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 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

North Berkeley Senior Center           Regular Meeting
1901 Hearst Street                         May 15, 2014
Classroom C (Upstairs)                        8:00 p.m.

Secretary: Kristy van Herick, 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 which 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 March 20, 2014 meeting.
6. Presentation of Annual City Manager Report under the Open Government Ordinance, Berkeley Municipal Code Section 2.06.190(C); discussion and action to accept Report and forward Report to City Council.
7. Draft Report to Council re: Commission recommendations to improve reporting process regarding Regional Boards, including proposed amendment of Section 2.06.090 of the Open Government Ordinance; Commission discussion and action re: same.
8. Draft Report to Council re: Commission recommendation to amend Council Rules of Procedure re: Speaker Cards and Public Comment on items not on the agenda; Commission discussion and action re same.
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. **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 located at 2180 Milvia St., 4th Floor, Berkeley, CA.
MINUTES

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

March 20, 2014

Members Present: Patrick O'Donnell (Chair), John Aldrin Carreon, Jennifer Lombardi, Dean Metzger, Al Murray, Brad Smith, and Sherry Smith

Members Absent: None. [Dave Ritchie on approved leave of absence]

Also Present: Kristy van Herick, Secretary/Staff Counsel

1. **Call to Order**

Meeting called to order at 8:15 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment**

Two members of the public spoke on matters not on the agenda. 3 members of public in attendance.

4. **Report**

   a. Report from Chair

   None.

   b. Report from Staff

   Announcement that yearly City Manager Report to the Commission will be scheduled for next meeting of the Commission.

5. **Approval of minutes for the January 16, 2014 Meeting**

   *Two members of the public spoke.* Commission held discussion regarding action minutes versus more detailed minutes summarizing public comment and Commission discussion.
Motion to approve minutes for the January 16, 2014 meeting: (M/S/C: Murray/B. Smith; Ayes: Carreon, Lombardi, Murray, O'Donnell, B. Smith, S. Smith; Noes: Metzger; Abstain: None; Absent: None.)

   a. Brief staff report and report from Brad Smith.
   b. Public Comment. Two members of the public spoke.
   c. Commission discussion.

Motion to make recommendation to Council to revise Council Rules of Procedure (as stated in report), and request staff return with draft report to City Council for Commission review and approval. (M/S/C: B. Smith/Murray; Ayes: Carreon, Lombardi, Murray, O'Donnell, B. Smith, S. Smith; Noes: Metzger; Abstain: None; Absent: None.)

7. Report from staff [carried over from 1/16/14 meeting] and report from Commissioner Brad Smith re: Commission recommendations to improve reporting process regarding Regional Boards, including proposed amendment of Section 2.06.090 of the Open Government Ordinance; Commission discussion and action re: same.
   a. Dean Metzger recused himself and left the room.
   b. Brief staff report and report from Brad Smith.
   c. Public Comment. Two members of the public spoke.
   d. Commission discussion.

Motion to approve proposed draft revision to Section 2.06.090 of Open Government Ordinance, as amended, and request staff return with draft Commission report to Council for Commission’s review at next meeting. (M/S/C: Murray/Carreon; Ayes: Carreon, Lombardi, Murray, O'Donnell, B. Smith, S. Smith; Noes: None; Abstain: None; Absent: Metzger [recusal].)

10. Adjournment

The meeting adjourned at 9:43 p.m.
DATE: May 15, 2014

TO: OPEN GOVERNMENT COMMISSION

FROM: CHRISTINE DANIEL, City Manager
       ZACH COWAN, City Attorney
       KRISTY VAN HERICK, Commission Secretary

SUBJECT: ANNUAL REPORT UNDER BMC SECTION 2.06.190.C

Introduction

The Open Government Ordinance (BMC Chapter 2.06; OGO) requires the City Manager to prepare an annual report to the Open Government Commission that contains at least the following information:

1. The number of Public Records Act requests received by the City;
2. The average length of time taken to respond to those requests;
3. The approximate number of pages produced in response to those requests;
4. The number and resolution of all written complaints received by the City concerning its compliance with the Public Records Act with respect to such requests;
5. The number and resolution of all complaints received by the City concerning its compliance with the Brown Act; and
6. Any other information the City Manager deems appropriate that relates to the City's compliance with this Ordinance, the Brown Act, the Public Records Act, or open and effective government in Berkeley. (BMC § 2.06.190.C.)

This is the third annual report. This report covers 2013 calendar year.

We address each topic specified in Section 2.06.190.C below.
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 enable staff to capture and record the information required by Section 2.06.190.C, staff continued to utilize the Customer Relations Management (CRM) module. Currently, there are 35 designated staff in 14 departments that use CRM to track PRA requests. For each entry, staff must complete 15 data fields, and update the entry several times based on the status of the request, including the date of the initial response, any documents obtained and paid for, as well as uploading the request or response letter when appropriate. IT Department and City Attorney staff conducted follow up training for designated staff in every department.

The following data captured for this report represents Public Records Act requests received during the period January 1, 2013 through December 31, 2013.

The City received 4,520 PRA requests from January to December 2013. Of the 4,520 requests received, 99 percent were fulfilled within the required time period (either 10 days or, with an extension, 24 days). Only 48 requests or 1%, were completed outside of the required time frame. The late responses were primarily due to staff error, underscoring the need for ongoing staff training. Other factors that contributed to responses not being fulfilled by the due date include: the due date falling on a Voluntary Time-Off (VTO) day, holiday, and/or weekend; the complexity of the request; data was needed from multiple departments; or the staff member verbalized the time extension to the requesting party but may not have made a notation in the system. Other causes for late responses may be delays in processing, obtaining signatures, or key staff being out of the office. Attached to this report is a list of the past due responses.

The City received $14,823 in reimbursement during this period, primarily from charges of $0.10 per page, for the 46,085 pages of documents provided in paper form. This data does not include the many responsive documents provided in electronic format, as well as 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 was 368, not including the time of the Senior Management Analyst in the City Manager's Office who is responsible for coordinating all city-wide PRA requests. The average length of time taken to respond to the requesting party was slightly more than 2.1 days. This statistic is not particularly meaningful, as most responses were provided immediately (e.g., over the counter) while others took more substantial periods of time.
2. **The Number and Resolution of all Written Complaints Received by the City Concerning its Compliance with the Public Records Act, the Brown Act, and the Open Government Ordinance**

Pursuant to Section 2.06.190 of the Open Government Ordinance, the Commission hears complaints concerning alleged non-compliance with this Ordinance, the Brown Act or the Public Records Act, by the City or any of its legislative bodies, officers or employees. The Commission is charged with (1) considering ways to informally resolve those complaints and make recommendations to the Council regarding such complaints, (2) seek advice from the City Attorney concerning those complaints; and (3) advise the City Council of its opinion, conclusion or recommendation as to any complaint.

The Commission reviewed four Written Complaints during 2013. A fifth complaint was returned to the filing party for clarification as it did not allege non-compliance with the OGO, the Brown Act or the Public Records Act. Of the complaints investigated and reviewed by the Commission, one asserted a violation of the Public Records Act, two asserted violations of the Brown Act/OGO, and one asserted violation of the OGO.

Summaries of the complaints follow:

**Jane Welford, SuperBold Complaint 13-009**

**Summary of Complaint.** On June 5, 2013, Jane Welford with SuperBold filed a complaint alleging that the City Council violated the Brown Act and the Open Government Ordinance (OGO) based on actions taken related to the public comment process during the April 30, 2013 City Council meeting. The complaint alleges that the speakers were not given enough time to speak, that a speaker was cut off, and that Public Comment was incorrectly moved to the end of the Action Calendar. They also complained about the Mayor’s handling of the meeting, including taking a recess and "shouting back”.

**Outcome:** Staff prepared a staff report noting that there did not appear to be a violation of the Brown Act or the Open Government Ordinance. The Commission passed two motions:

*Motion to send a friendly notification to Police Review Commission providing notice that the Commission received this complaint regarding BPD action on April 30, it appears to be in violation of TIB 209, and the Commission is passing it along as a possible violation. (M/S/C: Ritchie/de Leon. Ayes: Costa, de Leon, Murray, O’Donnell, Ritchie, and Smith; Noes: None; Abstain: Lombardi; Absent: Pritchard.)*

*Move that reviewed material before us and believe that it does not raise a violation of the Brown Act or Open Government Ordinance. (M/S/C: Smith/Ritchie. Ayes: Costa, Lombardi, Murray, O’Donnell, Ritchie and Smith;*
Noes: de Leon; Abstain: None; Absent: Pritchard.)

Jane Welford, SuperBold Complaint 13-010

Summary of Complaint: On August 2, 2013, amended August 5, 2013, Berkeley resident Jane Welford on behalf of SuperBold filed a complaint alleging noncompliance with the Brown Act, particularly related to the use of speaker cards and the timing of public comment regarding topics not on the agenda. Staff reviewed that matter and noted that the Complaint did not appear to raise a violation of the Brown Act, but instead seemed to be raising a Complaint about compliance with Council procedure. At its September 19, 2013 meeting, the Commission discussed the Complaint, which among other things, raised a concern regarding the City’s use of speaker cards for persons who wish to speak on non-agenda items and regarding the splitting of non-agenda public comment between the beginning and end of the meeting (Gov. Code § 54953.3, The Brown Act).

Outcome: The Commission discussed this matter at its meetings of September 19 and October 17, 2013, with plans to continue discussion of this issue in 2014 and possibly forward a report to Council with recommended revisions to the current speaker card process and related to public comment on non-agenda items.

Carol Denney Complaint 13-011

Summary of Complaint: On August 23, 2013, Carol Denney filed a Complaint in reference to an August 1, 2013 Public Records Act (PRA) request made to the Rent Stabilization Board. While the Rent Board timely responded to the request, Ms. Denney felt that the Rent Board had withheld documents to which she was entitled. The Rent Board asserted that no responsive records had been withheld. Commission staff reviewed the complaint and correspondence, and noted that subsequent to Ms. Denney filing her complaint, the Rent Board sent a supplemental response on September 3 which clarified that no responsive documents had been withheld.

Outcome: At its September 19, 2013 meeting, the Commission took that following action: Motion that Commission encourages parties to work together to informally resolve issue (re: PRA request) (M/S/C: Bronstein/Carreon. Ayes: Bronstein, Carreon, Lombardi, Murray, and O’Donnell; Noes: None; Abstain: None; Absent: None.

The parties each followed up in a Communication subsequent to the September Commission meeting to confirm that the parties met on September 26th to further discuss the request, and that the PRA request had been resolved.

Dean Metzger: Complaint 13-012
Summary of Complaint: A September 27, 2013 Complaint filed by Dean Metzger alleged noncompliance with Open Government Ordinance Section 2.06.090 (reporting on regional board meetings) by Mayor Bates and Councilmember Wengraf. Mayor Bates sits on the Metropolitan Transportation Commission (“MTC”) and Councilmember Wengraf is the Berkeley Representative to the Association of Bay Area Governments (ABAG). Both of these regional boards were involved in the “One Bay Area Plan”. Mr. Metzger identifies the dates of noncompliance as “9/18/2012 through 9/17/2013 and many months prior to 9/18/2012 as well.” Staff found that some reports on regional meetings had been submitted. There was one or more regional meetings that the Mayor was unable to attend and for which no report was submitted.

Outcome: The Commission considered the Complaint at its October 17, 2013 meeting. The Commission passed the following motion:

Motion to recommend possible amendments to improve ordinance and to provide for improved reporting by Councilmembers regarding regional bodies. (M/S/C: Lombardi/Ritchie; Ayes: Lombardi, Murray, O’Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Bronstein and Carreon.)

This matter is still under review by the Commission. The Commission may present recommendations regarding possible revisions to Section 2.06.090 during 2014. Additionally, as discussed below, the City Clerk has created a template to aid Councilmembers’ reporting regarding regional boards.

3. Any Other Information the City Manager Deems Appropriate that Relates to the City’s Compliance with the OGO, the Brown Act or the Public Records Act

Agenda Process
The agenda timelines required by the OGO have become standard procedure and they are fully implemented and effective.

The provisions of Section 2.06.070(E) allow for the submission of corrections or supplements to an item on the agenda under two specific circumstances. This practice has been used by both Council and staff as important information has come to light in the intervening 12 days between publication of the Agenda Packet and the Council meeting.

1. Corrections or Supplements Introduced at the Meeting: These supplements may be accepted for consideration with a 2/3 vote of the Council. The table below shows the number of supplemental items submitted on the night of the meeting and by whom they were submitted.
2. Corrections or Supplements Posted 5 Days Prior to the Meeting: Revised and supplemental reports submitted to the City Clerk by 5:00 p.m. on the seventh day prior to the meeting are published and distributed 5 days before the meeting. This provision was added to the OGO in 2012. Between January 1 and December 31 of 2013, 17 supplemental items were posted 5 days prior to the meeting. See the table below for a breakdown by submitter.

<table>
<thead>
<tr>
<th>Submitted By:</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Council</td>
<td>29</td>
<td>24</td>
</tr>
<tr>
<td>Staff</td>
<td>16</td>
<td>7</td>
</tr>
<tr>
<td>Commissions</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

There are two other noteworthy open government items from 2013. First is the Electronic Agenda Packet program. Not only does publishing the agenda packet electronically save over 120,000 pieces of paper annually, it provides greater access to the public by posting the full packet, with page numbers, to the web. This provides for easier access to the information, and the page numbers assist the public in following the Council discussion during meetings. Hard copy versions of the full packet are still available at the Library and at the City Clerk Department.

The second item is the improved notification to the public of items under consideration by the Council. In response to a Council referral, the City Clerk now posts two signs at the meeting that inform the public which items have been moved to Consent, which have been held over to a future meeting, and which remain on the agenda for discussion.

**Council Meetings**
The City Council has scheduled enough meetings to meet the minimum number required in the OGO. Since the OGO became effective, no public hearing has been opened after 10:00 p.m. The City-owned presentation tools have been utilized by the public on a few occasions without any difficulty for staff or the public.

The members of regional bodies have been submitting reports on the activities of those bodies. The City Clerk issued a memo to City Council on October 8, 2013 to remind all Council members and the Mayor regarding the reporting requirement under Section 2.06.090. As the reports have taken on differing formats, the memo included a draft
Public Records
All information required to be posted to the web pursuant to 2.06.140 has been posted and is regularly updated. The OGO web page was created as a single source of information for all the records and information required to posted to the web under the OGO. It contains links to all the items required to be posted, communications to outside agencies, and the OGC Complaint Form. The Large document index is posted on the OGO web page and all items in the index have been catalogued at the Main Library.

Attachments
1: Data Summary
# 2013 PUBLIC RECORD ACT (PRA) REQUESTS - EXCEEDED DUE DATE

**Date Opened:** 1/1/2013 - 12/31/2013

<table>
<thead>
<tr>
<th></th>
<th>Department</th>
<th>Date Opened</th>
<th>Elapsed Time (calendar days)</th>
<th>Response Date</th>
<th>Date Closed</th>
<th>Days to Respond</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>City Clerk</td>
<td>5/2/2013</td>
<td>15</td>
<td>5/15/13</td>
<td>5/15/13</td>
<td>13</td>
<td>Clerk searched for relevant material and was unable to provide what the citizen was looking for - case was re-allocated to Public Works 5/8/13; docs provided 5/15/13; case closed 5/15/13.</td>
</tr>
<tr>
<td>5</td>
<td>City Manager</td>
<td>6/21/2013</td>
<td>24</td>
<td>7/12/13</td>
<td>7/15/13</td>
<td>21</td>
<td>Response and documents e-mailed 7/12/13; case closed 7/15/13.</td>
</tr>
<tr>
<td>7</td>
<td>Finance</td>
<td>1/7/2013</td>
<td>11</td>
<td>1/18/13</td>
<td>1/18/13</td>
<td>11</td>
<td>Response/documents sent to RP 1/18/13; case closed 1/18/13.</td>
</tr>
<tr>
<td>11</td>
<td>Finance</td>
<td>7/31/2013</td>
<td>15</td>
<td>8/14/13</td>
<td>8/15/13</td>
<td>14</td>
<td>Case was misdirected. Reallocated to Finance on 8/2/13; response 8/14/13; case closed 8/15/13.</td>
</tr>
<tr>
<td>12</td>
<td>Finance</td>
<td>8/15/2013</td>
<td>76</td>
<td>8/26/13</td>
<td>10/30/13</td>
<td>11</td>
<td>Due date fell on Sunday, 8/25; response e-mailed 8/26/13. Staff failed to close case--case closed 10/30/13.</td>
</tr>
<tr>
<td>13</td>
<td>Health, Housing &amp; Community Services</td>
<td>3/18/2013</td>
<td>15</td>
<td>4/2/13</td>
<td>4/2/13</td>
<td>14</td>
<td>Additional time was taken because staff didn’t have current mailing address to mail documents. Rsp ltr mailed 4/2/13; case closed 04/02/13</td>
</tr>
<tr>
<td>14</td>
<td>Health, Housing &amp; Community Services</td>
<td>4/2/2013</td>
<td>29</td>
<td>4/18/13</td>
<td>5/1/13</td>
<td>16</td>
<td>Requestor never came to p/u copied documents; Contacted RP 4/18/13–documents ready for pick up; case closed 05/01/13</td>
</tr>
<tr>
<td>15</td>
<td>Health, Housing &amp; Community Services</td>
<td>4/5/2013</td>
<td>13</td>
<td>4/18/13</td>
<td>4/18/13</td>
<td>13</td>
<td>Staff didn’t close case until confirm w/requestor if she wanted to copy full file. Documents ready for pick up on 4/18/13; case closed 4/18/13</td>
</tr>
</tbody>
</table>

Note: If due date falls on a reduced service day, holiday, or weekend the due date is extended to the next business day.
<table>
<thead>
<tr>
<th>Department</th>
<th>Date Opened</th>
<th>Elapsed Time (calendar days)</th>
<th>Response Date</th>
<th>Date Closed</th>
<th>Days to Respond</th>
<th>COMMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>17 Health, Housing &amp; Community Services</td>
<td>6/18/2013</td>
<td>78</td>
<td>7/10/13</td>
<td>9/4/13</td>
<td>22</td>
<td>E-mail sent to RP 7/10/13--staff tried to contact requestor several times; closed case due to lack of response. Rsp ltr emailed 7/15/13; case closed 9/04/13</td>
</tr>
<tr>
<td>19 Health, Housing &amp; Community Services</td>
<td>12/16/2013</td>
<td>43</td>
<td>2/11/14</td>
<td>2/11/14</td>
<td>55</td>
<td>Staff failed to monitor queue--delay in responding. Rsp emailed 2/11/14; case closed 2/14/13</td>
</tr>
<tr>
<td>20 Information Technology</td>
<td>1/11/2013</td>
<td>255</td>
<td></td>
<td></td>
<td></td>
<td>This was a Test Case for PRA Notification</td>
</tr>
<tr>
<td>21 Information Technology</td>
<td>4/26/2013</td>
<td>48</td>
<td>6/13/13</td>
<td>6/13/13</td>
<td>47</td>
<td>Parking Citation Issue. Community member asked for screen shots of the online AR submission process. We did not have screen shots and had to request them from Duncan. It took them a while to get them to us. While this was classified as a PRA it was not information readily available to us. Response e-mailed 6/13/13; case closed 6/13/13</td>
</tr>
<tr>
<td>24 Planning</td>
<td>1/31/2013</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td>Planning had no responsive documents; requested Housing respond to the request; case not reallocated to Housing. No response to RP noted. Staff closed case on 2/12/13.</td>
</tr>
<tr>
<td>25 Planning</td>
<td>7/31/2013</td>
<td>12</td>
<td>8/12/13</td>
<td>8/12/13</td>
<td>12</td>
<td>The due date fell on Saturday, 8/10; changed to Monday 8/12. The response was sent and case closed on 8/12/13 - Not past due</td>
</tr>
<tr>
<td>29 Police</td>
<td>7/19/2013</td>
<td>13</td>
<td>7/31/13</td>
<td>12/6/13</td>
<td>12</td>
<td>Response letter provided on 7/31/13; staff failed to close case--case closed 12/6/13</td>
</tr>
<tr>
<td>30 Police</td>
<td>7/31/2013</td>
<td>12</td>
<td>8/12/13</td>
<td>8/12/13</td>
<td>12</td>
<td>Due date fell on weekend-Saturday, 8/10/13. Responded on next business day on time, 8/12/13; case closed 8/12/13</td>
</tr>
</tbody>
</table>

Note: If due date falls on a reduced service day, holiday, or weekend the due date is extended to the next business day.
To: Honorable Mayor and Members of the City Council
From: Open Government Commission
Submitted by: Kristy van Herick, Secretary, Open Government Commission
Subject: Amending Open Government Ordinance Section 2.06.090 regarding reporting on regional boards

RECOMMENDATION
Adopt first reading of an Ordinance amending Berkeley Municipal Code Section 2.06.090 to add additional reporting and posting requirements for Councilmembers, staff and other persons who serve on regional boards.

FISCAL IMPACTS OF RECOMMENDATION
None.

CURRENT SITUATION AND ITS EFFECTS
At its September 2013 Commission meeting, the Open Government Commission considered a complaint related to reporting on regional board meetings. On review of the complaint, the Commission identified potential revisions to the Open Government Ordinance to improve the current practice of reporting on the actions at regional board meetings which may have an impact of Berkeley residents.

A September 27, 2013 Complaint filed by Dean Metzger alleged noncompliance with Open Government Ordinance, Berkeley Municipal Code (BMC) Section 2.06.090 (reporting on regional board meetings) by Mayor Bates and Councilmember Wengraf. The complaint related to representation by Mayor Bates on the Metropolitan Transportation Commission (“MTC”) and by Councilmember Wengraf as the Berkeley Representative to the Association of Bay Area Governments (ABAG). Both of these regional boards were involved in the “One Bay Area Plan”. The Complaint asserted a lack of reporting on regional board activities related to the One Bay Area Plan. Commission staff investigated the complaint, and found that some reports on regional meetings had been submitted by Councilmember Wengraf and Mayor Bates. There was one or more regional meeting focused on the One Bay Area Plan that the Mayor was unable to attend and for which no report was submitted.
The Commission considered the Complaint at its October 17, 2013 meeting. While the Commission did not issue a specific finding of a violation of the OGO, it did note a need for more consistent and timely reporting on regional board activities on items that impact the City of Berkeley, including meetings at which a Berkeley representative was absent, and passed the following motion:

*Motion to recommend possible amendments to improve ordinance and to provide for improved reporting by Councilmembers regarding regional bodies.* (M/S/C: Lombardi/Ritchie.  Ayes: Lombardi, Murray, O’Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Bronstein and Carreon.

The Commission continued to discuss the matter at its meetings of January and March of 2014, and took into consideration public feedback, including specific recommendations from Shirley Dean on behalf of the Berkeley Neighborhoods Council. The Commission proposed revisions to add a requirement that City staff and other persons designated by a Councilmember to fill a regional board role should similarly report on actions of the regional body. The Commission also noted that even when a representative is absent from a meeting, there would be a benefit to knowing that a meeting happened and where the public can go to get more information.

On May 15, 2014, the Commission passed the following motion:

*Motion to recommend that City Council amend to 2.06.090 in line with the Commission’s recommendation and to approve draft Commission Report to Council.* (M/S/C: ____________. Ayes:  Noes: ; Abstain: None; Absent: None.

**BACKGROUND**

The Open Government Ordinance (OGO) tasks the Commission, among other roles, with hearing complaints from the public regarding possible non-compliance with the OGO, the Brown Act or the Public Records Act. The OGO calls for the Commission to consider ways to informally resolve complaints, and advise the City Council of its opinion, conclusion or recommendation as to any complaint.

Pursuant to 2.06.190, in addition to advising on specific complaints, the Commission may propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with this Ordinance, the Brown Act and the Public Records Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.

The Commission makes the current recommendation to amend Section 2.06.090 in furtherance of its efforts to improve the Open Government Ordinance and enhance open and effective government in Berkeley.
ENVIROMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION
The proposed changes will result in more consistent and timely reporting on attendance at regional meetings, and greater public access to information.

ALTERNATIVE ACTIONS CONSIDERED
None considered.

CITY MANAGER
The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission’s Report. [OR] Refer to the budget process.

CONTACT PERSON
Patrick O’Donnell, Chair, Open Government Commission (510) 486-0236
Kristy van Herick, Secretary (510) 981-6998

Attachments:
1: Ordinance
ORDINANCE NO #.### - N.S.

AMENDING OPEN GOVERNMENT ORDINANCE, BERKELEY MUNICIPAL CODE SECTION 2.060.090, TO ADD REPORTING OBLIGATIONS RELATED TO ATTENDANCE AT REGIONAL BOARDS AND COMMISSIONS

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

Section 1. That Berkeley Municipal Code Section 2.06.090 is hereby amended to read as follows:

2.06.090 Reports regarding regional bodies.

A. Council members, staff, or other persons who have been authorized to vote on behalf of the City who represent the City on regional bodies and commissions shall, as soon as possible, but within two weeks, promptly after attending meetings of those bodies, provide to the City Council and the public a report on the City’s website as set forth in subdivision B that briefly summarizes the discussion and any action on any item that affects the City of Berkeley. Should a City Council member, staff or other person who has been authorized who represents to vote on behalf of the City on a regional body or commission be absent from a meeting of that body, they shall as soon as possible, but within two weeks of the date of the meeting report their absence and identify any items on the agenda which they know or believe to potentially affect the City of Berkeley. Such reports shall provide names, phone numbers, and URL, if any, where state where additional information about the issues summarized may be obtained.

B. The City Clerk shall maintain on the City’s website a special section where the information from Council members, staff, or other persons who have been authorized to vote on behalf of the City on regional bodies and commissions is regularly posted. Reports submitted to the City Clerk by Council members and staff regarding the actions of regional bodies and commissions shall be placed on the next City Council agenda consistent with the agenda timelines in this Chapter.

Section 2. Posting.
Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.
ORDINANCE NO #.#### - N.S.

AMENDING OPEN GOVERNMENT ORDINANCE, BERKELEY MUNICIPAL CODE SECTION 2.060.090, TO ADD REPORTING OBLIGATIONS RELATED TO ATTENDANCE AT REGIONAL BOARDS AND COMMISSIONS

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

Section 1. That Berkeley Municipal Code Section 2.06.090 is hereby amended to read as follows: 2.06.090 Reports regarding regional bodies.

A. Council members, staff, or other persons who have been authorized to vote on behalf of the City on regional bodies and commissions shall, as soon as possible, but within two weeks after attending meetings of those bodies, provide to the City Council and the public a report on the City’s website as set forth in subdivision B that briefly summarizes the discussion and any action on any item that affects the City of Berkeley. Should a Council member, staff or other person who has been authorized to vote on behalf of the City on a regional body or commission be absent from a meeting of that body, they shall as soon as possible, but within two weeks of the date of the meeting report their absence and identify any items on the agenda which they know or believe to potentially affect the City of Berkeley. Such reports shall provide names, phone numbers, and URL, if any, where additional information about the issues summarized may be obtained.

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To: Honorable Mayor and Members of the City Council
From: Open Government Commission
Submitted by: Patrick O’Donnell, Chair, Open Government Commission
Subject: Commission Recommendations to Amend Public Comment Process for Matters Not on the Agenda

INTRODUCTION
The Open Government Ordinance (OGO) tasks the Open Government Commission, among other roles, with hearing complaints from the public regarding possible non-compliance with the OGO, the Brown Act or the Public Records Act. The OGO calls for the Commission to consider ways to informally resolve complaints, and advise the City Council of its opinion, conclusion or recommendation as to any complaint.

As the result of complaints filed during 2013, the Commission has been studying the City Council’s current process of receiving public comment on non-agenda items and the related speaker card process. For the reasons set forth in this Information Report, the Commission makes the following recommendations:

(1) Speakers should be called to give public comment on non-agenda items through a number lottery rather than through speaker cards; and
(2) Council procedures should be amended to provide for up to ten speakers at the beginning of the meeting, with a shorter time period to maintain the ten minute limit on public comment.

CURRENT SITUATION AND ITS EFFECTS
City Council’s current procedure for receiving public comment on matters not on the agenda involves use of speaker cards and a lottery system, which allows five speakers to speak at the beginning of the Council meeting. Pursuant to The Berkeley City Council Rules of Procedure and Order, Adopted by Resolution No. 66,500–N.S., Effective March 25, 2014, Ch. 4 (Public Comment on Non Agenda Matters), p. 16: “Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be
heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters."

The Commission received a complaint from Jane Welford on behalf of SuperBOLD in August of 2013 regarding the current City Council public comment process related to items not on the agenda. The complaint specifically raised issues regarding the following:

(1) Requiring persons who wish to speak on non-agenda items to sign a speaker card;
(2) Requiring the remainder of speakers, over the 5 whose cards are drawn to speak on non-agenda items at the meeting’s beginning, to wait until the very end of the agenda to speak.

The complaint specifically requested that the Commission “advise the City Council to incorporate the Council Rules of Procedure, particularly for Public Comment, into the Open Government Ordinance.”

The Commission reviewed these topics at its September and October 2013 and January and March 2014 meetings. It looked at the current policy and practice in Berkeley for speaker cards and public comment on non-agenda items and the speaker card process used in other local Cities.

The Commission did not conclude that the current process violates the Brown Act or Open Government Ordinance, nor is it recommending merging the public comment procedure into the Ordinance. However, based on its review of this issue, the Commission noted areas for potential increased public participation and fairness, and recommends that the City Council consider revising its Procedures. The Commission makes this recommendation pursuant to its authority, under Section 2.06.190.A.2, to advise City Council “as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.”

The Commission’s proposed revisions, set forth below, allow for anonymous speech and for more speakers to participate in public comment at the beginning of the meeting, allowing for greater predictability for members of the public as to whether they will be speaking at the beginning of the meeting. Currently, if there are more than five speakers for public comment period, five speakers are permitted to speak shortly after 7:00 p.m. while others may need to wait until 11 p.m. The Commission looked at information regarding the number of speakers who routinely speak on matters not on the agenda. The Commission believes that expanding to ten the number of speakers who may speak at the beginning of the meeting would allow all or most speakers to complete comments at the beginning of the meeting. By dropping the comment time to 1 minute if there are 6 or more speakers on non-agenda items, the meeting timing will not be significantly impacted as the overall time will still be 10 minutes.
The Commission also recommends moving to a number lottery system rather than a speaker card lottery system. This will allow for those wishing to participate anonymously to do so. Those wishing to share their names may still do so during public comment.

The Commission recommends the following revisions to The Berkeley City Council Rules of Procedure and Order, Ch. 4 (Public Comment on Non Agenda Matters):

Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, up to ten persons will be selected from numbered tickets provided by the City Clerk. If one to five persons selected by lottery, wish to speak, each will have two minutes each to address matters not on the Council agenda. Persons If there are six to ten speakers wishing to address the Council, each will be given one minute to address the Council. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. The Presiding Officer will make every effort to accommodate those wishing to speak on non-agenda items at this time and not hold over speakers until the end of the meeting unless necessitated by a large number of speakers.

In order to determine the total number of speakers and for the Presiding Officer to call on the speakers, persons wishing to address the Council on matters not on the Council agenda during the initial ten minute period for such comment, must submit obtain a name card to numbered ticket provided by the City Clerk in person at the meeting location and prior to the commencement of that meeting the public comment period. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on nonagenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters. 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, 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 agendized business remains unfinished at 11:00 p.m. or the expiration of any extension after 11:00
p.m., it will be moved to the next Council meeting. In that event, the meeting shall be automatically extended for up to fifteen (15) minutes for public comment on non-agenda items.

ENVIRONMENTAL SUSTAINABILITY
There are no identifiable environmental effects or opportunities associated with the subject of this report.

BACKGROUND
See Current Situation and it Effects, above.

POSSIBLE FUTURE ACTION
Determine whether to amend City Council Rules of Procedure and Order.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
None.

CONTACT PERSON
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