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
1901 Hearst Street
Classroom C (Upstairs)

Special Meeting
May 3, 2012
7:30 p.m.
Secretary: Kristy van Herick, Deputy City Attorney

The Commission may act on any item on this agenda.

1. Call to Order 7:30 p.m.
2. Roll Call
3. Public Comment.
4. Report from Chair
5. Report from Staff
6. Approval of minutes for the March 15, 2012 Regular Meeting
7. Staff report summarizing Commission suggestions from March 15, 2012 meeting for updating Council processes related to supplemental and revised reports and public comment (process for yielding time), and discussion and possible action regarding same
8. Discussion and possible action on whether to hold May 17, 2012 meeting
9. Adjournment

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

North Berkeley Senior Center
1901 Hearst Street
Health Room

Regular Meeting
March 15, 2012

Members Present: Steve Wollmer (Chair) Patrick O’Donnell (Vice-Chair), John Cummins, and Brad Smith

Members Absent: Steve Bedrick, Dave Ritchie.

Also Present: Kristy van Herick, Secretary/Staff Counsel; Zach Cowan, City Attorney; William Rogers, Interim Deputy City Manager; Steve Buckley, Principal Planner

1. Call to Order

Chair called the meeting to order at 7:30 p.m.

2. Roll Call

Roll call taken.

3. Public Comment

Eight members of the public attended and five members spoke. Public comment held during individual items.

4. Report from Chair

None.

5. Report from Staff

None.

6. Approval of minutes for the December 15, 2011 Special Meeting.

Motion to approve minutes for the December 15, 2011 meeting. (M/S/C: Cummins/Smith, Cummins, O’Donnell, Smith, and Wollmer; Noes: None; Abstain: None; Absent: Bedrick, Ritchie.)

7. Discussion and action regarding election of Open Government Commission Chair and Vice Chair for 2012.

Move to reappoint current chair (Steve Wollmer) and vice chair (Patrick O’Donnell).
(M/S/C: Smith/Cummins, Cummins, O'Donnell, Smith, and Wollmer; Noes: None; Abstain: None; Absent: Bedrick, Ritchie.)

8. **Presentation of Annual City Manager Report under the Open Government Ordinance, Berkeley Municipal Code Section 2.06.190(C)**
   - Deputy City Manager William Rogers presented CM Report.
   - Public comment
   - Commission discussion.

*No action taken.*

9. **Review of three Complaints filed by Cynthia Mahabir alleging violations of the Public Records Act and staff report regarding same; Commission discussion and possible action**
   - Commission staff report presented
   - Presentation from complainant
   - Presentation from Planning Staff
   - Public Comment held
   - Commission discussed complaint

*No action taken.*

10. **Review of two Complaints filed by SuperBOLD alleging violation of the Brown Act and Public Records Act related to February 14, 2012 City Council meeting, and staff report regarding same; Commission discussion and possible action**
    - Commission staff report presented
    - Presentation from complainant Jean Bernardi of SuperBOLD
    - Public Comment held
    - Commission discussed complaints

*No action taken.*

11. **Review of Complaint filed Dean Metzger alleging a violation of the Open Government Ordinance related to February 28, 2012 City Council meeting, and staff report regarding same; Commission discussion and possible action**
    - Commission staff report presented
    - Presentation from complainant Dean Metzger
    - Public Comment held
    - Commission discussed complaints

*No action taken*

Commission requested staff return with report summarizing commissioner feedback on possible recommendations for Council based on SuperBOLD and Metzger complaints.

12. **Adjournment**

*Meeting adjourned.*

The meeting adjourned at 9:35 p.m.
To: Open Government Commission

From: Kristy van Herick, Deputy City Attorney/Secretary

Date: May 3, 2012


On March 15, 2012, the Commission heard six complaints from three parties. After considering the complaints, Commissioners discussed a number of possible recommendations to Council. The Commission asked staff to return with a summary of the Commissioners' suggestions for further discussion. Staff has included the various Commission suggestions below. Staff has also included recommendations on ways to implement some of the suggestions.

**Issue 1:** Supplemental reports are arriving to Council on the night of the meeting without adequate copies or clear announcement to the public of their existence.

**Commission Suggestions:**

1. All supplemental and revised reports pertaining to items on the agenda must be provided to the City Clerk no later than a firm deadline of noon on Monday for a Tuesday City Council meeting (or noon one business day prior to the meeting for any Council meeting).

2. Supplemental or revised reports should be scanned and posted by the City Clerk prior to the close of business the day prior to the City Council meeting.

3. Supplemental or revised reports should be labeled with the agenda item number to which they pertain, as well as the name of the party submitting the report.

4. All supplemental/revised reports should be processed and distributed by the City Clerk.
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(5) Councilmember/City Staff should provide at least 42 copies of the supplemental or revised Report to the City Clerk.

(6) The supplemental or revised reports should be available by a link from the agenda.

**Staff Recommendation/Feedback:**

Staff has two main suggestions to address the issue of late supplemental and revised reports. First entails better identification and notice of the reports provided at the Council meeting. The second involves changing the submission deadline to allow more reports to be submitted and publically accessible in advance of the Council meeting.

To aid Council and the public in receiving notice of supplemental or revised reports at the Council meeting, a template cover sheet could be created by staff and utilized to submit the item to the City Clerk. The cover sheet should include the agenda item number, whether it is a late or supplemental report, the number of copies provided, and the name of the party submitting the supplemental or revised report. Use of the cover sheet could be a requirement for submission and could be addressed in the Council rules.

To reduce the reports submitted at Council meetings, the Commission could propose an amendment to the Open Government Ordinance. The attached proposed amendment would allow supplemental or revised reports to be submitted and available to the public no later than a set number of days in advance of the Council meeting in lieu of going through the “good of the City” assessment. The deadline for posting should be early enough to allow adequate notice and review by the public and late enough to capture most of the supplements and revisions that come up after the agenda packet distribution deadline. Currently, any report that is not received by the agenda distribution date, which is at least 11 days prior to the subject meeting, must be held until the meeting. Under the proposed revision, supplemental or revised reports which are not posted by the late submission deadline would need to still be held for the Council meeting to go through the “good of the City” determination.

A draft revision to Section 2.06.070(E) is attached with the specific number of days left open for the Commission’s consideration. Additionally, the draft includes a proposed revision to subsection C, reflective of a recent change in state law regarding posting of Agendas on the City website. This is a minor clean up revision to keep the Ordinance consistent with state law.
Issue 2: Council has been voting to accept supplemental or revised reports without a roll call vote or discussion of the good cause determination.

Commission Suggestions:

(1) The Councilmember (or staff person) submitting the item should be required to announce that the item is subject to City Council acceptance and may not be acted upon unless City Council votes to accept the late item.

(2) Public comment should be allowed before the Commission votes to accept an item.

(3) Councilmember/staff putting forward late item should be required to specifically articulate the showing requested under 2.06.070, explaining why the supplement item should be considered by the Council under the standard "that the good of the City clearly outweighs the lack of time for citizen review or City Council member evaluation of an item." (BMC 2.06.070.E.)

(4) Council acceptance of the supplemental item should be by roll call vote with the motion adopting or modifying the Council member's statement of necessity for consideration.

Staff Recommendation:

On the cover sheet described above, the Councilmember or staff submitting the report could describe the good cause showing in writing, so that the public and Council are aware of public benefit to receiving the late document and there is a clear record that the analysis was presented before the vote to accept the item. This process could be written into the Council rules.

Staff does not believe a roll call vote serves any purposes in cases where the Council is unanimous, although staff agrees that the Council should be clear that it is voting to accept an item. Moreover, the requirement that the sponsor of the item specifically articulate why the "good of the City" standard is met will likely lead to more explicit decision making.

Issue 3: The Council rules do not specifically state that each member of the public gets one turn at the microphone during a public comment period.

Commission Suggestions:

(1) Update Council rules to include an explicit statement that each speaker gets one turn at the microphone.

(2) The Mayor should specifically announce that each speaker gets one turn at the microphone.
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**Staff Recommendation:**

This could be clarified in the Council rules as follows:

“Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes or more than one turn at the podium. **All persons yielding time to another speaker must be present at the podium with the speaker.** The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue."
ORDINANCE NO. #.### - N.S.

AMENDING SECTION 2.06.070 OF THE BERKELEY MUNICIPAL CODE, RELATING TO REVISED AND SUPPLEMENTAL REPORTS CONCERNING ITEMS ON COUNCIL AGENDAS

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

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

Section 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 or 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 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 no later than 5:00 p.m. on the calendar day prior to the City Council meeting at which it is to be considered. The online version of the City Council agenda shall contain a link to all such items.

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. (Ord. 7166-NS § 1 (part), 2011)

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the glass 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.