

Improving City of Davis Decision Making: An Open Letter

Informed and transparent decision-making is an essential pillar of good local governance. In Davis, this pillar is eroding. Recent years have seen multiple alarming instances of secretive action, shortsighted planning, and disconnect between community and leadership priorities.

We the undersigned—including current and former members of city commissions—call on City Council to address these issues. Specifically, we urge swift adoption of the attached common-sense proposals regarding (1) transparency, information disclosure and public engagement, (2) city commissions, and (3) advancement of significant actions and initiatives.

An unparalleled level of civic engagement and civic pride is one of Davis's greatest strengths. Over 120 Davis citizens participate on city commissions (a term that also includes city boards, task forces, and committees), volunteering substantial time and effort to hear public comments, provide expert analysis, and propose informed actions on the issues that shape Davis' present and future. In short, commissioners work tirelessly to ensure that the public voice is heard at all levels.

Because they serve as conduits between Davis government and Davis residents, commissioners are sometimes referred to as the “eyes and ears” of the City Council. Unfortunately, distance has grown between the City's eyes and ears and its core executive bodies. Council and staff routinely make major decisions following only cursory consultation with relevant commissions. In the most egregious cases, such as with the BrightNight lease option agreement, relevant commissions are not consulted at all.

When commissions do have the opportunity to give input, commission perspectives are often given less weight than staff perspectives. This is evidenced in part by the fact that staff representatives regularly participate in Council deliberations on key items, but commission representatives are rarely invited or allowed to participate.

Other challenges further undermine the capacity of city commissions to participate actively in decision making.

First, Council makes very little information available about the nature of its closed sessions. While confidentiality of details may be justifiable in some cases, near-complete opacity surrounding the subjects and outcomes of closed sessions is not.

Second, conflicting guidance from City staff renders it functionally impossible for different commissions to collaborate on topics of mutual interest.

Third, the City provides almost nothing in the way of commissioner onboarding and training. This means that commissions are largely populated by individuals who have deep subject-matter expertise, but limited knowledge of how to contribute that expertise productively.

City Council can correct these problems by adopting the attached proposals. The result will be a Davis that is shaped by all its residents—a Davis that is not just a city, but a community.

July 23, 2020

The following signatories to this letter and the attached proposal are signing as individuals, not as official representatives of their city commissions or any other organization. Names are listed in alphabetical order, and people's affiliations are noted for information only.

Crilly Butler, former Commissioner, Bicycling, Transportation and Street Safety Commission

Michael Corbett, former Mayor of Davis

Larry Guenther, Chair, Tree Commission

Dillan Horton, Chair, Police Accountability Commission

Lorenzo Kristov (cosimo91@gmail.com), Commissioner, Utilities Commission

Elizabeth Lasensky, Chair, Senior Citizen Commission

Richard McCann (rjmccann58@gmail.com), Commissioner, Natural Resources Commission

Roberta Millstein, Chair, Open Space and Habitat Commission

Jeff Mischkinsky, Member, Broadband Advisory Task Force

Alan Pryor (ozone21@att.net), Commissioner, Natural Resources Commission

Greg Rowe, Commissioner, Planning Commission

Hannah Safford, Co-Chair, Natural Resources Commission

Johannes Troost (johannes2020@gmail.com), Chair, Utilities Commission

Erik Vink, Alternate, Recreation and Park Commission

Colin Walsh, Commissioner, Tree Commission

Matt Williams (mattwill@pacbell.net), former Chair, Finance and Budget Commission

For further information about this proposal please contact any of the signatories who have provided email addresses.

July 23, 2020

A Proposal for Improving City of Davis Decision Making

This document offers for public discussion specific proposals for improving the way the Davis City Staff develops proposals to bring to City Council for consideration and approval, as well as the criteria City Council follows in deciding whether to approve proposals presented to it. The objective is to establish and follow city procedures and practices for transparency, information disclosure, public engagement and collaboration, in particular to ensure effective collaboration between City Staff and City Commissions and other volunteer resident experts, so that the City as a whole can realize the full benefits of its considerable local expertise.

This proposal may be refined and improved in the coming months, to be finalized and adopted at the start of the next City Council session or sooner if possible. Upon adoption by the City Council, the City Manager will be responsible for implementing these practices and ensuring City Staff's ongoing adherence.

Elements of the Proposal

The proposal is organized in three sections:

- A. Provisions regarding transparency, information disclosure and public engagement
- B. Provisions regarding City Commissions
- C. Provisions for developing and making decisions on Staff proposals submitted for City Council action.

A. Provisions regarding transparency, information disclosure and public engagement

The intent of California's open meetings law, also known as the Brown Act, is quite clear.

California Government Code, Section 54950: opening paragraphs of the Brown Act:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them.

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.

Attorney General Opinion No. 10-206, Dec. 27, 2011, p 2:

The open meetings law known as the Ralph M. Brown Act (Brown Act or Act) was adopted “to ensure the public’s right to attend the meetings of public agencies,” as well as “to facilitate public participation in all phases of local government decision-making and to curb misuse of the democratic process by secret legislation by public bodies.”

To ensure that the City complies with the spirit and intent of the Brown Act, the City Council must be consistently and unambiguously clear that the City Attorney’s obligation with respect to the Brown Act is to maximize transparency, information access and public engagement. Every effort should be made to avoid technical readings of the law to enable closed sessions of City Council or other non-public activities of Staff and City Council that may lead to *“misuse of the democratic process by secret legislation by public bodies.”*

In situations where the City Council and Staff determine that closed session meetings of City Council are needed and appropriate (e.g., for real-estate negotiations per Government Code section 54956.8), the City Council agenda shall provide:

- A full description of the nature of the transaction being considered in closed session;
- A full and clear description of the set of topics being discussed;¹
- Reference to the provisions in state law that allow for closed sessions on the identified topics.

Discussion of other topics in closed session is strictly prohibited unless those topics have already been discussed and resolved in open public proceedings by the City Council.

¹ The following is an example description: “Conference with Real Property Negotiators regarding Solar Facility Lease Option; Property: APN 042-140-013 (no street address) and APN 042-140-009 (City of Davis Wastewater Treatment Plant, 45400 County Road 28H, Woodland, CA 95776); Agency Negotiators: a complete list of City representatives attending; Negotiating Parties: a complete list with names of companies and individual participants; Under Negotiation: Price and terms of payment. See Government Code section 54954.5(b).

The following is an actual description from the Closed Session of 12/16/2014 ([LINK](#)) “Conference with Real Property Negotiators; Property: Easement for drainage, irrigation, and other reclamation purposes traversing 45400 County Road 28H, Davis, CA, APN 042-140-013 (City Wastewater Treatment Plant Property); Agency Negotiators: City Attorney Harriet Steiner, Public Works Director Robert Clarke, Principal Civil Engineer Michael Lindquist; Negotiating Parties: RD2035; Under Negotiation: Price and terms of payment”

Reportable actions by the Council in a closed session shall be decided by a motion and vote of the Council members present, and the results of the vote shall be included in the public announcement of reportable actions.

B. Provisions regarding City Commissions

The following provisions shall be incorporated into the Handbook for City Council-appointed commissions and shall also apply to City Council-appointed committees, task forces and other voluntary advisory or research bodies.

1. Ideally the Council should schedule its Commission Appointments meeting at least three months prior to the date when Commissioners take office. That would give the newly appointed commissioners an opportunity to (i) sit in on at least two meetings before beginning their formal tenure, and (ii) build 2-3 months of observation experience, which will result in more informed questions during the commission onboarding process.
2. Currently the commission onboarding process and materials vary greatly from commission to commission. Standardizing that onboarding process, much like the Commission Handbook has been standardized, should be completed prior to the end of FY 2020-2021.
3. Commission agendas will be prepared by the Commission Chair with input from City Staff and the Commission Vice-Chair. Staff cannot exclude from the agenda any topics the Commission wishes to discuss in their meetings that fall within the scope of the Commission's enabling City Council resolution. The Commission Chair has the discretionary right to delegate some or all of the agenda preparation responsibility to the Staff liaison, with the mutual consent of the Staff liaison.
4. Annually the Chairs from all the Commissions will meet for a full-day public workshop meeting in which each Commission will (i) explain its charge or statement of purpose and scope, (ii) give a brief review of last 12 months activities and recommendations made to City Council, and (iii) identify the subjects the Commission expects to address in the coming 12 months. As part of the meeting the Commissions will identify those subjects where their charges intersect and agree on next steps to begin collaborative efforts on those subjects. This meeting should be scheduled on a Saturday or Sunday to maximize the opportunity for public participation, much like the biennial [City Council Goals](#) retreat held in September.

5. Subject to the provisions of the Brown Act, two or more Commissions may form a Task Group consisting of members from each of the respective forming Commissions to perform a specified task, such as information gathering, research, or analysis of alternative actions the Commissions are considering. The Task Group shall not be authorized to make decisions on behalf of its forming Commissions, and should be sized so that it may meet and perform work without requiring publicly noticed meetings. The Task Group will be required to report on its activities, results, findings, etc., in public meetings of all the Commissions participating in the Task Group. City Staff will support the Task Group by providing information as required to fulfill its charge.

If requested by any of the participating Commissions in a Task Group, those Commissions will hold a joint publicly-noticed meeting to decide on any joint recommendations and/or reports they wish their respective Commissions to collectively make to City Council or the Planning Commission. Commissions may also make their own individual recommendations to City Council per their normal procedures.

C. Provisions for Staff development of and City Council decision making on proposals regarding specific City initiatives and actions

Applicability: This framework shall apply to all significant actions and initiatives being considered by the City, whether by direction of City Council or for another reason, including but not limited to:

- climate mitigation, adaptation and resilience measures
- environmental measures related to water, stormwater, trees, habitat and energy
- measures to support local businesses and regional agriculture
- economic development applications and proposals
- housing development applications and proposals
- city procurement and contracting
- alternative uses of city real estate or other property
- alternative uses of public space
- changes to current city utility services

- consideration of new city utility services
- other (e.g., social services, public safety services, parks and recreation, ...)

Consultation Plan: As City Staff begin consideration of an initiative, either by direction of City Council, initiation by City Staff, or for another reason, they shall develop a Consultation Plan for formulating the proposal they will ultimately bring to City Council for approval. The Plan shall describe the following activities and elements:

1. Clearly state the initiative’s purpose and objectives, or the problem to be addressed, and any constraints that the final proposal must respect;
2. Identify City Commissions or other Council-appointed bodies whose charge is relevant to the initiative and specify outreach to the key Commission chairs to develop agenda items for discussion;
3. Obtain input from Commissions on:
 - a. the initiative’s purpose and objectives, or problem to be solved,
 - b. criteria for evaluating alternative ways to meet the objectives,
 - c. ways the initiative has linkages to other City or community matters, and
 - d. other items raised by Commission members and subject matter experts;
4. Identify parties or segments of Davis population, as well as regional stakeholders, who might be affected by the initiative and ask how they will be affected;
5. Create outreach plans for:
 - a. affected parties, stakeholders and population segments,
 - b. community organizations working in relevant areas,
 - c. the general public, and
 - d. regional collaborators;
6. Identify any need for closed sessions of City Council and the rationale for such needs (see part A above for requirements regarding closed sessions).

Final Staff Report for City Council or Planning Commission Action: The final staff report submitted by City Management for a City Council or Planning Commission meeting where City Staff is seeking approval of its proposal, shall include three additional sections: (i) Commissions/Committees Identified as Relevant, (ii) Public Outreach and Commission

Engagement Activities, and (iii) Formal Commission Recommendations. The first section would simply list the commissions and other Council-appointed bodies whose charge is relevant to the topic of the staff report. The second section would describe what, if any actions, were taken to engage those commissions (and the public) on that topic. The third section would include any formal recommendations adopted by Commissions that engaged in considering a proposal. Those recommendations would be advanced in full, rather than as a summary in the Staff Report. Further, the final staff report must include a description of any closed sessions of City Council conducted as part of the initiative, with an explanation of results of the closed session, a report of votes taken in the closed session, and how the closed session discussions complied with the applicable provisions of California Government Code.

If a staff report lists a particular commission in Section (i) described above, then that staff report must be directly transmitted to all the members of that commission via email at the same time that the staff report is transmitted to Council or other primary recipient of the report. It is not enough to just post the staff report on the City website.

The Staff Report to the City Council or Planning Commission on a proposed action shall provide verbatim all proposals and recommendations from City Commissions in addition to any proposed action by the Staff. The Staff Report may provide Staff's objective assessment, with supporting documentation, of the merits and drawbacks of each proposal for the Council or Planning Commission to consider. The Staff Report shall not definitively oppose any proposal from a City Commission unless that proposal is expressly illegal or against a City policy previously adopted by City Council.

With regard to outside party proposals, such as development applications, purchase, sale and/or lease agreements, the Staff shall not advocate on behalf of a proposal or its proponent in presentations before the City Council or Planning Commission. Only the proponent, or members of the public, or a Council-appointed body such as a Commission that formally adopts a motion in support of the proposal may advocate for an outside party proposal. In particular, Staff shall not opine on whether a project requirement recommended by a City Commission is feasible or not for financial or any other reason other than identified legal restrictions. Rather, it shall be the proponent's responsibility to justify any rejection of a Commission-recommended requirement to the City Council or Planning Commission. The proponent shall be provided sufficient time to present all relevant details of its proposal before the City Council or Planning Commission.

City Council Deliberation and Action:

If a staff report lists a particular commission in Section (i) described above, then a representative of that Commission shall be empowered to participate in any publicly noticed discussion of the item in the report, with equal status as the lead staff member in that discussion. If the Commission passes a formal recommendation on the item, the Commission will designate a specific member to represent the Commission in the publicly noticed discussion. Otherwise the representative shall be the Commission chair by default, or another Commission member designated by the chair. Note that listing a Commission in the staff report on a particular topic would be an invitation for a representative to participate, not a requirement.

If the Staff Report does not demonstrate full compliance with all of the requirements described in this proposal, City Council shall defer action on the initiative and direct City Staff to remedy the deficiencies.

Upon adoption, the City Manager will be responsible for implementing these elements and ensuring City Staff's ongoing adherence. The City Council will consider the City Manager's performance of these responsibilities in its regular assessment of the City Manager's overall performance. Such a review shall be held in a public session by the Council.