



Office of the Mayor

ACTION CALENDAR

October 9, 2007

To: Members of the City Council

From: Mayor Tom Bates

Subject: Revised Amendments to the Berkeley City Council Rules of Procedure and Order Chapter IV - Conduct of Meeting, Section A. - Public Comment and amend Sections E., F. and G. on Public Hearings, Worksessions and Public Discussions

RECOMMENDATION:

Request that 1) the City Manager return to Council with a proposal and cost analysis to move City Council meetings to a venue that is adequate in size for public participation, accessible for people with disabilities and seismically safe; and,

2) Request the City Council accept these revised amendments to the Berkeley City Council Rules of Procedure and Order (last amended May 8, 2007) Chapter IV – Conduct of Meeting, Sections A and E. Specifically, replace Section A - Comments from the Public with: a) Public Comment on Consent Calendar and Information Items; b) Public Comment on Action items; c) Appeals appearing on Action Calendar; and d) Public Comment on Non-Agenda Items; and amend Section E, F and G on Public Hearings, Worksessions and Public Discussions, respectively.

3) After listening to the public feedback and discussion at the September 11th Council Worksession and Council meeting, I am submitting these revisions detailing the process for how the Presiding Officer may allocate public comment speaker time and allow for the yielding of time to other speakers. The revisions are in italics, bold print and underlined.

BACKGROUND:

1) New Venue Analysis

City Council meetings are held in one of the few public buildings in Berkeley that has not been seismically retrofitted. The costs to retrofit The Maudelle Shirek Building (Old City Hall) would likely exceed \$30 million. While the Council Chambers has been adapted to accommodate people with disabilities, it is difficult to maneuver for people in wheel chairs, The Council Chambers seating capacity is approximately 125 people, often too small to accommodate the numbers of people attending a Council meeting. Limited seating often forces people to wait in the hallway or outside if they wish to address the Council or observe the proceedings. With no funding for retrofitting

available in the near future, it is critical that the Council relocate Council meetings to a safe, accessible building that is adequate in size for the public. Additionally, the City has made great strides in increasing access to the viewing and listening public by airing the meetings on television cable access, live video-streaming via the internet, and radio broadcasting. To ensure a new venue for the Council meetings is capable of maintaining this same of public service a comprehensive cost analysis must accompany any proposal for moving the meetings.

2) Public Comment Amendments

Over the seven months the Berkeley City Council, through both the Agenda Committee and Council meetings, has been working to improve the procedures for public comment during Council meetings.

In the past, a thirty-minute period was devoted at the beginning of regular Council meetings to provide an opportunity for citizens to address the Council on any issue concerning City business. Each speaker was limited to no more than three minutes each. A twenty-minute period was set aside for special meetings, including closed sessions. A fifteen-minute period during the first meeting of the month was devoted to Youth Forum. If a large number of persons wished to speak, the Presiding Officer could make adjustments to the rules by increasing or decreasing the amount of time allotted per speaker, increase the total amount of time for public comment, or allow a pooling of time per agenda subject.

To improve and expand public comment, the Presiding Officer working with the Council decided to explore various methods to ensure the public has the opportunity to speak to any item on the agenda. The following recommendations are what I believe have proved to be the most open and effective procedures for guaranteeing the public an opportunity to present their views and opinions on Council matters. These procedures also balance the need for the Council to hear from the public, for the public to present their views and opinions, and for the Council to move through its agenda in a timely fashion.

PROPOSED AMENDMENT TO REPLACE SECTION A. COMMENTS FROM THE PUBLIC WITH:

a) Public Comment on Consent Calendar and Information Items.

The Council will first determine whether to **move** items on the agenda to the "Consent Calendar" or remove "Consent Calendar" **items to the "Action Calendar"**. Items that remain on 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.

Up to three speakers will be entitled to two minutes each to speak in support of a Consent Calendar Item. The Presiding Officer will ask additional supporters in the

audience to stand to demonstrate their support of the item. Up to three speakers will be entitled to two minutes each to speak in opposition of a Consent Calendar Item.

In the case of more than three people wishing to speak either in support of or opposition to a consent item, the Presiding Officer will move the item to the end of the Action Calendar. **However, the Presiding Officer retains the authority to place such items earlier on the Action Calendar if time permits**. When the item is heard on the Action Calendar, public comment will be limited to new speakers. After hearing from public speakers, any Council Member may move any Information or Consent item to "Action", **however no additional items can be moved onto the Consent Calendar at that point**. Following this, the Council will vote on the items remaining on the Consent Calendar as a group.

b) Public Comment on Action Items.

The public may comment on each remaining Action 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.

The Presiding Officer will request that public members wishing to speak line up at the podium to determine the number of citizens interested in speaking at that time. 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.* 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.

c) . Appeals Appearing on Action Calendar

Appeals from decisions of the Zoning Adjustment Board, Landmarks Preservation Commission, Planning Commission and other City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand to the matter to the commission. Public comments shall be for persons representing both sides of **the action**/appeal and each side will be allocated five minutes to present their comments. The Presiding Officer retains the **authority to allow additional speakers one minute each to address the Council**. **Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes**.

d) Public Comment on Non Agenda Matters.

Speakers wishing to address the Council on items not on the Council agenda must submit a name card for the lottery if they want to be considered for the first round of public comment on non-agenda matters. Names must be submitted to the City Clerk in person and prior to commencement of the meeting. Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, five members of the public, selected by lottery, will have two minutes each to address matters not on the Council agenda. 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 Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer 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. 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 by 11:00 p.m. an extension is not approved, any unfinished agenda business will be moved to the next Council meeting and fifteen (15) minutes will be automatically allocated for public comment on non-agenda items.

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.

PROPOSED AMENDMENTS TO SECTION E, F AND G. - ADD PUBLIC HEARING FOR LAND USE AND ZONING MATTERS, ADD WORKSESSIONS AND AMEND PUBLIC DISCUSSIONS.

Section E – Add public hearing for Land Use and Zoning Matters

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to presentations of the public. The Council Staff shall introduce the Public Hearing and present their comments followed by five-minute presentations by the Appellant followed by five minutes for the Applicant. **The Presiding Officer will 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.** 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.* 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.

Amend Section F to add new section F- Worksessions

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a worksession item will be scheduled on a subsequent agenda under the Council Action Calendar.

In general, public comment at Council worksessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will 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. 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute and people who spoke during the prior public comment time may be permitted to speak again.

Amend Section G and F:

Old Section F becomes New Section G – Section F - Public Discussions (Adopted April 12, 2005) becomes Section G – following the proposed new Section F – Worksessions. Delete old Section G - Time Limitations for Public Testimony at Public Hearings and Public Discussions due to duplication on public comment process identified in Section A of Public Comments.

FISCAL IMPACTS OF RECOMMENDATION

None at this time.

CONTACT PERSON

Tom Bates, Mayor, 981-7100

Attachments

1. Resolution

REVISED SEPTEMBER 11/OCTOBER 9, 2007

The Berkeley City Council
Rules of Procedure and Order

RESOLUTION NO. XX,XXX-N.S.

AMENDING RESCINDING 62,857-N.S. AND 63,690-N.S. AND
REGARDING ADOPTING COUNCIL RULES OF PROCEDURE TO INCOPORATE
NEW RULES ON PUBLIC COMMENT ~~AND RESCINDING 62,857-N.S. AND~~
~~63,690-N.S.~~

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:
~~that~~

That Resolution 62,857-N.S., adopted April 12, 2005 and 63,690-N.S. adopted May
8, 2007 are hereby amended as follows: rescinded, and

~~That the following rules of the City Council shall govern proceedings of the City~~
~~Council therein described, subject to the exception and deviations provided for in~~
~~such rules.~~

~~BE IT FURTHER RESOLVED that violation of these rules shall not be construed as~~
~~a penal offense, excepting that breach of the peace or willful failure to comply with~~
~~the lawful orders of the Council or its presiding officer shall be punishable as~~
~~misdemeanors under applicable law.~~

IV. CONDUCT OF MEETING

A. Comments from the Public

~~A thirty-minute period shall be devoted at the beginning of regular Council meetings to provide an opportunity for citizens to address Council on any issue concerning City business. Each speaker shall limit his/her remarks to no more than three minutes.~~

~~A twenty-minute period shall be set aside for public comment at all special meetings, including closed sessions and work sessions, and meetings of Council subcommittees. Each speaker shall limit his/her remarks to no more than two minutes. However if the only matter on the agenda for a special meeting is a public hearing, the public shall speak following the rules for public comment during public hearings and no additional time shall be set aside for public comment on other subject matters.~~

~~A fifteen-minute period (Youth Forum) shall be devoted at the beginning of the first business meeting of each month to provide an opportunity for citizens 18 years of age or younger, to address Council on any issue concerning City business. Each person speaking during Youth Forum period shall limit his/her remarks to three minutes.~~

~~A speaker may not yield his/her public comment time to a person that has already used up his/her allotted time.~~

~~In order to increase the number of persons who can be heard by the Council when there are a large number of persons who wish to be heard on one or more matters, the Council may make adjustments to these rules for example by increasing or shortening the amount of time per speaker, increasing the total time allotted for public comment or for a subject and/or require the pooling of time per side on a subject.~~

~~Speakers are asked to give their names and the city of their residence prior to making their public comments. To expedite the public comment period, the City Clerk will announce the name of the speaker and the city of residence if provided on the speaker card.~~

~~Council members may ask questions, but the Council shall not discuss or act in connection with such citizen comment, if the subject is not on the agenda for action. A council member may, however, refer a subject to staff or other resources for factual information or for action, if appropriate.~~

1. Public Comment on Consent Calendar and Information Items.

~~The Council will first determine whether to **add** **move** items on the agenda to the "Consent Calendar" or remove **matters from its** "Consent Calendar" **items to the "Action Calendar"**. Items that remain on 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.

Up to three speakers will be entitled to two minutes each to speak in support of a Consent Calendar Item. The Presiding Officer will ask additional supporters in the audience to stand to demonstrate their support of the item.

Up to three speakers will be entitled to two minutes each to speak in opposition of a Consent Calendar Item.

In the case ~~if of there are more than three people wishing to speak either in support of or opposition to a consent item~~, the Presiding Officers will move the item to the end of the Action Calendar. ~~When the item is heard on the Action Calendar, public comment will be limited to new speakers. However, the Presiding Officer retains the authority to place such items earlier on the Action Calendar if time permits. When the item is heard on the Action Calendar, public comment will be limited to new speakers.~~

After hearing from public speakers, any Council Member may move any ~~additional~~ Information or Consent item to "Action." **however no additional items can be moved onto the Consent Calendar at that point.** Following this, the Council will vote on the items remaining on the Consent Calendar as a group.

2. Public Comment on Action Items.

The public may comment on each remaining Action 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 may speak for up to two minutes. Speakers are permitted to cede their two minutes to one other speaker, with no speaker having more than four minutes.~~

The Presiding Officer will request that public members wishing to speak line up at the podium to determine the number of citizens interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. ~~If there are more than nineteen persons demonstrating interested in speaking, the Presiding Officer may limit the public comment for remainingall speakers to one minute per speaker. Speakers are permitted to cedeyield their time to one other speaker, however no one speaker shall have ~~with no speaker having more than four minutes.~~ 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.~~

3. Appeals Appearing on Action Calendar

Appeals from decisions of the Zoning Adjustment Board, Landmarks Preservation Commission, Planning Commission and other City commissions appear on the "Action" section of the Council Agenda. Council determines whether to affirm the action of the commission, set a public hearing, or remand to the matter to the commission. Public comments shall be for persons representing both sides of **anthe action**/appeal and each side will be allocated five minutes to present their comments. The Presiding Officer retains the **authority to extend the time** ~~allocated for both sides. allow additional speakers one minute each to address~~

the Council. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

4. Public Comment on Non Agenda Matters.

Speakers wishing to address the Council on items not on the Council agenda must submit a name card for the lottery if they want to be considered for the first round of public comment on non-agenda matters. Names must be submitted to the City Clerk in person and prior to commencement of the meeting. Immediately following Ceremonial Matters and the City Manager Comments and prior to the Consent Calendar, five members of the public, selected by lottery, will have two minutes each to address matters not on the Council agenda. 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. ~~members of the public may speak to any matter not on the Council Agenda, for a period not to exceed two minutes per speaker. The Presiding Officer retains the authority to limit the number of speakers by subject. The Presiding Officer 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. 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 by 11:00 p.m. an extension is not approved, any unfinished agenda business will be moved to the next Council meeting and fifteen (15) minutes will be automatically allocated for public comment on non-agenda items.

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.

B. Consent Calendar

There shall be a Consent Calendar on all regular meeting agendas on which shall be included those matters which the Mayor, council members, boards, commissions, City Auditor and City Manager deem to be of such nature that no debate or inquiry will be necessary at the Council meetings. Ordinances for second reading may be included in the Consent Calendar.

It is the policy of the Council that council members 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.

Consent Calendar items removed from the Consent Calendar will automatically be moved to the end of the agenda to be considered after completion of the Action Calendar.

C. Information Reports Called Up for Discussion

Reports for Information designated for discussion at the request of any council member shall be added to the appropriate section of Reports for Action and may be acted upon at that meeting or carried over as pending business until discussed or withdrawn. The agenda will indicate that at the request of any council member a Report for Information may be acted upon by the Council.

D. Communications

Letters from the public will not appear on the Council agenda as individual matters for discussion but will be distributed as part of the Council agenda packet with a cover sheet identifying the author and subject matter and will be listed under "Communications," with the exception that communications regarding appeals will be listed with the appeal.

All such communications must have been received by the City Clerk no later than the Monday eight days prior to the meeting in order to be included on the agenda.

In instances where an individual forwards more than three pages of email messages not related to actionable items on the Council agenda to the Council to be reproduced in the "Communications" section of the Council packet, the City Clerk will not reproduce the entire email(s) but instead refer the public to the City's website or a hard copy of the email(s) on file in the City Clerk Department.

All communications shall be simply deemed received without any formal action by the Council. A council member may refer a communication to staff for action, if appropriate, or prepare a consent or action item for placement on a future agenda.

E. Public Hearings

The City Council, in setting the time and place for a public hearing, may limit the amount of time to be devoted to presentations of the public. The Council Staff shall introduce the Public Hearing and present their comments followed by five-minute presentations by the Appellant followed by five minutes for the Applicant. The Presiding Officer will 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. 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. 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.

~~Members of the Public shall be allowed two minutes to comment on the item. If there are more than nine persons demonstrating interest in speaking, the Presiding Officer may limit the public comment for remaining speakers to one minute per speaker. Speakers are permitted to cede their time to one other speaker, with no speaker having more than four minutes. After all Public Comment, the Applicant followed by the Appellant shall be given three minutes for final arguments.~~

~~Anyone desiring to speak to the Council on the subject of the public hearing shall submit a written request to the City Clerk at the meeting at which the public hearing is held.~~ In the conduct of the public hearing, the presiding officer will request that those making presentations avoid repetition in order to permit maximum information to be provided the Council within the time allotted to the hearing.

Speakers may speak on public hearing matters only during the designated public hearing and not as part of Public Comment. Council may allow the elderly, disabled and those with child care needs to speak early during public hearings.

When more than one public hearing is scheduled, there will be a Council recess between the hearings.

F. Council Worksession

The City Council may schedule a matter for general Council discussion and direction to staff. Official/formal action on a worksession item will be scheduled on a subsequent agenda under the Council Action Calendar.

In general, public comment at Council worksessions will be heard after the staff presentation, for a limited amount of time to be determined by the Presiding Officer.

The Presiding Officer will 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. 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.

After Council discussion, if time permits, the Presiding Officer may allow additional public comment. During this time, each speaker will receive one minute and people who spoke during the prior public comment time may be permitted to speak again.

G. Public Discussions

The City Council may, from time to time, schedule a matter for public discussion and may limit the amount of time to be devoted to said discussions. At the time the public discussion is scheduled, the City Council may seek comment from others if they so determine.

G. ~~Time Limitation for Public Testimony at Public Hearings and Public Discussions~~

~~Each speaker shall be limited to three minutes with the exception that one representative for an appellant or applicant of an appeal shall be allowed five minutes during the public hearing on this matter. The Mayor, subject to alteration by the Council may establish overall time limits for applicants, appellants and other speakers at public hearings and set up such other procedures that may facilitate the orderly and efficient conduct of such hearings.~~

H. Protocol

~~Each person addressing the Council shall first give his name and address in an audible tone of voice for the record.~~ All remarks shall be addressed to the Council as a body and not to any member thereof. No one other than the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the presiding officer. No question shall be asked a council member except through the ~~presiding~~ Presiding Officer.

That the following rules of the City Council shall govern proceedings of the City Council therein described, subject to the exception and deviations provided for in such rules.

BE IT FURTHER RESOLVED that violation of these rules shall not be construed as a penal offense, excepting that breach of the peace or willful failure to comply with the lawful orders of the Council or its presiding officer shall be punishable as misdemeanors under applicable law.