



Open Government Commission

Date: July 19, 2023
To: Open Government Commission
From: Samuel Harvey, Secretary
Subject: Letter from Jim McGrath raising concerns regarding compliance with the Open Government Ordinance, Public Records Act and Brown Act

1. Summary

At its May 18, 2023 meeting, the Open Government Commission received the attached communication from a member of the public (the “Requestor”) asserting that City staff have mishandled their responses to the Requestor’s Public Records Act (“PRA”) requests, and raising various open governance concerns as a result. (See Attachment 1.)

Commission staff have reviewed the Requestor’s communication as well as the City’s handling of his numerous PRA requests. Staff have not identified any violations of the PRA, Brown Act or Open Government Ordinance. Staff recommends that the Commission take no further action on this matter.

2. Analysis

Between January 5, 2023 and April 12, 2023, the Requestor submitted 11 separate public records requests to the City. Each of these requests sought records pertaining to City action and deliberation related to the marina, waterfront and proposed ferry terminal. For a number of these requests, the Requestor also submitted subsequent communications to City staff expanding or clarifying the scope of the requests. These requests were directed to the following City departments: City Clerk, City Attorney, and Parks, Recreation and Waterfront. Each City department is responsible for responding to its own PRA requests. However, the City Attorney’s Office handles PRA requests for the City Council and City Manager’s Office, as well as requests submitted to more than one City department (“multi-departmental requests”).

As of the date of this report, each of these requests has been responded to by the City and closed. (See Attachment 2.) The City has provided several hundred pages of records to the Requestor in response to these requests. In some cases, City staff directed the requestor to responsive records published on the City’s website.

The City has also withheld records or portions of records based upon the following exemptions:

1. Attorney-client privilege (Cal. Gov. Code § 7927.705, Cal. Evid. Code § 954)
2. Deliberative process privilege (Cal. Gov. Code § 7927.705, Cal. Evid. Code § 1040)
3. Privilege for preliminary notes, drafts and memoranda (Cal. Gov. Code § 7927.500)

Pursuant to the Open Government Ordinance (BMC Ch. 2.06.), the Commission is empowered to “consider ways to informally resolve . . . complaints and make recommendations to the Council regarding such complaints.” (BMC § 2.06.190.A.1.b.) Commission staff have reviewed the City’s handling and responses to the Requestor’s PRA requests. Commission staff have not identified any records which were improperly withheld from the Requestor or any violations of the PRA, Open Government Ordinance or Brown Act committed in City staff’s handling of these PRA requests. At this time, staff recommend the Commission take no further action on this matter.

Attachments:

1. Communication from Mr. McGrath
2. NextRequest summary of Public Records Act request responses

Received

APR 18 2023

City Attorney

2301 Russell Street
Berkeley, CA 94705
April 14, 2023

Sam Singer
City Attorney's Office
2180 Milvia Street
Berkeley, CA 94704


SUBJECT: City staff withholding documents in violation of the Brown Act and the Berkeley Open Government Ordinance

Dear Mr. Singer:

Enclosed are copies of a statement I read to the Parks, Recreation and Waterfront Commission and a letter I sent to the City Manager asking for the staff involved to be disciplined. I am filing this letter as a complaint under the Open Government Ordinance. I believe that the City attorney must reform its approach to responding to Public Records Requests. In this particular case, I have yet to see a single e-mail generated by City staff. Given what I have discovered from other agencies, city staff appears to be embarrassed by some of their e-mail records. But the city attorney's office has not provided substantive oversight over the process of responding to my PRA's; instead you have turned my PRA requests over to the very people who have hidden records that I have requested. This is simply unacceptable, and contributes to distrust for city government at a level where I believe you must act.

Beyond that, I believe that the City Attorney's office needs to lead a training exercise for all staff responsible for contacts with the public and with responding to PRA's. E-mails that would be kept in the ordinary course of city record keeping are public records, and become public records when they involve communication with outside agencies, and sometimes when policy direction has been given by council members or senior staff. No such e-mails have been provided pursuant to my requests. I believe that the Open Government Commission should be involved in this matter, and should consider making a recommendation to the Council about what modifications to the Open Government procedures might be needed to bring the city into compliance with the Brown and Public Records Acts.

Very truly yours,



Jim McGrath

Attachment

2301 Russell Street
Berkeley, CA 94705
April 13, 2023

Dee Williams-Ridley
2180 Milvia Street
Berkeley, CA 94704

SUBJECT: City staff withholding documents in violation of the Brown Act and the Berkeley Open Government Ordinance

Dear Ms. Williams-Ridley:

Enclosed is a statement I read to the Parks, Recreation and Waterfront Commission last night. It includes the factual background of an effort by city staff to withhold documents from my review. I believe that effort is a serious violation of both the Brown Act and the Berkeley Open Government Ordinance. I ask that you open an investigation into this matter, and take the appropriate disciplinary action reprimanding all of those involved. Since many city staff acquiesced in this effort, I also ask that you review the implementation of the Open Records Act to determine whether more specific guidance is necessary. I also urge you to immediately undertake a training effort for all staff that have contact with the public so that they know what their legal responsibilities for sharing information entail..

As you well know, Berkeley faces controversial proposals, most recently for re-design of the Hopkins Corridor. For that project, there is concern among stakeholders that city staff work was neither balanced nor complete in their staff work. I am sure it will not reassure those who have lost faith with city staff efforts and oversight to find another effort where the city staff have actively suppressed documents on a controversial project.

The Brown Act is clear about the public's right to documents in matters where they have concerns. Section 54950 of the Brown Act states:

The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed** so that they may retain control over the instruments they have created.

The City's own Open Government Act contains implementing language, with this clear policy statement in Section 2.06.010 of the Municipal Code:

Democracy in our representative form of government requires that the public have an opportunity to understand the government's activities and to communicate its concerns to its elected and appointed representatives, and that those representatives have an adequate opportunity to consider those concerns and then act effectively and in a timely manner.

It is not just the single incident of denying me access to the city response letter that raises these concerns; I have tried for over three months to obtain the documents that I need to "understand the government's proposed activities at the marina so that I may communicate with my elected and appointed representatives. But the city has turned my PRA requests over to the very people who have hidden the response letter, where they have been slow walked. This is simply unacceptable, and contributes to distrust for city government at a level where I believe you must act.

Very truly yours,

Jim McGrath

Attachment

Comments to Parks, Recreation and Waterfront Commission

As someone who lobbied for funding for this effort, I have reached the conclusion that this planning effort is corrupt. City staff have systematically bypassed this commission, and have taken steps to **prevent** stakeholders from accessing the information they need to provide you and the council with meaningful comments. I could give multiple examples of how this Commission has been bypassed, and the struggles I have had to get information, despite filing multiple Public Records requests. But I will use just the most egregious example to make my point.

On December 7, 2021, city staff presented the results of their studies of a ferry terminal in Berkeley marina. That report made these commitments as next steps:

- "...these studies ... will be published on the City's website in January 2022..."
- The staff and WETA would discuss design, and "...will come to the Council to discuss design within 60 days."
- "conduct a robust and transparent public engagement process."

In response to PRA records dating back to December of 2022, and the promise made on December 7, 2021, I finally got a copy of the Ferry Facility Feasibility Study, dated November 12, 2021. It is unchanged since that date, and there was no legitimate reason to hold that study secret. The staff did not come back to the Council to discuss design, but instead began to solicit funding for a final design of the ferry terminal, starting with the Alameda County Transportation Authority. After a series of inquiries by e-mail, on June 30, 2022, Farid Javandel submitted an application for an MTC Federal OBAG 3 Grant for design of the ferry terminal that had not yet been approved. There was no robust and transparent public engagement—there was no public engagement at all. The application materials did not include the 1986 Waterfront Master Plan, the governing document, but instead cited the West Berkeley Transportation Element of 1993, adopted at a time when a ferry terminal was under consideration for the foot of Gilman Street. ACTA informed city staff that they would have to also submit the Complete Streets checklist for the project. Rather than consult this Commission, which is charged with reviewing matters pertaining to the waterfront, the city sent the matter to the newly created Transportation Commission. On July 27, the new Commission met—with Commissioners that had just been appointed-- to discuss what was noticed as "Review the Complete Streets checklist for a One Bay Area Grant round three (OBAG3) grant application." Nothing in the meeting notice revealed that the subject grant was for the design of accessways, and environmental studies for a proposed ferry terminal.

The standard for notice under the Brown Act, described by the Attorney General, "is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." The notice provided failed to meet this standard. The only way to find out the actual project that was under consideration was to download the whole packet, not consult the meeting notice. The city did not revise the notice, it continued and submitted the matter to ACTA. On July 31, I sent a letter to ACTA objecting to the notice and noting that the application also did not meet the requirements of the grant announcement. I didn't have a copy of the application, which had not provided ACTA with the correct land use plan policies, or I would have included that mistake in my letter. I copied city staff on that letter.

After further e-mails with ACTA staff, the city submitted a response to my letter dated August 29, 2022, signed by Scott Ferris and Liam Garland. No copy was provided to me. ACTA staff sent several e-mails to the city, asking them if they intended to send me a copy, which finally resulted in this response:

“We don’t have plans to share our City Response letter with Jim McGrath.”

That e-mail was copied to senior Berkeley staff. None of them saw the inconsistencies between this approach and the requirements of the Brown Act, or their promise to conduct a robust and transparent public engagement process. Until this e-mail was sent, perhaps the city could have argued that any shortcomings in process or content were inadvertent, or de minimus. But with this statement, and the quiescence of senior city staff, the city’s willingness to avoid the intent of the Brown Act was laid bare.

Tomorrow I will file a complaint about this dereliction of responsibility with the Open Government Commission and the City Manager. I believe that everyone involved in withholding information should be reprimanded, and that mandatory training on the requirements of the Brown Act must be instituted immediately for all city staff that are responsible for communication with the public and other agencies.

The planning activities of local government depend on process to reach a plan that is acceptable to the citizens and stakeholders of a city. But if the process cannot be trusted, the outcome cannot be trusted. If the city resorts to treating stakeholders as enemies, it will ensure that they are enemies, and that their number will grow.

To be sure, that is not the only problem with the City’s application for a grant from ACTA. The source of funds for the OBAG grants is the Federal Highway Administration, which triggers Section 4(f) of the Federal Highway Act of 1966. Now codified in 49 U.S.C 138, that section prohibits a “take” of park and open space land unless there are no practicable alternatives. Since Berkeley marina is designated as a shoreline park priority use area by BCDC that protection and the associated procedures are triggered.

The grant was turned down, and probably would have been turned down even without my letter. Among the substantive problems for applying for this grant is that there is no approved plan, final EIR, or budget for a ferry terminal. Nor was there any consideration of Section 4(f). The overall cost for the terminal is over \$110 million, and the only clearly identified funding is \$30 million of WETA funding in a 2016 business plan prepared by WETA. In the face of the plunge in ridership, WETA has delayed updating that business plan. Yet city staff sought \$7.7 million in grants and promised a 40% match. That matching funding was not identified in the adopted city budget, and would cover work that was to be funded by WETA in the existing MOU. Of course, talking about the budget for such funds in public would have let stakeholders know what the city was up to.

Unfortunately, this is all too common in Berkeley. Rather than face hard decisions about what to do with the marina, and the \$120 million in deferred maintenance problems, political attention shifts to the next shiny object down the road—a commuter ferry terminal. A project which the city staff now acknowledges will not generate any revenue.

Many years ago I learned never to put anything into a letter or e-mail that I was not willing to see on the front page of the Los Angeles Times. That lesson seems to have escaped Berkeley staff, who were willing to make false, even slanderous accusations about my motives, and admit that they were trying to limit my receiving information about this grant proposal. I’ve got a pretty thick skin, and I think it is

actually pretty funny. But what is not funny is the city's promising a robust and transparent public engagement process—and then violating the Brown Act to keep secrets.

Item 9 - Addendum Attachment 2

Id	Created At	Request Text	Point of Contact	Request Date	Status	URL	Visibility	Closed Date	Closure Reasons	Departments	Requester Name	Requester Email
23-034	01/11/2023 11:44:46 AM	All records related to the Berkeley Marina Area Specific Plan (BMASP), and Large-Scale Ferry Feasibility study.	rmiller@berkeleyca.gov	01/05/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-34	Published	07/12/2023 08:55:46 AM	Fulfilled	City Attorney; Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net
23-100	01/31/2023 01:33:56 PM	Any changes or amendments to the MOU between Berkeley and the Water Emergency Transportation Authority (WETA), originally adopted as Resolution No. 68,782-N.S.	sbunting@berkeleyca.gov	01/31/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-100	Published	02/09/2023 12:43:05 PM	Fulfilled	City Clerk	James McGrath	macmcgrath@comcast.net
23-129	02/09/2023 12:45:44 PM	Contract between Berkeley and Hargreaves Jones for preparation of the Berkeley Marina Area Specific Plan and any modifications to said contract.	sbunting@berkeleyca.gov	02/09/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-129	Published	02/09/2023 12:50:26 PM	Fulfilled	City Clerk	James McGrath	macmcgrath@comcast.net
23-141	02/14/2023 12:42:54 PM	A detailed PDF of the proposed landside modifications to University Avenue and shoreline to the north presented conceptually at community workshop on the pier, October 27, 2021, and identified as "preferred conceptual alternative", slide 32. A version showing grading, vegetation removal, and scale is what I need.	rmiller@berkeleyca.gov	02/14/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-141	Published	04/25/2023 03:35:31 PM	Fulfilled	City Attorney; Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net
23-142	02/14/2023 12:44:15 PM	These records were identified on page 3 of the report for the Council Worksession of December 7, 2021 on "Large Scale Ferry Feasibility Study" 1. Wind and Wave Analysis to ensure safe and energy-efficient ferry berthing 2. Analysis of dredging locations and depths 3. Transportation Demand Management (TDM) review 4. Sea Level Rise Adaptation to ensure long term sustainability of the new pier 5. A ferry electrification feasibility	rmiller@berkeleyca.gov	02/14/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-142	Published	06/01/2023 05:11:58 PM	Fulfilled	City Attorney; Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net
23-143	02/14/2023 12:45:40 PM	These documents were discussed as work products for the Berkeley Marina Area Specific Plan in the City Council Work Session of February 11, 2021 1. Evaluation of potential new revenue opportunities and programs in the context of existing land use, zoning, and regulatory frameworks 2. A financial analysis of the operation of the Berkeley waterfront revenues and expenses, programs and services These documents were discussed as work products for the same plan in the RFP advertising for consultant services. 1. New revenue generation opportunities (element J.5) 2. Parking, existing parking, standards, project demand (element F.3)	rmiller@berkeleyca.gov	02/14/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-143	Published	03/27/2023 01:58:32 PM	Fulfilled	City Attorney; Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net
23-144	02/14/2023 12:46:48 PM	I. Deliverable documents from scope of services for contract No 10632 with GHD, ferry terminal feasibility study. All deliverables listed in the Scope of Services including: a. Ferry Facility Criteria Memorandum b. Wave Protection Assessment Technical memo c. Recreational concepts including meeting agendas, meeting minutes, and plans d. Transportation and Parking Demand Analysis including survey instrument and technical memo e. Memorandum of Potential Parking and TDM strategies f. Landside plans including meeting agendas and meeting minutes g. Programming level cost estimates h. Draft Ferry Facility Expanded Feasibility Study II. Deliverable documents from scope of services for BMASP, with Hargreaves Jones from the scope of services for that contract, 32000183.	rmiller@berkeleyca.gov	02/14/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-144	Published	06/01/2023 05:08:55 PM	Fulfilled	City Attorney; Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net
23-230	03/13/2023 10:01:28 AM	All reports associated with Contract 31900058 with Land Use Economics. This contract involves the economic assets at the waterfront. Contract was approved December 6, 2018.	knesbit@berkeleyca.gov	03/10/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-230	Published	04/17/2023 12:52:15 PM	Fulfilled	City Attorney	James McGrath	macmcgrath@comcast.net
23-344	04/11/2023 10:30:09 AM	MOU between Berkeley and WETA for shared parking in the Marina. Identified on page 240 of the FY 2014 and FY 2015 Adopted Budget as an accomplishment. I want a copy of the MOU and the Council resolution approving it.	sbunting@berkeleyca.gov	04/11/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-344	Published	04/19/2023 01:19:56 PM	No responsive records	City Clerk	James McGrath	macmcgrath@comcast.net
23-346	04/11/2023 04:51:05 PM	...all records of ridership and parking usage for the two small scale ferry operations carried out by PropSF and Tidelines since their inception of service....copies of all revenue received by the city, and expenses incurred by the city, for those two operations. ...surveys of parking use...	knesbit@berkeleyca.gov	04/07/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-346	Published	07/13/2023 10:15:32 AM	Fulfilled	City Attorney	James McGrath	macmcgrath@comcast.net
23-347	04/12/2023 02:59:12 PM	study of parking supply, demand, and management strategies in the Berkeley Waterfront in 2018 cited in Feasibility Study, Ferry Facility at Berkeley Municipal Pier in Nelson Nygaard appendix.	wwilliams@berkeleyca.gov	04/12/2023 12:00:00 AM	Closed	https://cityofberkeleyca.nextrequest.com/requests/23-347	Published	04/28/2023 10:12:51 AM	Fulfilled	Parks, Recreation and Waterfront	James McGrath	macmcgrath@comcast.net

COMMUNICATIONS

Harvey, Samuel

From: Jp Massar <jamespmassar@gmail.com>
Sent: Tuesday, July 11, 2023 2:18 PM
To: Harvey, Samuel
Cc: James Mcfadden; Kitt Saginor; Kate Harrison
Subject: Open Government writeup / comments
Attachments: open-gov-cmte-proposals-writeup-v3.doc

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Please consider the ideas contained in the attached document and reproduced below, authored by James McFadden, Steve Martinot and myself, in your soon-to-be deliberations on Council rules of Procedure et al.

Thanks!

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On the Proposal Before the Open Government Commission to Change Certain City Council Rules of Procedure

General remarks

These proposals emerged, pre-pandemic, from a growing recognition of undemocratic procedure in Berkeley City Council. What suggests this are aspects of council procedure that serve to silence people, and thus to prevent real participation in political matters.

The principles from which these proposals derive are first, that policy is made through dialogue, not monologue. And second, that those who will be affected by a policy should be involved in articulating and deciding the policy that will affect them.

These proposals are designed to shift in a small way away from procedures that obstruct people's ability to participate in decision-making. We see these as democratizing measures furthering the goal of open government.

Specific reasoning with respect to each proposal

1- Changing the agenda order

The City Clerk shall poll the public audience... to determine the number of persons at the meeting for action items. If the number exceeds twelve (12) for any one item, that item is moved to the first action item. If more than two items exceed 12, then the order for those items will be determined with the highest number going first.

Too often, when an issue appears on council agenda that is controversial, and for which many people may show up to speak, it is placed late in the agenda. As the evening proceeds, it becomes unclear whether the item will ever be reached and considered. The effect, intentional or not, is that many who come to speak on the item will have left and gone home by the time the item comes up. This is a form of silencing people, as well as disrespecting them.

If a large number of people take the time, and have the energy to come to council, the fact that they do so should be respected by giving active recognition to their presence. Thus this change respects and recognizes

the public's interest in the item and its underlying issue, and grants people a priority of place over council business that does not elicit great popular interest.

(Note that online polling over Zoom could be achieved using the 'raise hands' feature, and there are potentially other simple ways as well.)

2- Changing the order of discussion on agenda items

The council shall discuss an item after it is introduced, with each Council member stating their current understanding and general thoughts on the item. After council discussion, public comment will be taken. The council will then debate the item, ask any questions of the speakers and make its decision on the matter.

Public comment often takes place before councilmembers have discussed the agenda item up for consideration. That means people know little of the positions of the councilmembers on the item, and little of the motivation that brings it to council attention. Thus, much of the public comment is reduced to abstract approaches to the issue, without informed knowledge. Even when the Mayor or sponsor introduces the item, he or she gives their own interpretation and background on it. The public has no awareness of how individual councilmembers consider the item. This leads to a certain randomness in the way the public attempts to participate in the discussion.

By changing the order of address to the item, this effect can be mitigated. Before public comment, let the council as a whole discuss it for a specified period of time, during which councilmembers can say something about how they see the item and its purpose. People can then address the item with greater knowledge, and address individual councilmembers directly concerning how they think about it. This will enhance the relevance of public commentary, and possibly lead to some dialogue between the public and the councilmembers.

3- Giving Consent calendar influence back to the people

An item on the consent calendar shall be moved to the action calendar if five (5) of more speakers request that the item move to the action calendar. The Mayor may implement this as they see fit. One implementation path is as follows: if a speaker requests that an item on the consent calendar move to action, then the Mayor will poll the audience to determine whether five (5) members of the public would like to pull the item, and, if so, the item shall be moved to action.

At one time it was possible for people on the floor at council meetings (three or more asking to do so) to move an item the Consent calendar to Action, so that it could be discussed in public by council, and so that the public knew that their commentary might have an effect on how council considered the item. That ability has been cancelled. This is a direct exclusion of the public from participation. Though people can still speak on a Consent item, it is a dead end since council will not be considering it.

This proposal is designed to restore the power to the people to remove an item from Consent and place it on Action. It goes without saying that, with respect to democratic procedure, if the public wants an item addressed by council, it is because it hopes that the council might change its attitude and approach to the item to some degree, altering the implicit unanimous affirmation expressed by placing it on Consent in the first place.

4- Changing the time allotted to speakers to speak

A member of the public will be given a minimum of 2 minutes to speak and up to a maximum of four (4) minutes, if given time from another speaker. If the number of speakers appears to be so large as to prevent essential city business from completion, then the item can be moved to a special meeting.

One minute is not enough. One of the more insidious ways of silencing people is forcing them to squeeze their thoughts into too small a time frame. It forces people into a condition in which it becomes difficult to formulate reasoned or logical arguments. This is the effect of restricting a speaker to sixty seconds, which happens automatically when ten or more people wish to say something. Though others can cede their time, it means they deprive themselves of their own right to speak. The silencing is double.

What this proposal really reaches for is the ability on the part of the public to argue completely for their position on an issue. The provision for a special meeting is crucial because otherwise meetings will go late into the night, making it difficult for the public to continue participation and for the Council members to think clearly.

(Note that it is much more difficult to find someone to 'cede time' to you when sitting at home, participating in Council through Zoom. It is almost impossible to have to quickly edit down carefully prepared comments from two minutes to one minute. At the very least a person should have 1.5 minutes to express themselves, but 2.0 minutes is significantly more conducive to a well-reasoned statement, to the benefit of the Council as well.)

Harvey, Samuel

From: Cordell Hindler <cordellhindler@ymail.com>
Sent: Friday, July 14, 2023 3:26 PM
To: FCPC (Fair Campaign Practices Commission)

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello Sam,

I Will Forward The Item to Be Placed on the Next Agenda:

Procedures for Personnel Board,

In Person: Anyone who desires to address the Personnel Board on items appearing on the agenda, including PUBLIC COMMENT, must complete and file a yellow speaker's card with Human Resources prior to the Personnel Board's consideration of the item. Once the Humna Resources has announced the item, no person shall be permitted to speak on the item other than those persons who have submitted their names to Human Resources. Each speaker will be allowed up to TWO (2) MINUTES to address the Personnel Board

Sincerely
Cordell

Harvey, Samuel

From: margots999@aol.com
Sent: Monday, July 17, 2023 4:51 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: City Council meeting re: public commenting, access and public participation - July 20

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Open Government Commissioners,

I am writing to register comments and suggestions regarding items that come before the City Council. Please forward my comments to the full Commission.

Regarding your item #10 on the July 20 agenda: "Report from subcommittee reviewing policies and practices related to City Council meeting, public commenting, access and public participation; discussion and possible action," I ask that you please address the way that items may be casually dismissed from the Council's Consent agenda through abstentions or no votes. If three or more Council Members object to an item by expressing their intent to abstain or vote no, please automatically remove it from Consent and discuss it under Action Items. In this way, items will be available for discussion and consideration by all Council and the public. Currently, five members of the Council can abstain on a consent item without discussion or explaining their position.

For greater transparency, the City Manager and staff items must also be published the Thursday before the Agenda Committee meets to allow time for the public and Committee to vet for completeness, give feedback, and schedule accordingly. I also ask that the projects the City Manager and Staff proposes go through the same rigorous process as Council items, including review by policy committees. Our Berkeleyites need to have all considered in depth.

I would also ask that the Clerk restore the ability of members of the public to attend Commission meetings virtually and provide virtual public comment on Zoom, even if the Commissioners are barred from attending remotely by State law. There may be some associated Zoom licensing and staff costs, but they are a small price to pay for public participation and transparency.

I hope that you will consider these ways of revising the way the Council considers its duties and the accessibility of Commission meetings.

Sincerely,

Margot Smith
1300 A Shattuck Ave
Berkeley 94709
510-660-5508 (text)
Margots999@sonic.net

Harvey, Samuel

From: Chizu Hamada <chizuhamada@gmail.com>
Sent: Tuesday, July 18, 2023 6:14 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Please consider to change the resolution from the content to action calendar

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Commissioners,

I was so dissapointed last Tuesday, July 11, the Mayor and four councilmembers abstained on a consent calendar resolution opposing the Japanese government and Tokyo Electric Power Company's plan to dump wastewater from the Fukushima Daiichi nuclear power plant into the Pacific, allowing the resolution to die on consent without debate.

I learned there were almost 100 public comments in support of this resolution including Pacific Island heritage whose islands would be most affected when Fukushima radioactive wastewater is dumped into the Pacific.

The government of Japan and TEPCO say it's TREATED water, but it still holds many radionuclides. Advanced Liquid Processing System(ALPS) can not remove all radionuclides including Tritium, Strontium-90, Carbon - 14,etc.etc.

Experts and scientists from the UN, Pacific Islands Form, National Association of Marine Laboratories(NAML, which consists of over 100 U.S. academic institutions including Stanford, Harvard, Yale, Monterey Bay Research Institute) oppose the proposal, citing environmental and human health risks and inadequate scientific data to support the claim that the wastewater is safe.

The International Atomic Energy Agency (IAEA) supported Japan's decision, but IAEA has been colluded with Japan/TEPCO and is well known for promoting nuclear energy.

We, as Berkeley citizens, owe it to the rest of the world that we do not pollute the ocean and earth anymore. Berkeley is the City that adopted the Nuclear Free act in 1986. Please act this time right again!

Sincerely,
Chizu Hamada
resident of Berkeley

Harvey, Samuel

From: RAFAEL J. GONZALEZ <rjgonzalez@mindspring.com>
Sent: Tuesday, July 18, 2023 8:58 PM
To: FCPC (Fair Campaign Practices Commission)
Cc: Arreguin, Jesse L.; Kate Harrison
Subject: Agenda item #10, changes to Council's procedural rules

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Dear Gentlefolk — I must say that I was disappointed and angered by the City Council's failure to censure Japan's plans to release the radio-active waters from the Fukushima nuclear disaster into the Pacific ocean. I was particularly incensed by the abstention of Mayor Jesse Arreguín and the four council members. I can consider it nothing less than an act of pusillanimity that amounted to a "no" vote on the resolution to censure the Japanese government's criminal act.

Need I reiterate the disastrous effects upon the environment and the people of the Asia-Pacific that the proposed dumping of radio-active waters will have? Once released it cannot be "cleaned up."

I am fully aware that the City of Berkeley cannot legislate on foreign affairs, but the voice of the City of Berkeley is influential way beyond the city's size and is heard not only nationally but internationally. The failure of the City Council to pass the resolution is a blemish on the reputation of the City of Berkeley (a nuclear-free city) for raising its voice in the cause of Justice. This is a rare instance in which I was made ashamed of my beloved city.

Changes must be made to the Council's procedural rule to improve public participation. A change I ask that you seriously consider is that consent items be automatically moved to the action calendar when three or more Council members declare intentions to vote no or abstain..

Most sincerely,

Rafael Jesús González

Poet Laureate Emeritus

Berkeley, California

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Harvey, Samuel

From: Sally Nelson <sallynels7@gmail.com>
Sent: Tuesday, July 18, 2023 9:23 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Open Government Commission Meeting July 20, 2023: Agenda Item #10

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

To Berkeley's Open Government Commission,

I am writing about Agenda Item #10, regarding the Council's procedural rules for public participation. We very much need to improve the procedure. One change would be to automatically move consent items to the action calendar when three or more Councilmembers announce their intention to vote no or to abstain.

Having lived in Berkeley since 1977, I see that we need to facilitate and improve public participation. Contributing to the process of decision making is empowering and generates a sense of belonging which greatly improves our sense of community responsibility.

Respectfully,
Sally Nelson
2200 McGee Avenue (D-4)
Berkeley, CA 94703

Harvey, Samuel

From: Phoebe Thomas Sorgen <phoebes0@earthlink.net>
Sent: Tuesday, July 18, 2023 9:27 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: to Berkeley Commissioners for Open Government

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Berkeley Commissioners for Open Government:

I'm writing to you re Agenda item #10 for the meeting this Thurs evening. You will be considering changes to the Council's procedural rules to improve public participation, access and comment. Please **automatically move consent items to the action calendar when two or more Councilmembers announce their intention to vote no or abstain**. This would parallel the rule that an item can only be moved to consent from the action calendar on the agreement of three Councilmembers.

Recently, the Mayor and 4 Councilmembers abstained on an item of keen public interest that was on the Consent Calendar. Four Councilmembers voted for it to be adopted by consent, as approximately 100 members of the public had requested. It should have at least been moved to the action calendar and discussed! Instead, the 5 abstentions meant disrespect for and disregard of the many people who had weighed in re Japan's plan to release 1.3 million tons of Fukushima radioactive water into the Pacific Ocean — headed our way!

Sincerely,

Phoebe Anne Thomas Sorgen (she/they)
Berkeley resident since 1989, former Commissioner

The beautiful land I am grateful to inhabit was the territory of xučyun (Huchiun [Hooch-yoon]), ancestral and unceded land of the Chochenyo [Cho-chen-yo]-speaking Ohlone [Oh-low-nee] people, ancestors and descendants of the sovereign Verona Band of Alameda County. This land is of great importance to Ohlone people. We who care may pay a tax deductible Shuumi Land Tax: <https://sogoreate-landtrust.org/donate-update-draft/> I honor the original inhabitants, the documented 5,000-year history of a vibrant community at the West Berkeley Shellmound, the Ohlone people who reside here and beyond, and all ancestors and descendants of slavery and attempted genocide. Colonists' descendants still benefit from the occupation of stolen lands and other exploitation. The U.S.'s tragic history is heart-breaking and shameful. Rematriation and extensive reparations are long overdue.

Harvey, Samuel

From: beneficialbug@sonic.net
Sent: Tuesday, July 18, 2023 10:38 PM
To: FCPC (Fair Campaign Practices Commission)
Cc: Harrison, Kate
Subject: Please make the needed changers to the consent calendar

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To all concerned:

Too often last few years deeply important issues have been swept under a rug in Berkeley by too much being on a consent calendar and left in spite of need for much more discussion before action is taken. Been there, done that. Is the CoB ready to face reality and prioritize democratic action?

In fact, if time is put into making better decisions all would run more smoothly and not have to be continually revisited. It's a funny thing how when people work by democratic practices designed to take everyone's serious concerns seriously, people can find ways to compromise their own positions if those are not about compromising ethics. Funny thing, that democracy.

Sincerely,

Maxina Ventura

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Maxina Ventura
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WiseWomanHealth.com

Harvey, Samuel

From: Tsukuru Fors <forfuturefukushima@gmail.com>
Sent: Wednesday, July 19, 2023 12:03 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Agenda item #10, July 20th

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Commissioners,

I'm writing today to ask you to take the necessary and important steps to changing procedures surrounding abstention in city council meetings.

What transpired on July 11th in the Berkeley City Council Meeting with regards to the Consent item #29, the resolution to oppose TEPCO/the government of Japan's plan to discharge radioactive wastewater from the Fukushima Daiichi Nuclear Power Plant into the Pacific Ocean was an assault to the democratic process and an insult to the constituents of the City of Berkeley.

Abstention should not be city council members' way of avoiding discussion on important matters. Five people on the city council including the mayor abstained on the item #29 on July 11th, forcing the resolution to be thrown out. This was done after many constituents both in person and via zoom had expressed their displeasure and puzzlement and demanded: 1) the resolution be supported, given the fact that Berkeley is a "nuclear-free zone;" and 2) those who abstained should publicly state their reasons for doing so.

I especially take issue with the second point. City council members have been put in their seats by their constituents to represent their interest. When they abstain from voting on an important issue that not only is fundamental to the city's values but also has the potential to negatively impact the health of its people and environment, we would hope that at least they have the obligation to explain why they are abstaining from voting; thus, avoiding to make their position on the matter known. On July 11th, the constituents of the city of Berkeley deserved that courtesy but did not get it.

For the reasons stated above, I am asking the honorable commissioners to take the steps to bring the necessary changes to the procedures surrounding "abstentions" in the Berkeley City Council, so the City of Berkeley remains the model case of democracy and progressive politics we all aspire to.

Sincerely,
Tsukuru Fors
Founder, Pacific Asian Nuclear-Free Peace Alliance