



Fair Campaign Practices Commission  
Open Government Commission

## CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

### MEETING AGENDA

July 20, 2023

6:30 p.m.

#### North Berkeley Senior Center – 1901 Hearst Ave. – Aspen Room

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.

Secretary: Samuel Harvey

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

1. Call to Order 6:30 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for June 15, 2023 FCPC-OGC Regular Meeting

#### **Fair Campaign Practices Commission (FCPC) Agenda**

5. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
6. Report from subcommittee on contribution limits under Berkeley Municipal Code § 2.12.415; discussion and possible action.
7. FCPC Work Plan; discussion and possible action.

### Open Government Commission (OGC) Agenda

8. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
9. Letter from Jim McGrath raising concerns regarding compliance with the Open Government Ordinance, Public Records Act and Brown Act; discussion and possible action.
10. Report from subcommittee reviewing policies and practices related to City Council meeting public commenting, access and public participation; discussion and possible action.
11. OGC Work Plan; discussion and possible action
12. Commission meeting procedures, adding agenda items, agenda item order and Brown Act considerations; discussion.
13. Adjournment.

### Communications

- Email from James Massar, James McFadden and Steve Martinot re Item 10

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.



Fair Campaign Practices Commission  
Open Government Commission

## DRAFT MINUTES

June 15, 2023

### CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

North Berkeley Senior Center  
1901 Hearst Ave.  
Aspen Room

Secretary: Samuel Harvey

Members Present: Patrick O'Donnell, Janis Ching, Kitt Saginor, Henry Isselbacher,  
Pedro Hernandez, James, Hynes

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:31 p.m.

2. **Roll Call**

Roll call taken

3. **Public Comment**

One speaker

4. **Approval of Minutes:**

a. May 18, 2023 FCPC-OGC Concurrent Regular Meeting

a. Public comment: none.

b. Commission discussion and action.

*Motion to approve minutes* (M/S/C: Ching/O'Donnell; Ayes: O'Donnell, Ching, Saginor, Isselbacher, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)

### **FCPC Agenda**

5. **Reports**

a. **Report from Chair**

b. **Report from Staff**

6. **Report from subcommittee on contribution limits under Berkeley Municipal Code § 2.12.415**

- a. Public comment: No speakers.
- b. Commission discussion. No action taken.

7. **FCPC Work Plan**

- a. Public comment: No speakers.
- b. Commission discussion. No action taken. Staff will provide updated item at July 20, 2023 meeting for Commission approval.

**OGC Agenda**

8. **Reports**

- a. Report from Chair.
- b. Report from Staff.

9. **Report from subcommittee reviewing policies and practices related to City Council meeting public commenting, access and public participation**

- a. Public comment: No speakers.
- b. Commission discussion. No action taken.

10. **OGC Work Plan**

- a. Public comment: No speakers.
- b. Commission discussion. No action taken. Staff will provide updated item at July 20, 2023 meeting for Commission approval.

11. **Background information on Public Records Act compliance: City Public Records Act Training Presentation**

- a. Public comment: No speakers.
- b. Commission discussion. No action taken.

12. **Adjournment**

*Motion to adjourn* (M/S/C: O'Donnell/Ching; Ayes: O'Donnell, Ching, Saginor, Isselbacher, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.)

The meeting adjourned at 8:42 p.m.



Fair Campaign Practices Commission

Attachment 1

INFORMATION CALENDAR  
September XX, 2023

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Sam Harvey, Secretary, Fair Campaign Practices Commission

Subject: Fair Campaign Practices Commission FY2023-2024 Work Plan

INTRODUCTION

The Fair campaign Practices Commission (FCPC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes ongoing compliance review of campaign statements; ongoing review of alleged violations of the Berkeley Election Reform Act (BERA); receiving trainings on various topics including due process, complaint hearings processes, the Brown Act, conflicts of interest, BERA and campaign reporting obligations, and legislative vs. quasi-judicial roles of the Commission; identifying issues, monitoring trends and collecting data related to campaign fundraising and contribution limits; analyzing and assessing the performance of the City's campaign public financing system; developing recommendations for removing barriers to access for candidates and improving public sharing of information by streamlining, clarifying and simplifying the City's campaign rules, regulations and procedures; and reviewing the Commission's BERA enforcement procedures

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on July 20, 2023, the Fair Campaign Practices Commission approved the FY2023-2024 Work Plan, which will be used to guide the Commission's work throughout the year.

**Action:**

**Vote:**

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS



Fair Campaign Practices Commission

Attachment 1

No environmental or climate impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary, City Attorney's Office (510) 981-6998  
James Hynes, Chairperson, (510) 981-6998

Attachment: 1: Fair Campaign Practices Commission Work Plan



Fair Campaign Practices Commission

Attachment 1

**Work Plan for FY2023-2024 (July 1, 2023- June 30, 2024)  
Approved July 20, 2023**

- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of the Berkeley Election Reform Act (“BERA”)
- Receive trainings on various topics including:
  - Due process and complaint hearings processes
  - Brown Act
  - Conflicts of interest
  - BERA and other campaign reporting obligations
  - Legislative vs. quasi-judicial roles of the Commission
- Identify issues, monitor trends and collect data related to campaign fundraising and contribution limits
- Analyze and assess the performance of the City’s campaign public financing system over time
- Develop recommendations for removing barriers to access for candidates and improving how candidates and the public share information by streamlining, clarifying and simplifying the City’s campaign rules, regulations and procedures
- Review BERA enforcement procedures

Received

APR 18 2023

City Attorney

2301 Russell Street  
Berkeley, CA 94705  
April 14, 2023Sam Singer  
City Attorney's Office  
2180 Milvia Street  
Berkeley, CA 94704


SUBJECT: City staff withholding documents in violation of the Brown Act and the Berkeley Open Government Ordinance

Dear Mr. Singer:

Enclosed are copies of a statement I read to the Parks, Recreation and Waterfront Commission and a letter I sent to the City Manager asking for the staff involved to be disciplined. I am filing this letter as a complaint under the Open Government Ordinance. I believe that the City attorney must reform its approach to responding to Public Records Requests. In this particular case, I have yet to see a single e-mail generated by City staff. Given what I have discovered from other agencies, city staff appears to be embarrassed by some of their e-mail records. But the city attorney's office has not provided substantive oversight over the process of responding to my PRA's; instead you have turned my PRA requests over to the very people who have hidden records that I have requested. This is simply unacceptable, and contributes to distrust for city government at a level where I believe you must act.

Beyond that, I believe that the City Attorney's office needs to lead a training exercise for all staff responsible for contacts with the public and with responding to PRA's. E-mails that would be kept in the ordinary course of city record keeping are public records, and become public records when they involve communication with outside agencies, and sometimes when policy direction has been given by council members or senior staff. No such e-mails have been provided pursuant to my requests. I believe that the Open Government Commission should be involved in this matter, and should consider making a recommendation to the Council about what modifications to the Open Government procedures might be needed to bring the city into compliance with the Brown and Public Records Acts.

Very truly yours,



Jim McGrath

Attachment



2301 Russell Street  
Berkeley, CA 94705  
April 13, 2023

Dee Williams-Ridley  
2180 Milvia Street  
Berkeley, CA 94704

SUBJECT: City staff withholding documents in violation of the Brown Act and the Berkeley Open Government Ordinance

Dear Ms. Williams-Ridley:

Enclosed is a statement I read to the Parks, Recreation and Waterfront Commission last night. It includes the factual background of an effort by city staff to withhold documents from my review. I believe that effort is a serious violation of both the Brown Act and the Berkeley Open Government Ordinance. I ask that you open an investigation into this matter, and take the appropriate disciplinary action reprimanding all of those involved. Since many city staff acquiesced in this effort, I also ask that you review the implementation of the Open Records Act to determine whether more specific guidance is necessary. I also urge you to immediately undertake a training effort for all staff that have contact with the public so that they know what their legal responsibilities for sharing information entail..

As you well know, Berkeley faces controversial proposals, most recently for re-design of the Hopkins Corridor. For that project, there is concern among stakeholders that city staff work was neither balanced nor complete in their staff work. I am sure it will not reassure those who have lost faith with city staff efforts and oversight to find another effort where the city staff have actively suppressed documents on a controversial project.

The Brown Act is clear about the public's right to documents in matters where they have concerns. Section 54950 of the Brown Act states:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed** so that they may retain control over the instruments they have created.

The City's own Open Government Act contains implementing language, with this clear policy statement in Section 2.06.010 of the Municipal Code:

**Democracy in our representative form of government requires that the public have an opportunity to understand the government's activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.**

It is not just the single incident of denying me access to the city response letter that raises these concerns; I have tried for over three months to obtain the documents that I need to "understand the government's proposed activities at the marina so that I may communicate with my elected and appointed representatives. But the city has turned my PRA requests over to the very people who have hidden the response letter, where they have been slow walked. This is simply unacceptable, and contributes to distrust for city government at a level where I believe you must act.

Very truly yours,

Jim McGrath

Attachment

## Comments to Parks, Recreation and Waterfront Commission

As someone who lobbied for funding for this effort, I have reached the conclusion that this planning effort is corrupt. City staff have systematically bypassed this commission, and have taken steps to **prevent** stakeholders from accessing the information they need to provide you and the council with meaningful comments. I could give multiple examples of how this Commission has been bypassed, and the struggles I have had to get information, despite filing multiple Public Records requests. But I will use just the most egregious example to make my point.

On December 7, 2021, city staff presented the results of their studies of a ferry terminal in Berkeley marina. That report made these commitments as next steps:

- “...these studies ... will be published on the City’s website in January 2022...”
- The staff and WETA would discuss design, and “...will come to the Council to discuss design within 60 days.”
- “conduct a robust and transparent public engagement process.”

In response to PRA records dating back to December of 2022, and the promise made on December 7, 2021, I finally got a copy of the Ferry Facility Feasibility Study, dated November 12, 2021. It is unchanged since that date, and there was no legitimate reason to hold that study secret. The staff did not come back to the Council to discuss design, but instead began to solicit funding for a final design of the ferry terminal, starting with the Alameda County Transportation Authority. After a series of inquiries by e-mail, on June 30, 2022, Farid Javandel submitted an application for an MTC Federal OBAG 3 Grant for design of the ferry terminal that had not yet been approved. There was no robust and transparent public engagement—there was no public engagement at all. The application materials did not include the 1986 Waterfront Master Plan, the governing document, but instead cited the West Berkeley Transportation Element of 1993, adopted at a time when a ferry terminal was under consideration for the foot of Gilman Street. ACTA informed city staff that they would have to also submit the Complete Streets checklist for the project. Rather than consult this Commission, which is charged with reviewing matters pertaining to the waterfront, the city sent the matter to the newly created Transportation Commission. On July 27, the new Commission met—with Commissioners that had just been appointed-- to discuss what was noticed as “Review the Complete Streets checklist for a One Bay Area Grant round three (OBAG3) grant application.” Nothing in the meeting notice revealed that the subject grant was for the design of accessways, and environmental studies for a proposed ferry terminal.

The standard for notice under the Brown Act, described by the Attorney General, “is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.” The notice provided failed to meet this standard. The only way to find out the actual project that was under consideration was to download the whole packet, not consult the meeting notice. The city did not revise the notice, it continued and submitted the matter to ACTA. On July 31, I sent a letter to ACTA objecting to the notice and noting that the application also did not meet the requirements of the grant announcement. I didn’t have a copy of the application, which had not provided ACTA with the correct land use plan policies, or I would have included that mistake in my letter. I copied city staff on that letter.

After further e-mails with ACTA staff, the city submitted a response to my letter dated August 29, 2022, signed by Scott Ferris and Liam Garland. No copy was provided to me. ACTA staff sent several e-mails to the city, asking them if they intended to send me a copy, which finally resulted in this response:

“We don’t have plans to share our City Response letter with Jim McGrath.”

That e-mail was copied to senior Berkeley staff. None of them saw the inconsistencies between this approach and the requirements of the Brown Act, or their promise to conduct a robust and transparent public engagement process. Until this e-mail was sent, perhaps the city could have argued that any shortcomings in process or content were inadvertent, or de minimus. But with this statement, and the quiescence of senior city staff, the city’s willingness to avoid the intent of the Brown Act was laid bare.

Tomorrow I will file a complaint about this dereliction of responsibility with the Open Government Commission and the City Manager. I believe that everyone involved in withholding information should be reprimanded, and that mandatory training on the requirements of the Brown Act must be instituted immediately for all city staff that are responsible for communication with the public and other agencies.

The planning activities of local government depend on process to reach a plan that is acceptable to the citizens and stakeholders of a city. But if the process cannot be trusted, the outcome cannot be trusted. If the city resorts to treating stakeholders as enemies, it will ensure that they are enemies, and that their number will grow.

To be sure, that is not the only problem with the City’s application for a grant from ACTA. The source of funds for the OBAG grants is the Federal Highway Administration, which triggers Section 4(f) of the Federal Highway Act of 1966. Now codified in 49 U.S.C 138, that section prohibits a “take” of park and open space land unless there are no practicable alternatives. Since Berkeley marina is designated as a shoreline park priority use area by BCDC that protection and the associated procedures are triggered.

The grant was turned down, and probably would have been turned down even without my letter. Among the substantive problems for applying for this grant is that there is no approved plan, final EIR, or budget for a ferry terminal. Nor was there any consideration of Section 4(f). The overall cost for the terminal is over \$110 million, and the only clearly identified funding is \$30 million of WETA funding in a 2016 business plan prepared by WETA. In the face of the plunge in ridership, WETA has delayed updating that business plan. Yet city staff sought \$7.7 million in grants and promised a 40% match. That matching funding was not identified in the adopted city budget, and would cover work that was to be funded by WETA in the existing MOU. Of course, talking about the budget for such funds in public would have let stakeholders know what the city was up to.

Unfortunately, this is all too common in Berkeley. Rather than face hard decisions about what to do with the marina, and the \$120 million in deferred maintenance problems, political attention shifts to the next shiny object down the road—a commuter ferry terminal. A project which the city staff now acknowledges will not generate any revenue.

Many years ago I learned never to put anything into a letter or e-mail that I was not willing to see on the front page of the Los Angeles Times. That lesson seems to have escaped Berkeley staff, who were willing to make false, even slanderous accusations about my motives, and admit that they were trying to limit my receiving information about this grant proposal. I’ve got a pretty thick skin, and I think it is

actually pretty funny. But what is not funny is the city's promising a robust and transparent public engagement process—and then violating the Brown Act to keep secrets.



Open Government Commission

PUBLIC HEARING  
XXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Jim Hynes, Chair, Open Government Commission

Submitted by: Samuel Harvey, Secretary, Open Government Commission

Subject: Proposed Changes to Public Comment

RECOMMENDATION

City Council to review and implement suggested changes to the way public comment is given at City Council Meetings.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

At the March 14, 2023 City Council meeting, the Council passed a resolution to allow two periods of public comment on Action Items and voted to “Refer the suggestions regarding improvements to the meeting process to the Agenda & Rules Committee and the Open Government Commission for consideration.” The OGC reviewed both the recording of this meeting and the comments sent in prior to the meeting and adopted the following recommendations.

**Action:**

**Vote:**

BACKGROUND

The City Council asked the Open Government Commission (OGC) to explore improvements to the way city council meetings offer opportunities for public comment. The OGC agrees with the resolution passed by City Council on March 14, 2023 as it provides the public two options to participate in discussion of Action Items. We thank the City Council for maintaining public comment at the time each Action Item is discussed as this allows the public to hear comments, questions, and proposed changes from City Councilmembers before making public comment. In addition to this change, the OGC proposes the following:

**For immediate implementation or rejection:**

<b>Suggested Change</b>	<b>Intended Result</b>
1. Continue to allow the public to participate remotely via videoconference.	Removes barriers to participation, especially for those with disabilities.
2. Enable live transcription at all meetings with a videoconference component.	People joining remotely can better understand what is being said.
3. Limit councilmember comments to 5 minutes/person and enforce this rule.	Bring practice more into alignment with City Council Rules of Procedure, Sec. V, Procedural Matters, Sub. G, Debate Limited, limits debate on any item to 20 minutes.
4. Start the Consent Calendar with an acknowledgement that consent items are important but should be ready to pass without prolonged discussion. Minimize discussion of items on the Consent Calendar.	Bring practice into alignment with City Council Rules of Procedure, Sec. IV, Conduct of Meeting, Sub. B, Consent Calendar, "It is the policy of the Council that the Mayor or Councilmembers wishing to ask questions concerning Consent Calendar items should ask questions of the contact person identified prior to the Council meeting so that the need for discussion of consent calendar items can be minimized."
5. Acknowledge and verbally summarize comments received via email.	Demonstrates that the council is receptive to written correspondence and encourages more written comments that can be read ahead of time. This would require an amendment to City Council Rules of Procedure Section IV, Sub D, Written communications. (In the future, Council could consider implementing an on-line form that would automatically summarize how many comments are for and against a given item.)

**For further consideration and/or research:**

<b>Suggested Change</b>	<b>Intended Result</b>
1. Schedule more meetings with fewer items on the agenda at each meeting	Members of the public would wait less long to speak on an item.
2. Have separate meetings for city department reports and/or informational items that will take longer than 20 minutes.	Agenda items at these meetings would be time certain.
3. Limit to 20 minutes any city department reports included within a regular meeting.	Department reports will not prolong meetings.
4. Have Special Meetings on a different day from Regular Meetings	Regular Meetings can start on time and end earlier.

5. Require that supplemental materials be submitted earlier.	Allows councilmembers and the public to review materials before the meeting.
--------------------------------------------------------------	------------------------------------------------------------------------------

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

## RATIONALE FOR RECOMMENDATION

The two main problems these recommendations aim to address are 1) that meetings run long, often ending late at night; and 2) long wait times make it difficult for members of the public to comment on issues being discussed, especially when substantive changes are proposed at the last minute.

The OGC plans to continue monitoring the situation to evaluate whether these changes produce the desired outcome of shorter meetings and shorter wait times for the public to speak.

## ALTERNATIVE ACTIONS CONSIDERED

### **Suggestions proposed at the meeting, but NOT recommended by the OGC**

<b>Suggested Change</b>	<b>Reason to reject</b>
1. Limit the number of speakers at public comment	Public comment is an integral part of our democracy.
2. Make all staff presentations “pre-reads” so that Council could open with questions and then public comment	Not possible to require councilmembers and public to “pre-read”
3. Move the Consent Calendar to the end of the meeting	Moving an item from Consent to Action would require either a second Action section or deferring the item to a subsequent meeting
4. Canvass public members on which item(s) they’ve come to address and reorder agenda to place those items first.	Impractical, especially with many joining on zoom.
5. Agendize items to “time certain” (a time, not just a date).	Length of items - including length of public - comment, cannot be predicted accurately
6. Evaluate changes introduced at the March 14th meeting after they’ve been in use for some time and “sunset” unless a decision is made to continue them.	Reconsideration as needed is recommended, but not a formal evaluation. Action to discontinue changes can be taken if needed.



<p>7. Remove ceremonial matters from the agenda.</p>	<p>Ceremonial matters are a positive part of City Council Meetings and a way to acknowledge the positive things residents are doing for our community.</p>
------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------

CITY MANAGER

CONTACT PERSON

Jim Hynes, Chair, Fair Campaign Practices Commission, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission (510) 981-6998



Open Government Commission

INFORMATION CALENDAR  
September XX, 2023

To: Honorable Mayor and Members of the City Council

From: Open Government Commission

Submitted by: Samuel Harvey, Secretary, Open Government Commission

Subject: Open Government Commission FY2023-2024 Work Plan

INTRODUCTION

The Open Government Commission (OGC) has updated its work plan, which outlines Commission objectives for the upcoming fiscal year. This work plan includes the ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act; proposing legislation and procedures to ensure the City's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act; administering and making more effective the Lobbyist Registration Act, including reviewing the Act's applicability to issue advocacy or "grassroots lobbying"; advising the City Council of any action or policy that would enhance open and effective government in the City; reviewing and making recommendations regarding public access and participation in public meetings; reviewing, approving, and forwarding to City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act; working collaboratively with the City Council to monitor and evaluate policies related to Council District (D-13) accounts; receiving trainings on topics including the Brown Act, conflicts of interest, the Public Records Act, the Open Government Ordinance, and the Berkeley Lobbyist Registration Act; and exploring ways to improve public access and usability of the City's website.

CURRENT SITUATION AND ITS EFFECTS

At the regular meeting on July 20, 2023, the Open Government Commission unanimously approved the FY2023-2024 Work Plan, which will be used to guide the Commission's work throughout the year.

**Action:**

**Vote:**



Open Government Commission

BACKGROUND

See attached Work Plan.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

No environmental impacts or opportunities were identified as a result of this recommendation.

POSSIBLE FUTURE ACTION

Based on Commission research and public hearings, new initiatives and recommendations to City Council may be submitted to City Council at such time deemed necessary.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Unknown, but none expected.

CONTACT PERSON

Samuel Harvey, Commission Secretary (510) 981-6998

James Hynes, Chairperson (510) 98106998

Attachment: 1: Open Government Commission Work Plan



Open Government Commission

Attachment 1

**Work Plan for FY2023-2024 (July 1, 2023- June 30, 2024)  
Approved July 20, 2023**

- Ongoing review of complaints concerning alleged non-compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, or the Lobbyist Registration Act.
- Propose legislation or procedures to further ensure the City's compliance with the Open Government Ordinance, the Brown Act, the Public Records Act, and the Lobbyist Registration Act.
- Administer and make more effective the Lobbyist Registration Act, including reviewing the ways in which issue advocacy or "grassroots lobbying" may be covered by the Act, and consider relevant recommendations.
- Advise the City Council of any action or policy that would enhance open and effective government in the City of Berkeley.
- Review and make recommendations regarding public access and participation in public meetings of the City Council and other City bodies
- Review, approve, and forward to the City Council the annual report submitted to the Open Government Commission by the City Manager regarding compliance with the Open Government Ordinance, the Public Records Act, the Brown Act, the Lobbyist Registration Act, and any other information the City Manager deems appropriate for open and effective government in the City of Berkeley.
- Work collaboratively with the City Council to monitor and evaluate policies related to Council District ("D-13") accounts.
- Receive trainings on various topics including:
  - Brown Act
  - Conflicts of Interest
  - Public Records Act
  - Open Governance Ordinance
  - Berkeley Lobbyist Registration Act
- Explore ways to improve public access and usability of the City's website

# **COMMUNICATIONS**

## Harvey, Samuel

---

**From:** Jp Massar <jamespmassar@gmail.com>  
**Sent:** Tuesday, July 11, 2023 2:18 PM  
**To:** Harvey, Samuel  
**Cc:** James Mcfadden; Kitt Saginor; Kate Harrison  
**Subject:** Open Government writeup / comments  
**Attachments:** open-gov-cmte-proposals-writeup-v3.doc

**WARNING:** This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Please consider the ideas contained in the attached document and reproduced below, authored by James McFadden, Steve Martinot and myself, in your soon-to-be deliberations on Council rules of Procedure et al.

Thanks!

=====

### **On the Proposal Before the Open Government Commission to Change Certain City Council Rules of Procedure**

#### **General remarks**

These proposals emerged, pre-pandemic, from a growing recognition of undemocratic procedure in Berkeley City Council. What suggests this are aspects of council procedure that serve to silence people, and thus to prevent real participation in political matters.

The principles from which these proposals derive are first, that policy is made through dialogue, not monologue. And second, that those who will be affected by a policy should be involved in articulating and deciding the policy that will affect them.

These proposals are designed to shift in a small way away from procedures that obstruct people's ability to participate in decision-making. We see these as democratizing measures furthering the goal of open government.

#### **Specific reasoning with respect to each proposal**

##### **1- Changing the agenda order**

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

Too often, when an issue appears on council agenda that is controversial, and for which many people may show up to speak, it is placed late in the agenda. As the evening proceeds, it becomes unclear whether the item will ever be reached and considered. The effect, intentional or not, is that many who come to speak on the item will have left and gone home by the time the item comes up. This is a form of silencing people, as well as disrespecting them.

If a large number of people take the time, and have the energy to come to council, the fact that they do so should be respected by giving active recognition to their presence. Thus this change respects and recognizes

the public's interest in the item and its underlying issue, and grants people a priority of place over council business that does not elicit great popular interest.

(Note that online polling over Zoom could be achieved using the 'raise hands' feature, and there are potentially other simple ways as well.)

## **2- Changing the order of discussion on agenda items**

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

Public comment often takes place before councilmembers have discussed the agenda item up for consideration. That means people know little of the positions of the councilmembers on the item, and little of the motivation that brings it to council attention. Thus, much of the public comment is reduced to abstract approaches to the issue, without informed knowledge. Even when the Mayor or sponsor introduces the item, he or she gives their own interpretation and background on it. The public has no awareness of how individual councilmembers consider the item. This leads to a certain randomness in the way the public attempts to participate in the discussion.

By changing the order of address to the item, this effect can be mitigated. Before public comment, let the council as a whole discuss it for a specified period of time, during which councilmembers can say something about how they see the item and its purpose. People can then address the item with greater knowledge, and address individual councilmembers directly concerning how they think about it. This will enhance the relevance of public commentary, and possibly lead to some dialogue between the public and the councilmembers.

## **3- Giving Consent calendar influence back to the people**

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

At one time it was possible for people on the floor at council meetings (three or more asking to do so) to move an item the Consent calendar to Action, so that it could be discussed in public by council, and so that the public knew that their commentary might have an effect on how council considered the item. That ability has been cancelled. This is a direct exclusion of the public from participation. Though people can still speak on a Consent item, it is a dead end since council will not be considering it.

This proposal is designed to restore the power to the people to remove an item from Consent and place it on Action. It goes without saying that, with respect to democratic procedure, if the public wants an item addressed by council, it is because it hopes that the council might change its attitude and approach to the item to some degree, altering the implicit unanimous affirmation expressed by placing it on Consent in the first place.

## **4- Changing the time allotted to speakers to speak**

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

One minute is not enough. One of the more insidious ways of silencing people is forcing them to squeeze their thoughts into too small a time frame. It forces people into a condition in which it becomes difficult to formulate reasoned or logical arguments. This is the effect of restricting a speaker to sixty seconds, which happens automatically when ten or more people wish to say something. Though others can cede their time, it means they deprive themselves of their own right to speak. The silencing is double.

What this proposal really reaches for is the ability on the part of the public to argue completely for their position on an issue. The provision for a special meeting is crucial because otherwise meetings will go late into the night, making it difficult for the public to continue participation and for the Council members to think clearly.

(Note that it is much more difficult to find someone to 'cede time' to you when sitting at home, participating in Council through Zoom. It is almost impossible to have to quickly edit down carefully prepared comments from two minutes to one minute. At the very least a person should have 1.5 minutes to express themselves, but 2.0 minutes is significantly more conducive to a well-reasoned statement, to the benefit of the Council as well.)