

To: Honorable Mayor and Members of the City Council

From: Kyle Haugh, Chair, Open Government Commission

Submitted by: Samuel Harvey, Secretary, Open Government Commission

Subject: Public access to supplemental materials and amendments at City Council meetings, including the timing of presentation of such materials by the mayor or city councilmembers, such that the public may comment on them

RECOMMENDATION

Refer to the Agenda and Rules Committee an item to add a subsection d) to the Berkeley City Council Rules of Procedure and Order Section III C4: Submission of Supplemental and Revised Agenda Material. This would read, d): Prior to the commencement of public comment on each Agenda Item, councilmembers will be asked to present any supplemental or revised agenda material they have prepared that is not already included in the packet.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The current Berkeley City Council Rules of Procedure and Order do not address supplemental materials that are submitted at the time of a City Council meeting. If such materials are available prior to public comment, the public should be able to read the material before they comment on an item. The OGC is aware that at the January 20, 2026 Regular City Council Meeting, a councilmember reported having “small amendments” to Item 24 that the mayor invited her to share. Her response was, *"I think we should close the public hearing and then I can discuss my proposed amendments."*

Because the material was shared with the public at the same time it was shared with City Council, there was no violation of the Brown Act. However, the OGC feels the spirit of the Brown Act was violated because material was intentionally withheld from public comment. While this was a small item with limited consequences, the OGC is concerned that it sets a precedence to diminish public input and could erode public trust in our city government.