

MEMORANDUM

Date: 12-10-02
To: City Council and Community
From: Councilmember Spring
Subject: RE: PROPOSED RULES COMMITTEE

Recommended Motion: That the Council hold this item over for a special publically noticed workshop to occur in January for the Council as a whole to work on a proposal for a Rules Committee and that the City Clerk will send for other examples of how Rules Committees function in other charter cities. And after formulating a draft proposal that the City Council have a public hearing on the proposal.

Discussion: On the City Council agenda tonight is a "Rules Committee" proposal that will dramatically change the way the City Council and its Commissions conduct their agendas. It will dramatically restrict how Council members can put items on the agendas. All items will have to be submitted to rules committee of three members of the Council. Currently Tom Bates is proposing himself, Linda Maio, and Mm Hawley.

The proposal states that any item proposed by a Councilmember or Commission that is not accepted by the proposed Rules Committee can be submitted to a special section of the council agenda. The rejected item may not be taken up for action and vote unless a majority of the Council votes to allow it to being moved for action. This is in violation of customary Robert's Rules of Order. This would require that any item pre-appby for a majority of the City Council. ~~This is in violation of customary Robert's Rules of Order. By in effect prohibiting the acting on~~ any views other than those of the majority of the City Council, it makes much more difficult for minority views to be aired and voted on. It also appears to contradict the language of the charter that states-- "The Council shall consist of the Mayor and eight (8) Councilmembers, **each of whom, including the Mayor, shall have the right to vote on all questions coming before the council**" --since the Rules Committee will have the power to vote on many issues that will never come before the City Council if a majority of the Council does not approve them.

This proposal, if enacted, would likely have an adverse effect upon the City's boards and commissions--because it would be very difficult for them to receive the fair, equal treatment that the law requires.

This proposal gives 2 councilmembers and their commissioners superpowers that , at the expense of other councilmembers and their commissioners to be treated equally as the City Charter requires.

The proposal has severe implications and possible violations of the Brown Act, the City's Charter, Fair Representation Ordinance, Roberts Rules of Order, equal treatment under the law and First Amendment Rights.

1. Adopting New Rules without Close Review

There is an obvious paradox in adopting rules to closely review proposals without these proposals being themselves closely reviewed. Note that in his position paper on Governance the Mayor stated " At my first City Council meeting, I will offer a new set of rules and procedures to the Council for public discussion." Clearly the public will not discuss these proposals and that is why there ought to be a public hearing.

The Rules Committee Proposal will also require a two-thirds vote on any policy matter not directly "Berkeley related" be approved by two thirds of the City Council, and not a simple majority. The definition of what is not "Berkeley-related" would be whatever the Rules Committee believes is not "Berkeley-related". The BARK Chapter of the ACLU is opposed to any requirement for a "super-majority" since it in effect gives the votes of some people (in this case the councilmembers opposed to the "not Berkeley related" council item) more power than the votes of others (in this case the councilmembers in favor of the "not Berkeley related" council item).

The Charter is very specific on what kind of items require a two-thirds vote and it is never for policy issues. The kind of situations in the charter that require a two-thirds vote are: calling a special municipal election, in protecting the city from fiscal mismanagement by establishing an ordinance the amount for which each specific in proved our purchase shall be approved by the Council, exceeding any amount set by ordinance for the expenditure of public money, in case of an emergency ordinance to protect the immediate preservation of the public peace, health or safety.

The Council and Commissions have historically constructed its meetings by Roberts Rules of Order. Requiring a two-thirds vote for policy decisions is not one allowed by Roberts Rules of Order.

This could also set a dangerous precedent that a majority of 5 could determine that two-thirds vote is needed to determine other policy matters.

There is no fiscal analysis of how much additional staff will be needed to staff this Rules Committee.

There are obviously several considerations in these new procedures which deserve much further examination.

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Note the promise of these new rules

" This [present] system prevents the Council from spending its resources on the most important and pressing matters and to base [sic] its determinations upon a **fully developed and considered analysis of the proposed actions and its [sic] likely consequences.**"

Yet this proposal has really no analysis of the proposed actions and absolutely no analysis of its likely consequences.

What began as some way of avoiding the divisive foreign policy resolutions being put on the agenda has grown into a full blown takeover of the Council and the Boards and Commissions by the Mayor and one or two members of the Council.

2. Orwell

All council members are equal but some are more equal than others. There is the very real problem of a three-member body controlling the democracy of a nine-member body.

There are further Orwellian qualities to this proposal –closed is open, less is more, two Councilmembers on a Rules Committee presenting another hurdle are less difficult than an open Council. There is the irony of adopting State Legislative Rules where the public is virtually absent and lobbyists are the key participants, where each speaker, such as Willie Brown, appoints the Rules Committee in order to have the power to control the agenda.

3. The Incompatibility between the Brown Act and a Three Member Rules Committee Controlling the Council Agenda.

The issue is the compatibility or "fit" between a "Rules Committee procedure" in the State legislature which is a central tool of the Speaker's power to control the Assembly and its relevance to Berkeley's tradition of openness and democracy.

The problem is how the Brown Act fits with a three-member committee controlling the Council. The Assembly Rules Committee and the whole of the state legislature are exempt from any Brown Act restrictions. The obvious point is that the Mayor's background with the Assembly simply conflicts with Brown Act constrictions. Some examples:

a) Communication between Rules Committee members. Virtually any communication on any item proposed, approved or denied between two members of the Rule Committee not done at the public meeting would constitute a majority of the Committee and thus violate the Brown Act.

b). Communication between Rules Committee Members and two other members of the Council Virtually any communication between any one of them and any 2 members of the Council not on the Rules Committee would constitute a violation of the Brown Act.

Thus Councilmember T has an item for the agenda which he or she goes to the Monday Rules Committee to discuss. 4 members have communicated. The Rules Committee members may not talk to a fifth member.

c) Communication between any Councilmembers not on the Rules Committee and any other Councilmember not on the Rules Committee about an item.

Clearly the limitations on the Rules Committee members get extended to any Councilmember who has discussed an item with the three of them He or she cannot talk with another Councilmember about the issue in any meeting, conversation or phone call without (3+1+1) 5 Councilmembers being in communication on the item.

This shows that the Rules Committee has not been clearly thought through. . Further, the impact on any individual Councilmember not on the Rules Committee is striking. Note that under these new restrictive rules, if the Rules Committee denies an item going on the agenda, the Councilmember may put it on the agenda in no fewer than

15 days and probably much more in a section of the agenda branded as "Items not Approved by the Rules Committee." which can only be taken up "upon the passage of a non-debatable motion to take up the matter contrary to the determination of the Rules Committee." Talking to any member of the Council (not on the Rules Committee which of course voted to deny the item) outside the meeting would violate the Brown Act (3+1+1) and the Councilmember is not allowed to say anything on the non-debatable motion!

d) Co-Sponsorship and the absurdities of the Rules Committee interaction with the Brown Act.

One of the routine and effective ways of showing support for a Council item is to have a co-sponsor on the item.

1) But with a 3 member Rules Committee and 2 co-sponsors, not on the Rules Committee, the two co-sponsors cannot appear before the Rules Committee to present their item since 5 members of the Council would be communicating—a clear violation of the Brown Act.

2) Cosponsoring and communication between co-sponsors not on the Rules Committee.

So one of the two co-sponsors goes to talk about the item but has clearly already talked with a fifth member of the council about the item. Serial communication. But more absurdly, even if that were not a violation, what if the Rules Committee said we want this and that change in your item before letting it on the agenda. The one co-sponsor could not talk to the other about the changes without 5 council members being involved.

3) Co-Sponsorship by members of the Rules Committee

It would appear to be impossible for two members of the Rules Committee to co-sponsor an item for the Council agenda, which would go before the Rules Committee. : It would appear that this would not be possible without violating the Brown Act since they would be discussing the item to go before the Rules Committee on which they constitute a majority.

e) Packet meetings

Traditionally these meetings have been held to go over the agenda –but under the new Rules Committee procedure they would violate the Brown Act because it would be virtually impossible for any sort of packet meeting not to serially involve 5 members of the Council.

Thus no member of the Rules Committee could be involved with such a packet meeting with more than one person not on Rules because 3 plus 2 equals 5.

Nor as above would it possible for any member of the Council not on the Rules Committee to be at a packet meeting where their item was discussed because they have appeared before the Rules Committee (3+1+1=5.) They have discussed the issue with 3 members of the Rules Committee, they themselves are the fourth, any further discussion with any member not on the Rules Committee would constitute a fifth and violate the Brown Act. Any packet meeting would be at best musical chairs with each person with an item having to leave the room because he or she had already talked with the three Rules Committee members!

f) Non-debatable Non-communicative Denials.

The no debate rule on non-Rules Committee approved items:. Since the Councilmember has been before the Rules Committee and thus 4 Councilmembers have discussed the item, it is illegal for the Councilmember to talk to any other member, not on the Rules Committee, to get any support for the item because that would mean a fifth member.

Each of these Brown Act situations should be submitted to the City Attorney for a written opinion.

4. Appointment by the Mayor vs. Nomination by the Mayor—really no difference.

The new rules prevent any member of the Council other than the Mayor from even nominating members for this Rules committee. The Council lap dog role is to say yes or no to the two people chosen by the

Mayor and if it were to say no to one of them then the Mayor gets to nominate another member. Or can the Rules Committee operate with just two members? Of course it can with one of them having a veto over all council action!

5. New Hurdles for Boards and Commissions.

The Background states:

"The Council's current practices also make it difficult for members of the community affected by an issue on the Council Agenda to be sufficiently involved in the development of city policy."

The Rules Committee package is a proposal with ramifications that deeply affect members of the community, and nobody in the community has been involved in its specific provisions. It is very unclear how this delegating the Council agenda and therefore virtually its whole power to essentially two people (two is a majority of the proposed Rules Committee) will in any way facilitate members of the community "being sufficiently involved in the development of city policy." Will coming before this Rules Committee constitute sufficient involvement?

While the impact on Councilmembers is absurd and severe, it is the expansion of the Rules Committee jurisdiction to cover all Board and Commission items which even further threaten to reduce citizen involvement on Boards and Commissions. Simply put, why labor for weeks or months on a tough issue when common sense tells the Commissioner and his or her Commission that if two of the Councilmembers on the Rules Committee disagree with the proposal in any way that the labor has been worthless?

If this system had been in effect, the General Plan would never have made it to the Council. The mayor and one other Council member could have kept it off the agenda indefinitely. Who would put in hours of effort much less 3 years when two Councilmembers or the Mayor and one Councilmember could dictate the fate of the whole endeavor?

6. The Rules Committee and District Representation.

Note that the Rules Committee power gives enormous power to two districts out of eight. The Orwellian point is obvious but further where are these two districts? They are as far away from students as they can get. They are as far away from South Berkeley as they can get. They are two of the three North districts and leave out everything South of University.