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Kriss Worthington
Councilmember, District 7

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: June 19, 2007

Item Number: # 6

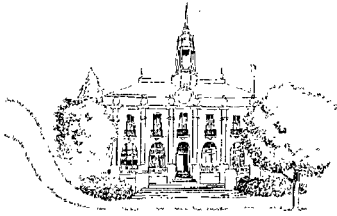
Item Description: Amend Resolution No. 53,575-N.S. Establishing Rules Concerning Posting of Agendas, Limitation Action Not on Posted Agenda and Public Comment

The item has been revised to make a number of changes to provide consistency between the background report and the attached resolution and to make grammatical changes.

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CONSENT CALENDAR

June 19, 2007

To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: AMEND RESOLUTION NO. 53,575 (ESTABLISHING RULES CONCERNING POSTING OF AGENDAS, LIMITATION ON ACTION NOT ON POSTED AGENDA AND COMMENTS FROM THE PUBLIC) AND “GUIDELINES FOR PUBLIC COMMENT AND COUNCIL MEETING ORDER”

RECOMMENDATION:

That the Council amend Resolution No. 53,575 to incorporate new procedures for public comment and other minor changes for clarity, consistency and conformance with the Brown Act and that the amended resolution be distributed to the City Council and all Boards, Commissions, Committees Task Forces and other legislative or advisory bodies for immediate implementation. Additionally, that the Council recommend that the City Clerk make specific changes to “Guidelines for Public Comment and Council Meeting Order” released in April 2007 and include the revised “Guidelines for Public Comment and Council Meeting Order” in Resolution No. 53,575.

BACKGROUND:

The City Council has adopted “Rules Concerning Postings of Agendas, Limitations on Action Not on Posted Agenda, and Comments From the Public”. These rules were established December 1986 as Resolution No. 53,575—N.S. The purpose of these rules is to create a systematic approach for the Council and each Board, Commission, Committee, Task Force and other legislative and advisory bodies of the City of Berkeley to comply with the state of California Brown Act.

The City Clerk’s Office has also recently released “Guidelines for Public Comment and Council Meeting Order which reflect the rules established by Resolution No. 53,575 as well as other changes approved by the Mayor and City Council.

This recommendation proposes to amend Resolution No. 53,575 in order to incorporate changes made to “Guidelines for Public Comment and Council Meeting Order” to bring its procedures into conformity with the state’s Brown Act.

PROPOSED CHANGES TO “GUIDELINES FOR PUBLIC COMMENT AND COUNCIL MEETING ORDER”

The proposed changes to “Guidelines for Public Comment and Council Meeting Order” are as follows (Text proposed to be deleted is strikethrough and text proposed to be added is underlined):

1. On page 3. Revise 1st sentence to read: the City Council is ~~currently experimenting with its~~ has developed new public comment procedures in order to increase public participation.
2. On page 3. Revise 2nd sentence to read: ~~As of January 1, 2007~~ Effective immediately the following procedures apply to matters other than public hearings.

3. On page 4. 1. **Public Comment on Consent Calendar or Information Items.**

Paragraph 2: Revise 2nd and 3rd sentences to read: Each speaker ~~will~~ shall be entitled to speak for to a total of two minutes when there are five or fewer speakers to speak to on any such item. The Mayor retains the ~~ability authority to limit the member of speakers speaking on a subject depending upon the number of speakers and the number of items on the Council agenda that night.~~ to reduce the amount of time to speak to one and one half (1.5) minutes when there are 6-9 speakers lined up to speak to Consent Calendar items, and to one minute when there are 10 or more speakers for Consent Calendar items.

4. On page 4 2. **Item by Item Comment.**

Revise 2nd sentence to read: Each speaker ~~may~~ shall be entitled to speak for up to two minutes when there are five or fewer speakers.

Revise last sentence to read: The Mayor retains the authority to ~~limit the total public comment time allocated to an item to persons representing a particular side of an issue depending on the length of the Council agenda and the number of potential speakers.~~ reduce the amount of time for each speaker only when there are 6 or more speakers as noted below:

When there are 6-9 speakers for an item, in which case the Mayor may limit each speaker to 1.5 minutes.

When there are 10 or more speakers for an item the Mayor may limit each speaker to one minute.

5. On page 4. 3. **Public Comment on Non Agenda Matters**

This section shall become Section 2. after **Public Comment on Consent Calendar**. Revise 1st and 2nd sentences as follows: ~~At the end of the agenda~~ Following the Council vote on the Consent calendar, members of the public ~~may~~ are entitled to speak on any matter not on the Council Agenda, for a period not to exceed two minutes per speaker. ~~The Mayor retains the authority to limit the number of speakers by subject.~~ However, the Mayor retains the authority to reduce the amount of time per speaker only when there are 6 or more speakers as noted below:

When there are 6-9 speakers lined up to speak on non-agenda items, in which case the Mayor may limit each speaker to 1.5 minutes.

When there are 10 or more speakers lined up to speak on non-agenda items, the Mayor may limit each speaker to one minute.

Due to the Council customarily meeting every other week, and the agenda therefore being lengthy, in order to comply with the Brown Act's requirement that members of the public shall be provided the opportunity to speak on non-agenda matters, this testimony must be allowed early in the evening. Otherwise, the business of the Council would have to be cut off 15 to 20 minutes before adjournment time in order to allow for the public testimony.

The Brown Act requires (54954.3(a)) that "Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public...that is within the subject matter jurisdiction of the legislative body."

For consistency, clarity and inclusiveness the following changes are proposed to Resolution No. 53,575 (See attached copy of resolution with changes strikethrough and additions underlined):

1. Under Section 1 add to 1st sentence: or in the case of the Berkeley Public Library, the Board of Library Trustees.
2. Under Section 2. In 1st sentence delete ~~or~~ before Committee and add or Task Forces, and at end of sentence add in clear lay terms.
3. Under Section 4. Public Comment. In 1st sentence, 1st line delete ~~and~~ before Committee and add afterwards and Task Force. In 2nd line delete ~~or~~ before Committee and add or Task Force afterwards, and delete ~~at the beginning of each meeting.~~
4. Under Section 4 delete 2nd paragraph in its entirety and add:

PUBLIC COMMENT:

The City Council has developed new public comment procedures in order to increase public participation. Effective immediately the following procedures apply to matters other than public hearings. Persons who wish to speak on matters scheduled for a public hearing must make their comments at the time set aside for the public hearing on the matter. For public hearings, please review the Public Hearings section of this document.

1. Public Comment on Consent Calendar or Information Items

The Council will first determine whether to add to or remove matters on its “Consent Calendar” and whether to move Information Items to Action. Items not removed from the “Consent Calendar” are voted on in one motion as a group. “Information Items” are not discussed or acted upon at the Council meeting unless they are moved to “Action” or “Consent”.

The Council will first take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Each speaker shall be entitled to speak for two minutes when there are five or fewer speakers on any such item. The Mayor retains the authority to reduce the amount of time to speak to one and one half (1.5) minutes when there are 6-9 speakers lined up to speak to Consent Calendar items, and to one minute when there are 10 or more speakers for Consent Calendar items .

After hearing from public speakers, any Councilmember may move any additional Information or Consent item to “Action.” Following this, the Council will vote on the items remaining on the Consent Calendar as a group.

2. Public Comment on Non Agenda Matters. Following the Council vote on the Consent calendar, members of the public are entitled to speak on any matter not on the Council Agenda, for two minutes per speaker. However, the Mayor retains the

authority to reduce the amount of time per speaker only when there are 6 or more speakers as noted below:

When there are 6-9 speakers lined up to speak on non-agenda items, in which case the Mayor may limit each speaker to 1.5 minutes.

When there are 10 or more speakers lined up to speak on non-agenda items, the Mayor may limit each speaker one minute.

The mayor will generally request that public members wishing to speak, line up at the podium to be recognized and to determine the number of citizens interested in speaking at that time. The Brown act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda.

However, the Council may refer a matter to the City Manager.

3. Item by Item Comment. The public may comment on each remaining item on the Council Agenda as it is taken up, unless that speaker has already addressed that item during a prior period of public comment at that meeting. Each speaker shall be entitled to speak for two minutes when there are five or fewer speakers. The Mayor retains the authority to reduce the amount of time for each speaker only when there are 6 or more speakers as noted below:

When there are 6-9 speakers for an item, in which case the Mayor may limit each speaker to 1.5 minutes.

When there are 10 or more speakers for an item the Mayor may limit each speaker to one minute.

5. Add as a final paragraph to Section 4 Public Comment:

In order to comply with the Brown Act's requirement that " All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body..." at no time shall members of the public be barred from entering the City Council chambers by police or other persons.

When there are more persons desiring to attend a Council or another legislative body's meeting than allowed by fire regulations the meeting shall be adjourned to a larger venue, e.g. Berkeley Community Theater or the Veteran's Auditorium. When it is anticipated that a large number of persons will attend a particular City Council, or other legislative body's, meeting, arrangements shall be made in advance for a larger venue.

FINANCIAL IMPLICATIONS:

Adding public comment procedures established by the Mayor will bring existing Resolution No. 53,575 up to date and will ensure that the procedures are conscientiously and consistently followed and will forestall costs of potential litigation threatened by the First Amendment Project on behalf of Super BOLD (Berkeleyans Organizing for Library Defense).

CONTACT PERSON:

Councilmember Kriss Worthington, 981-7170

Attachments:

1. Proposed amendments to Resolution No. 53,575 N.S.

RESOLUTION NO. 53,575-N.S.

ESTABLISHING RULES CONCERNING POSTING OF AGENDAS, LIMITATION ON ACTION NOT ON POSTED AGENDA, AND COMMENTS FROM THE PUBLIC.

BE IT RESOLVED by the Council of the City of Berkeley as follows;

WHEREAS, certain new requirements of the "Brown Act" require Berkeley's Boards, Commissions, and Committees to refine notice and meeting practices;

NOW, THEREFORE, BE IT RESOLVED the following rules are to be implemented by each Board, Commission, Committee, and Task Force of the City of Berkeley commencing January 1, 1987, except for Sub-Committees of these bodies composed solely of less than a quorum of the body:

1. POSTED AGENDAS

The Secretary shall post each agenda of a regular or adjourned regular meeting at least 72 hours in advance of said meeting at a location established for such purpose by the City Manager or in case of the Library, by the Board of Library Trustees. A copy of such agenda shall be made available to the City Clerk.

The Secretary shall maintain an affidavit indicating the location, date and time of posting of each agenda.

2. NO ACTION PERMITTED

No item of business shall be introduced or acted upon before a Board, Commission, ~~or~~ Committee, or Task Force without prior thereto having been published on the agenda of the meeting and posted in accordance with Section 1, above, a description of the subject matter in clear lay terms and general nature of the item and action requested, if any.

The Secretary shall maintain an affidavit indicating the location and time of posting of each agenda.

3. EXCEPTIONS

Matters not included on the published agenda may be discussed and acted upon provided that:

- a) Upon the vote of 2/3 majority of the membership of the body, or by unanimous vote if less than 2/3 of the body's membership is present, the Board, Commission, Committee or Task Force finds that the need to take action arose subsequent to the posting of the agenda and was not omitted from the posted agenda due to reasons of scheduling convenience or oversight; or

b) The item was included in a properly posted agenda for a prior meeting occurring not more than five days prior to the meeting at which the action is contemplated and was continued to the meeting at which the action is contemplated.

4. PUBLIC COMMENT

Every Board, Commission, ~~and~~ Committee and Task Force shall provide an opportunity for the public to address the Board, Commission, ~~or~~ Committee at the beginning of each meeting or Task Force on items of interest to the public within the body's subject matter jurisdiction.

~~Boards, Commissions, and Committees may adopt procedures setting aside a fixed period of time to receive public comment early in the meeting. Boards, Commissions, and Committees may decline to permit public comment at other times during the meeting, except as required for public hearings on particular matters.~~

The City Council is currently experimenting with its has developed new public comment procedures in order to increase public participation. As of January 1, 2007 Effective immediately the following procedures apply to matters other than public hearings. Persons who wish to speak on matters scheduled for a public hearing must make their comments at the time set aside for the public hearing on the matter. For public hearings, please review the Public Hearings section of this document.

1. Public Comment on Consent Calendar or Information Items

The Council will first determine whether to add to or remove matters on its "Consent Calendar" and whether to move Information Items to Action. Items not removed from the "Consent Calendar" are voted on in one motion as a group. "Information Items" are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

The Council will first take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Each speaker will shall be entitled to a total of speak for two minutes when there are five or fewer speakers to speak to on any such item. The Mayor retains the ability authority to limit the number of speakers speaking on a subject depending upon the number of speakers and the number of items on the Council agenda that night to reduce the amount of time to speak to one and one half (1.5) minutes when there are 6-9 speakers lined up to speak to Consent Calendar items, and to one minute when there are 10 or more speakers for Consent Calendar items.

After hearing from public speakers, any Councilmember may move any additional Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar as a group.

23. Public Comment on Non Agenda Matters. At the end of the agenda Following the Council vote on the Consent calendar, members of the public ~~may~~ are entitled to speak on ~~to~~ any matter not on the Council Agenda, for a period not to exceed two minutes per speaker. ~~The Mayor retains the authority to limit the number of speakers by subject~~ However, the Mayor retains the authority to reduce the amount of time per speaker only when there are 6 or more speakers as noted below:-

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The mayor will generally request that public members wishing to speak, line up at the podium to be recognized and to determine the number of citizens interested in speaking at that time. The Brown act prohibits the Council from discussing or taking action on an issue raised during Public Comment, unless it is specifically listed on the agenda. However, the Council may refer a matter to the City Manager.

32. Item by Item Comment. The public may comment on each remaining item on the Council Agenda as it is taken up, unless that speaker has already addressed that item during a prior period of public comment at that meeting. Each speaker shall be entitled to ~~may~~ speak for ~~up to~~ two minutes when there are five or fewer speakers. The Mayor retains the authority to ~~limit the total public comment time allocated to an item or to persons representing a particular side of an issue, depending on the length of the Council Agenda and the number of potential speakers.~~ reduce the amount of time for each speaker only when there are 6 or more speakers as noted below:

When there are 6-9 speakers for an item, in which case the Mayor may limit each speaker to 1.5 minutes.

When there are 10 or more speakers for an item the Mayor may limit each speaker to one minute.

Public comment which is a part of required public hearings should continue to be heard at the time the item is before the body.

Boards, Commissions, and Committees may not act on subject raised under public comment and which is not on the posted agenda. Any such matters may be placed on the next agenda duly posted in accordance with this resolution.

In order to comply with the Brown Act's requirement that " All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body..." at no time shall

members of the public be barred from entering the City Council chambers by police or other persons.

When there are more persons desiring to attend a Council or another legislative body's meeting than allowed by fire regulations the meeting shall be adjourned to a larger venue, e.g. Berkeley Community theater or the Veteran's Auditorium.

When it is anticipated that a large number of persons will attend a particular City Council, or other legislative bodies, meeting arrangements shall be made in advance for a larger venue.

