



AGENDA REPORT

TO: City Council
Members of the Public

FROM: Nikki Fortunato Bas
Councilmember, District 2

SUBJECT: Amended Council Rules of Procedure

DATE: January 5, 2023

RECOMMENDATION

I respectfully recommend that the City Council: Adopt a RESOLUTION **AMENDING AND RESTATING THE COUNCIL'S RULES OF PROCEDURE IN THEIR ENTIRETY TO, AMONG OTHER THINGS:**

1. RESCIND THE COUNCIL'S TEMPORARY RULES OF PROCEDURE FOR THE CONDUCT OF MEETINGS DURING THE STATE OF EMERGENCY RELATED TO THE COVID-19 PANDEMIC;
2. CHANGE THE TIMES FOR COMMENCING AND ENDING REGULAR COUNCIL MEETINGS TO MINIMIZE LATE-NIGHT MEETINGS AND INCREASE PUBLIC ACCESS AND PARTICIPATION;
3. HELP ENSURE THAT NEW ITEMS HAVE BEEN PROPERLY VETTED BEFORE THEY ARE SUBMITTED FOR SCHEDULING, TO INCREASE EFFICIENCY;
4. UTILIZE GENDER-INCLUSIVE LANGUAGE IN ACCORDANCE WITH THE CITY'S VALUES AND POLICY; AND
5. MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO MAKE THE COUNCIL'S RULES OF PROCEDURE EASIER TO NAVIGATE AND UNDERSTAND.

EXECUTIVE SUMMARY

City Charter Section 210 mandates Council establish Rules of Procedure for conduct of meetings and order of business. The Council Rules of Procedure (Council Rules) were last updated in 2018. Temporary Council Rules were adopted in 2020 and 2022 to address Council operations during COVID-19.

With the State of California Declaration of a State of Emergency set to expire on February 28, 2023, and AB 2449 requiring a return to in-person meetings by March 1, 2023, it is time to amend and restate the Council Rules.

These amendments seek to ensure:

- opportunities for public access and participation,
- greater transparency in the legislative process,
- gender-inclusive language, and
- more clarity so that the Rules are easier to navigate and understand.

Thank you to the Offices of the City Attorney, City Clerk and City Administrator for your input in these amendments, and partnership in planning our return to in-person meetings. Thanks also to members of the public who have shared feedback and public comments on access and participation in our Council meetings. I look forward to discussion and feedback on January 19th at the Rules & Legislation Committee meeting.

BACKGROUND / LEGISLATIVE HISTORY

City Charter Section 210 mandates Council establish Rules of Procedure for conduct of meetings and order of business. The Council Rules of Procedure (Council Rules) were last updated in 2018 with Resolution No. 87044 CMS. Temporary Council Rules were adopted as follows to address Council operations during COVID-19: Res. No. 88113 CMS (2020), Res. No. 88266 CMS (2020) and Res. No. 89432 CMS (2022). In 2021, Council amended the Rules to address high stakes negotiations with Res. No. 88785 CMS.

The following amendments seek to ensure:

- opportunities for public access and participation,
- greater transparency in the legislative process,
- gender-inclusive language, and
- more clarity so that the Rules are easier to navigate and understand.

These amendments propose that Council shall meet in regular session on the first and third Tuesdays of the month, commencing at **4:00 p.m. in the Chambers of City Hall**; and meetings shall **conclude no later than 10:00 p.m.**, unless the Council passes a motion by an affirmative vote of five (5) Councilmembers to extend the time for the meeting. **Council meetings shall be hybrid, allowing the public to participate via Zoom.**

Rule 3 – Definition of Terms

The following definitions are added:

- **Informational Item** shall mean an agenda item consisting only of an informational report that does not require or permit Council action.
- **Advisory Resolution** shall mean a resolution solely intended to proclaim the Council's support for or opposition to actions being taken or contemplated by another authority or organization, or to recognize the achievements of an individual or organization, or similar

resolution that requires little or no further action by the City to effectuate the intent of the resolution.

- **Non-Advisory Resolution** shall mean any resolution that is not an Advisory Resolution. A Non-Advisory Resolution is a resolution that requires substantial action or implementation by the City to effectuate the intent of the resolution, or requires substantive review by the City Attorney.
- **Consent Calendar** shall mean the portion of a Council agenda designated for the discussion and consideration of Consent Items.
- **Non-Consent Calendar** shall mean the portion of a Council agenda designated for the discussion and consideration of Non-Consent Items.
- **Special Meeting** shall mean a meeting of the Council or of a Standing Committee occurring on a date and time other than the regular, established time for that meeting.
- **Council-Approved Meeting Calendar** shall mean a schedule of Council and Standing Committee meetings for the calendar year, (1) which shall be approved and may be amended by Council resolution, (2) which reflects Regular Meetings for the year, as well as any cancellations or variations due to foreseeable events such as City holidays, Council recesses, and 5th Tuesdays, and (3) which shall include key deadlines for submitting agenda materials (see Rule 26).
- **Scheduling Request Form** shall mean the form attached hereto as Attachment A, which shall be used to request scheduling a proposed agenda item by the Rules and Legislation Committee to help ensure the timely and orderly submission and scheduling of such requests.
- **Agenda Report Template** shall mean the template attached hereto as Attachment B, which shall be used to generate reports to accompany ordinances and Non-Advisory Resolutions in accordance with Rule 26(D).

Rule 4 – Standing Committees

Public Works shall be renamed: Public Works and Transportation Committee

Under the Temporary Council Rules during COVID, Committees meet on the second and fourth Mondays and Tuesdays. These amendments would go back to the pre-COVID meeting schedule with five Committee meetings on Tuesdays and keeping Rules Committee on Thursdays.

The Regular Meetings of the Standing Committees shall be as follows:

- The Second and Fourth Tuesdays
 - Finance and Management Committee at 9:30 a.m.
 - Public Works and Transportation Committee at 11:30 a.m.
 - Community and Economic Development Committee at 1:30 p.m.
 - Life Enrichment Committee at 4:00 p.m.
 - Public Safety Committee at 6:00 p.m.

- Thursdays (weekly)
 - Rules and Legislation Committee at 10:30 a.m.

The Education Partnership Committee and the City-Port Liaison Committee shall meet at the discretion of the respective committee chairs or as determined by the Council.

Meetings of committees also shall be noticed as Special Meetings of the Council in light of the possibility that a majority of the Councilmembers may attend and participate in the meeting.

Rule 7 – Order of Business at Council meetings

The “Order of Business at Council Meetings” was moved from “Resolved” clauses. Please note that adding this new Rule 7 rennumbers former Rules 7 through 15. Changes to the Order of Business, from the pre-COVID Council Rules, are underlined below. Moving Council Announcements and Open Forum to the end of the meeting allows Council to consider the Consent and Non-Consent Calendars sooner, and has been the practice during COVID. The Pledge of Allegiance is removed as a requirement; Council may begin the meeting in different ways such as with a Land Acknowledgement, LoveLife acknowledgement, another opening or none at all.

Subject to the discretion of the Council President or presiding officer, the order of business for Council meetings shall be as follows:

1. Call to Order by Council President
2. Roll Call
3. Action on Special Orders / Presentations of the Day (with accompanying agenda materials as required by Sunshine Ordinance)
 - a. Ceremonial presentations, including proclamations, individual recognitions, etc.; and
 - b. Reports / presentations from the Mayor.
4. Approval of Council minutes
5. Modifications to the Agenda and Procedural Items, including but not limited to
 - a. Requests from Councilmembers to pull an item from the Consent Calendar and reschedule as Non-Consent Item on the same City Council meeting agenda.
 - b. Requests by Councilmembers to speak on an item on the Consent Calendar or to register a “No” vote or Abstention on an item on the Consent Calendar.
 - c. Requests by Councilmembers to change the order of the items on the Consent Calendar or the Non-Consent Calendar, or to defer items or make other modifications to the agenda.

- d. Announcements by the Presiding Officer of changes in the order of the agenda, deletion or deferral of items or other modifications to the agenda
 - e. Motion for Members' Requests for Reconsideration of Action the Council took at Immediately Preceding Meeting (In order to make motion, Member must have voted on "prevailing side".)
 - f. Members' Requests for Scheduling of Items considered by Committee but not forwarded to Council to be scheduled to the next City Council meeting. Scheduling of such items requires only a motion and a second pursuant to Rule 8.
6. Adoption of items on the Consent Calendar (after hearing public speakers and Councilmembers)
 7. Oral Report of Final Decisions in Closed Session by City Attorney and disclosure of non-confidential closed session discussion pursuant to Sunshine Ordinance, Oakland Municipal Code section 2.20.130

For Regular Meetings, action on Non-Consent Items will commence at 5:00 p.m., or as soon thereafter as reasonably practicable

8. Consideration of items with statutory Public Hearing Requirements
9. Action on Other Non-Consent Items
10. Council Acknowledgements / Announcements (Note: Announcements are no longer at the beginning of the meeting.)
11. Open Forum (Note: Open Forum no longer commences for 15 minutes at the beginning of the meeting.)
12. Adjournment – 10 p.m. unless Council passes a motion by an affirmative vote of five (5) Councilmembers to extend the time for the meeting

Rule 12 – Speaker Cards and EComments

These proposed Council Rules would go back to allowing comments on each agenda item. Changes to deadlines for receiving speakers' cards are underlined below.

Speakers' cards must be received by the City Clerk: (1) prior to Council action on Modifications to the Agenda for items agendized ~~from 5:30 to 6:30 p.m. before the Non-Consent Calendar,~~ and (2) by 8:00 p.m. for items agendized for 6:30 p.m. or thereafter prior to the introduction of the first Consent Item, unless consent to speak is given by the presiding officer or a majority of the Council.

Rule 13 – Open Forum

These amendments move Open Forum to the end of the meeting, and ceding time to other Open Forum speakers is not permitted. The time allotted for Open Forum speakers would revert

to the pre-COVID Council Rules – one (1) minute each to speak and a maximum of three (3) minutes, in the discretion of the presiding officer.

Rule 14 – Time Limits for Public Speakers on Committee and Council Agenda Items

Time limits for public speakers would revert to the pre-COVID Council Rules described below, with the exception that these amendments propose that ceding time to other speakers is not permitted for Consent Calendar or Open Forum speakers.

- Any member of the public who has submitted a speaker card pursuant to Rule 12 on an agenda item, other than open forum, shall be allotted a minimum of two (2) minutes per item to speak prior to any vote or action by the Council or Committee. The presiding officer may reduce each speaker's allotted time to one (1) minute if they publicly state all reasons justifying any reduction in speaker time, which reasons shall be based at a minimum on consideration of the time allocated or anticipated for the meeting, the number and complexity of agenda items and the number of persons wishing to address the local body, and whether there will be sufficient time available during the meeting to consider all agenda items if all speakers are allowed two minutes to speak.
- All speakers on any one item shall be allocated the same amount of speaking time on that item, unless the presiding officer approves ceded time or an organized presentation, or unless more time must be given to comply with due process or other legal requirements or in circumstances where the Council is acting in a quasi-adjudicatory capacity.
- A speaker who submits their name to speak on four or more items (other than open forum) at a **Standing Committee meeting** may be instructed to address all items concurrently and shall be allocated 2 minutes per item up to a maximum of 10 minutes; if the presiding officer exercises their discretion to reduce each speaker's time to one (1) minute, speakers who submit four or more speaker's cards shall be allotted one (1) minute per item up to a maximum of 5 minutes.
- If 20 or more speaker's cards are submitted for the **Non-Consent Calendar at a Council meeting**, a speaker submitting their name to speak on four or more items on that portion of the agenda may be instructed to address all items concurrently and shall be allotted two (2) minutes per item up to a total of ten (10) minutes.
- Public speakers who sign up for multiple items **before the Non-Consent Calendar at a Council meeting** will be instructed to speak on all items at once and be given two (2) minutes to speak on each item up to a maximum of six (6) minutes.
- **Ceding Time.** A speaker may extend their speaking time if other speakers who have submitted their names to speak agree to cede their time to the recipient speaker. The recipient speaker will receive one (1) minute speaking time from each ceding speaker, up to a maximum of five (5) minutes. At the presiding officer's discretion, a speaker may be allotted more than five (5) minutes based on ceded time. The recipient speaker must submit the ceding speakers' speaking cards, and the ceding speakers must be present

at the time the recipient speaker speaks. Ceding time to other speakers is not permitted for Consent Calendar or open forum speakers.

- Public speakers who sign up to speak on the Scheduling Items at the Rules and Legislation Committee will have one minute per scheduling request up to a maximum of 5 minutes, provided that a public speaker's total time for all items on the Rules and Legislation Committee agenda (excluding open forum) shall not exceed 10 minutes.

Rule 15 – Presiding Officer's Role Regarding Public Speakers

The amendments add that the presiding officer may rule a public speaker out of order if their remarks constitute hate speech.

Rule 16 – Temporary Suspension of a Council Rule

The amendments add this new rule that: The Council may suspend one or more of these Rules of Procedure, including Rule 14 (time limits for public speakers), on a temporary, ad hoc basis for a single meeting only if the Council passes a motion by an affirmative vote of six (6) Councilmembers, including a finding or findings of necessity, provided the temporary suspension otherwise complies with applicable law, including but not limited to the City Charter, Brown Act, and Sunshine Ordinance.

Rule 26 – Procedure for Councilmember to Place Items on an Agenda

This is a ***new proposed rule intended to create more transparency and clarity around the legislative process.*** Currently, there is no uniform protocol for timelines and information/analysis required for introducing legislation. The proposed amendment applies to all those who introduce legislation: Councilmembers, City Administrator, City Attorney, and Mayor. The proposed procedure is summarized below:

- A. Councilmembers, City Staff, City Attorney, and Mayor shall make all reasonable efforts to submit new proposals to an appropriate Standing Committee, rather than submitting the proposal directly to City Council, and are expected to plan accordingly. Councilmembers who intend to make a motion to substantively modify legislation during a meeting should discuss their proposed modification with City staff and/or City Attorney *prior to the meeting*, to allow for adequate input and advice.
- B. Requests for informational reports should be minimized and consistent with the Council-Approved Meeting Calendar (Attachment C) – due dates for reports to City Administrator (4 weeks before meeting), reports to Clerk and agenda distribution (10 days before meeting).

- C. Legal and Fiscal Review of Ordinances and Resolutions
- a. *Advisory Resolutions*. Draft titles to City Attorney at least two (2) full working days prior to scheduling deadline. Substantive draft of Resolution to City Attorney at least two (2) full working days prior to deadline for submitting legislation to Clerk.
 - b. *Ordinances and Non-Advisory Resolutions*. Substantive drafts to City Attorney and City Administrator at least three (3) weeks prior to scheduling to facilitate legal and fiscal review prior to scheduling.
 - c. If the sponsor is unable to comply with guidelines because the legislation requires immediate and urgent consideration, notice must be given to City Attorney and City Administrator as early as possible, and the Rules Committee may schedule the item only if the committee determines that item should be scheduled for specified reason, stated on the record.
- D. Sponsors of legislation shall submit a memorandum or report, substantially in the format of and including information in the Agenda Report Template (Attachment B), and shall do so no later than the deadline for submitting legislation to the Clerk.

Rule 28 – Procedure to Add, Remove Agenda Items

The proposed Council Rules *maintain* the changes (underlined below) in the Temporary Rules, which have been in place. To add/remove items after the Rules Committee has met and before an agenda is published, or when there is no intervening Rules meeting to add/remove an item, the Sponsor must request and receive authorization from: Rules Chair, Council President and either Mayor and/or City Administrator; for Standing Committee agendas, authorization must also be received from committee's chair. Requests must be emailed to the City Administrator by 12pm the day before agenda publication.

Rule 29 – Tie-Breaking Votes by Mayor

The proposed Council Rules *codify* the relevant provision in Measure X, approved by voters in November 2022. If Councilmembers are evenly divided in their vote on an item, the Mayor will break the tie. For the purposes of determining whether the Mayor is eligible to cast a tie-breaking vote, abstentions and absences shall count as a “No” vote, but a legally-required recusal shall not count as a “No” vote.

Rule 31 – Code of Conduct

The Code of Conduct is moved from an appendix to the Rules to a new Rule 31, for easier navigation and reference. The amendments provide greater clarification and are underlined below:

5. Learn and study the background and purposes of important items of business before voting, including reviewing agendas and agenda materials, and reading eComments.

sufficiently in advance of meetings to allow for consultation and coordination with other Councilmembers, staff, legal counsel, and/or members of the public as permitted by law.

11. Faithfully attend all sessions of the Council unless unable to do so because of disability or some other compelling reason; and inform, as soon as possible, the Council President or Committee Chair when unable to attend a scheduled meeting, or needing to arrive late or leave early.

13. Abide by federal and state law, the City Charter, City legislation and City Council policies.

Subsection 13 is added to the existing duties in order to harmonize the Code of Conduct with the Censure Procedures (Rule 32(B)).

Rule 31 – Censure of Councilmembers

The Censure procedures are moved from an appendix to the Rules to new Rule 32, for easier navigation and reference.

ANALYSIS AND POLICY ALTERNATIVES

With the State of California Declaration of a State of Emergency set to expire on February 28, 2023, and AB 2449 requiring a return to in-person meetings by March 1, 2023, it is time to amend and restate the Council Rules to prepare for a return of meetings to City Hall.

When discussing this proposal at the January 19, 2023 Rules and Legislation Committee meeting, Council members may consider alternatives to the changes described above as well as the timing of implementing such changes.

FISCAL IMPACT

The fiscal impact to adopting these amended Council Rules of Procedure will largely be related to returning to City Hall and conducting hybrid meetings with Council and staff in the Council Chamber or hearing rooms, and members of the public joining in person and via Zoom. The tech, equipment, and other related costs have already been incorporated into the budget and tech and equipment improvements to the Chamber and hearing rooms have been made.

PUBLIC OUTREACH / INTEREST

This item will be noticed at least 10 days in advance of its hearing at the January 19, 2023 Rules and Legislation Committee meeting. The Committee will take EComments and public comments at the meeting. In addition, public comments made during Open Forum of past

Council meetings, as well as comments during hearings of other amendments to the Council Rules, inform this proposal.

COORDINATION

Since last year, Council President Bas and former Rules Chair Sheng Thao have met several times in an inter-department workgroup which consists of the City Administrator's Office (CAO), Offices of the City Attorney (OCA) and the City Clerk. We have discussed planning for in-person/hybrid meetings of the Council, Boards and Commissions, and have been working through issues of health and safety, security, technology and equipment, legal compliance, efficiency, and public access and participation. Input from other departments on these amended Council Rules has been received through these meetings and one-on-one meetings.

The legislation was drafted with the Office of the City Attorney and was reviewed by the OCA.

SUSTAINABLE OPPORTUNITIES

This legislation would provide greater transparency and public participation in Council meetings and the legislative process through: more opportunities to comment, including on individual agenda items and to cede time to other speakers; public participation in person and via Zoom; Council meetings starting later in the day with the Non-Consent Calendar being heard no earlier than 5pm; and a clear procedure for placing items on the Council agenda.

Economic: Greater transparency and public participation in Council meetings and the legislative process can result in increasing economic opportunities for Oaklanders, including those who have been most deeply impacted.

Environmental: Greater transparency and public participation in Council meetings and the legislative process can result in increasing environmental sustainability for Oaklanders, including those who have been most deeply impacted.

Race & Equity: Greater transparency and public participation in Council meetings and the legislative process can result in increasing racial equity for Oaklanders, when those who have been most deeply impacted are better able to share their experiences and opinions, and give input to legislation that affects them.

ACTION REQUESTED OF THE CITY COUNCIL

I respectfully recommend that the City Council: Adopt a RESOLUTION **AMENDING AND RESTATING THE COUNCIL'S RULES OF PROCEDURE IN THEIR ENTIRETY TO, AMONG OTHER THINGS:**

2. RESCIND THE COUNCIL'S TEMPORARY RULES OF PROCEDURE FOR THE CONDUCT OF MEETINGS DURING THE STATE OF EMERGENCY RELATED TO THE COVID-19 PANDEMIC;

3. CHANGE THE TIMES FOR COMMENCING AND ENDING REGULAR COUNCIL MEETINGS TO MINIMIZE LATE-NIGHT MEETINGS AND INCREASE PUBLIC ACCESS AND PARTICIPATION;
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6. MAKE NON-SUBSTANTIVE, TECHNICAL EDITS TO MAKE THE COUNCIL'S RULES OF PROCEDURE EASIER TO NAVIGATE AND UNDERSTAND.

For questions regarding this report, please contact Cinthya Munoz-Ramos, Chief of Staff to Nikki Fortunato Bas, Councilmember, District 2 at cmunozramos@oaklandca.gov.

Respectfully submitted,



Nikki Fortunato Bas
Councilmember, District 2

Prepared by:
Nikki Fortunato Bas, Councilmember, District 2

Attachments (5):

1. Resolution - clean version
2. Resolution - red-lined version
3. (A) Scheduling Request Template
4. (B) Agenda Report Template
5. (C) 2023 Council Meeting Calendar