070.E
2. Resolution Amending Council Rules of Procedure and Order

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 2.06.070 REGARDING THE
SUBMISSION OF REVISED OR SUPPLEMENTAL AGENDA MATERIAL

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 2.06.070 is hereby amended to read as follows:

2.06.070 Agenda Packet distribution.

A. The Agenda Packet shall consist of the Agenda and all supporting documents for the agenda items.

B. No later than 11 days prior to a regular Meeting, the City Clerk shall:

1. Distribute the Agenda Packet to each member of the City Council;
2. Post the Agenda Packet to the City's website;
3. 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;
4. Mail copies of the Agenda to any resident of the City of Berkeley who so requests in writing; and
5. Make copies of the Agenda available free of charge in the City Clerk Department.

C. Failure to post the Agenda Packet to the City's website shall not be a basis for cancelling a City Council meeting.

D. The City Clerk may not accept any agenda item or revised agenda item after the established deadlines, 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.

E. No item may be considered unless it is included in the Agenda Packet except that a correction or supplement to an item already included in the Agenda Packet may be considered, if either:

1. the City Council, by a two-thirds roll call vote, determines that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of an item; or
2. the correction or supplement to an item is posted on the City's website with the City Council agendas no later than either:

a. 5:00 p.m. on the fifth calendar day prior to the City Council meeting at which it is to be considered; or

b. 5:00 p.m. on the day ~~prior to~~ the City Council meeting at which it is be considered, subject to the receipt of the correction or supplement by the City Clerk by noon on the day ~~of~~ prior to the City Council meeting for distribution at the meeting.

Reports carried over as Old Business need not be reproduced again.

F. Matters not included on the published Agenda may be discussed and acted upon only if and to the extent authorized by the Brown Act, specifically Government Code section 54954.2(b) as it may be amended from time to time.

Section 2. Copies of this ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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

AMENDING THE CITY COUNCIL RULES OF PROCEDURE AND ORDER,
SECTION III.4 REGARDING THE SUBMISSION OF SUPPLEMENTAL OR
REVISED AGENDA MATERIAL

WHEREAS, in order for revisions or supplements to agenda items to be considered by the City Council, Berkeley Municipal Code Section 2.06.070.E (Open Government Ordinance) requires that revisions or supplements be posted on the City's website no later than 5:00 p.m. on the fifth calendar day prior to the City Council meeting at which it is to be considered. Revisions submitted by this deadline are included in the Supplemental Communications and Reports Packet 1; and

WHEREAS, the City Council amended the Open Government Ordinance in 2016 to allow the submission of revisions or supplements by noon on the day of the Council meeting to be included in Supplemental Communications and Reports Packet 2 (Supplemental Packet 2). Items submitted by this deadline do not require a two-thirds vote of the Council to accept the late material for consideration; and

WHEREAS, since the adoption of this new policy, the Mayor and Council have often submitted late revisions for Supplemental Packet 2. This packet is distributed to the Councilmembers the afternoon of the Council meeting. This does not provide adequate for the Council to review revised reports or supplemental materials. In addition, the public often is not aware that reports have been revised; and

WHEREAS, when discussion and action is taken on revised items at a Council meeting, it is difficult for the Council and public to have an informed discussion with last minute changes. In the spirit of transparency, and giving the Council and public adequate time to review changes to agenda items, the law should be revised to require submission of revised reports and supplemental material on the day prior to the Council meeting.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council Rules of Procedure and Order as revised by Resolution No. 67,500-N.S. are hereby amended as follows:

III. AGENDA

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 for inclusion in Supplemental Communications and Reports Packet 1 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. Supplemental and revised agenda material for inclusion in Supplemental Communications and Reports Packet 2 shall be submitted to the City Clerk no later than 12:00 p.m. the day 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. the day prior to the meeting. Revised reports must reflect a comparison with the original item using track changes formatting. Copies of revised reports shall be delivered to the City Clerk for distribution at 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) After 5:00 p.m. ~~seven calendar days~~ the day 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.