

Report on Draft Open Government Commission Bylaw Revisions

September 20, 2021 Open Government Commission Meeting

Prepared by Commissioner LoPilato

I. Background / Relevant History

In the Open Government Commission's May 3, 2021 Meeting, the Commission voted to form a subcommittee to review and identify potential revisions to the Open Government Commission Bylaws to maximize efficiency, transparency, accessibility, and effectiveness of Commission meetings. On July 19, 2021, the Commission met again and provided feedback on the first report by the Subcommittee, indicating general alignment and consensus around the big-picture questions to consider in the revision process (adoption of Rosenberg's Rules of Order, adoption of time limits, etc).

This is the second report by the Subcommittee and, as promised in the July Meeting, this Report contains Draft Bylaw Revisions for consideration by the full Commission. The Draft Bylaw Revisions contain margin comments which may be helpful in the Commission and Staff review and discussion. Notes on several specific details are also flagged below.

II. Relevant Documents

- A.** Exhibit A: Draft Bylaw Revisions (prepared by Commissioner LoPilato) in mark-up format tracking changes from original Bylaws
- B.** Exhibit B: Draft Bylaw Revisions (prepared by Commissioner LoPilato) in clean format
- C.** Exhibit C: Rosenberg's Rules of Order
- D.** Exhibit D: City Council Meeting Rules of Order

III. Follow-Up On Issues Identified in Prior Meetings / Noteworthy Items

A. Visions of a More Robust Non-Agenda Public Comment and Related Considerations

As we go through the process of formalizing procedures and time limits for Commission meetings and complaint hearings, it feels important to stay mindful of ways to ensure this body is a welcoming space for members of the public who want to share issues they are encountering in the implementation of the Sunshine Ordinance.

As noted in the July 2021 preliminary report on this project, the Non-Agenda Public Comment section could be a vehicle for community members to come forward with issues they've encountered with the Sunshine Ordinance without them having to file a formal complaint to flag the issue for the Commission's consideration. Public comment received during this

section of the Agenda could then, in turn, help inform the Commission's annual report on practical and policy problems encountered in the implementation of the Sunshine Ordinance.

The Commission would not be able to engage in discussion about or take immediate action on any specific item raised during Non-Agenda Public Comment, but this could still be a good option for members of the public to surface issues to the Commission for potential future action. Of course, some issues should be raised through the formal complaint process and individuals should not be discouraged from filing complaints when that's the case. However, by identifying a clear alternative option on how to be heard in this public forum, we may be able to shift the landscape of community information-sharing towards proactive solutions and City partnership, and away from the adversarial complaint process. As the complaint hearing procedures will also likely become more formalized, it will be important that complaints are properly tailored to alleged violations of the Sunshine Ordinance with a specifiable remedy.

Implementation Note: Many members of the public won't have any idea that this option exists as a way to flag issues or share their concerns without filing a formal complaint. If the full Commission agrees with the principles set forth here, the following steps might help ensure effective implementation:

- A friendly notation on the [Open Government Commission website](#) could advise the public that anyone may attend Open Government Commission meetings and share any concerns or issues they have regarding the City's compliance with the Sunshine Ordinance during the Non-Agenda Public Comment section. This could clearly spell out the variety of options for contacting the OGC: oral public comment at meetings, written correspondence submitted in advance of the meetings, or requesting that Staff forward correspondence along to the OGC.
- Commissioners can advise anyone who inquires to them personally that Non-Agenda Public Comment is an appropriate space to raise concerns about anything within the Commission's purview.
- Staff can also advise members of the public about this option, especially when an individual or group inquires about filing a potential complaint.

Finally, we need to consider the possible "meeting flow" impact if this non-agenda public comment section becomes more robust. The City Council Agenda structure limits the initial round of non-agenda public comment to 15 minutes at the beginning of the meeting, with any remaining non-agenda public comment to take place near the end of the meeting. For uniformity, these Draft Bylaw Revisions are intended to generally¹ align with City Council's practice on this topic, but two alternatives could be: (1) to place no time limit on the Non-Agenda Public Comment at the beginning of the meeting or (2) to leave it to the Chair's discretion whether to impose a time limit based on the number of speakers and the anticipated time needed for regular agenda items on that specific meeting date.

¹ City Council's Rules of Order place a different time limit on Non-Agenda Public Comment of 2 minutes or less (similar to the shortened time period for public comment on regular agenda items when 7 or more speakers are present). The 2-minute vs. 3-minute distinction seems overly complicated for this Commission's current purposes so it has been omitted here.

B. Order of Business and Adjournment Issues

A good question was raised during the Commission's July discussion regarding possible changes to the agenda sequence - specifically, whether to move Commissioner Communications (and/or the new section "Commissioner Agenda Requests") to the top of the agenda.

At this time, I am hopeful that, with the addition of more formalized procedures and time limits, the Commission will typically have no issue reaching the Commissioner-driven sections of the agenda during future meetings. Accordingly, in these Draft Bylaw Revisions, Commissioner Agenda Requests and Commissioner Communications remain after the Regular Agenda Items in this draft of the "Order of Business" section (Section VI(A)). As a counterbalance, these Draft Bylaw Revisions also include an "encouragement" to future Commissioners in Section V(D)(3) "Adjournment" to consider potential adjustments to the Order of Business if two or more meetings are adjourned prior to the Staff Update, Commissioner Agenda Requests, or Commissioner Communications. (This is also an attempt to "bake in" the acknowledgment that Bylaws can be revised over time when specific sections no longer meet the needs of the moment, as we have found in this current round of revisions.)

C. Communications and Work Between Meetings

The new sub-section "Communications and Work Between Meetings" is a preliminary draft of potential guidance for new Commissioners on how to most effectively carry work forward from meeting to meeting. This language has been provided in advance to the Chief Assistant City Attorney for review to allow for any improvements which may further ensure any non-meeting communications comply with the Brown Act and Sunshine Ordinance. Of course, it may also benefit substantially from additional Commissioner feedback.

IV. Recommendation on Action To Be Taken

- A.** Review and discuss Draft Bylaw Revisions (Exhibit A), including review and discussion of new / modified issues identified above and any additional related issues raised by Commissioners for potential inclusion in Revised Bylaws.
- B.** Full Commission vote to (1) accept Draft Bylaw Revisions as written, (2) accept Draft Bylaw Revisions with specified modifications to be finalized by Subcommittee or Staff, or (3) reject Draft Bylaw Revisions
- C.** Set date for further technical revisions to align Revised Bylaws with anticipated changes to Complaint Procedure, Training/Onboarding Resources, or other Bylaw sections and consider any implementation issues.