



Council Meeting Staff Report

November 20, 2019

Agenda No.:	7.B
Indexes (Council Goals):	* 2019 Council Goal - N/A
Presenters:	Philo Shelton
Legislative File:	12418-19

Title

Options for Forming Subcommittees

Recommended Action

None

Staff Recommendation

None

Body

Summary:

During this fall's strategic planning work session, BPU discussed exploring the use of Subcommittees or Ad Hoc Committees to gain the advice and expertise within our community on various issues facing BPU. BPU has had much success with the Future Energy Resource Committee (FER) Committee, an Ad Hoc Committee, in receiving input, and prioritizing the various FER initiatives. First, if considering forming a committee, then the purpose and need needs to be identified with goals and deliverables for the committee. Next the form of the committee should be selected based on the purpose and need that BPU identifies. Below is an outline of options in forming a Subcommittee, an Ad-Hoc Committee, or Stakeholder Group. Also, attached are the LAC Orientation Manual for Members of Boards and Commissions, and Subcommittee Section document for additional detail.

Subcommittee:

1. A quorum of BPU members can be on the subcommittee, and if there are three or more BPU members then a quorum notice of meetings will need to be made
2. To create sub-committees or task forces that will include members not currently serving on the board or commission it will require County Council approval prior to its formation
3. Subcommittee will consist of not less than 3 members nor more than 5 members
4. Subcommittees can be in place for up to two years and the subcommittee members must be re-affirmed annually by the BPU.

Ad-Hoc Committee:

1. BPU can establish the Ad-Hoc Committee for a specific purpose or project
2. Maximum of two BPU members (less than a quorum) can be on the Ad-Hoc Committee
3. Ad hoc committees shall be appointed by motion and vote of the BPU
4. Ad hoc committees are to be in place short term for a specific task (generally are in place for a period of six months or less)
5. BPU may request that staff be assigned to assist the ad hoc committee as a resource, however this request will require Utility Manager approval; staff members, if assigned will act

as ex-officio members

Stakeholder Group:

1. Issue a contract to a third party to hold a stakeholder process as identified in attached Boards and Commission Public Involvement Plan.
2. Stakeholder meetings are facilitated by the consultant and are designed to let the participants take the lead by suggesting ideas and solutions.
3. Staff and BPU members will generally be expected to step back and listen.
4. This format allows for input from a larger group of people (up to 30 people) under this process.

Other distinctions and considerations:

A frequent question is whether the subcommittee or ad-hoc meetings must be open to the public. As provided above in Section V. 3. c. of the *Procedural Rules*, if there is a quorum of the BPU present in the meeting, the sub- or ad-hoc committee must follow all State and County Open Meeting requirements, including notice and agenda provisions, or if Council requires the meeting to be open to the public, then they must be open.

After considering all the above and as an alternative, each board and commission can also act informally to ask its own members to investigate a matter, subject, or issue and report back during any later meeting. Here they are not actually creating a formal subcommittee or ad-hoc committee, instead, members are simply performing their duties as a board or commission member. Also, a non-quorum of commissioners or board members can always meet with the public to receive and discuss related public matters. The concern in this situation is that there is no *actual or potential* quorum of members present or that a rolling online/email quorum is created.

Another issue to consider, which albeit rare, is whether the subcommittee or ad-hoc committee is given powers *to make a decision on a matter instead of the superior and appointing board or commission*. As the Council is the only final decisionmaker in the County, that is no board or commission can formally bind the County in any matter, it is unlikely this situation will arise; the issue though is not always so clear in practice. For example, if the board or commission wants the sub- or ad-hoc committee to recommend only one, two or three out of seven projects in which the board or commission *would then only vote on or consider the one, two or three projects only*, the subcommittee or ad-hoc committee has limited the overall board or commission’s decision-making authority. By identifying what the sub- or ad-hoc committee will do, recommend, or bring-back without limitation or exclusions, you can help ensure that there is no *potential* claim of the sub- or ad-hoc committee being a decision-making body, thus implicating the Open Meetings Act requirements.

Background:

County Boards and Commissions

The BPU is a “standing board” under the County Charter. Charter § 305. Section 501 of the Charter sets out the number of Board members, requirements for membership, terms of office, etc. Section 501.3 then provides that the BPU create and file with the County Council “procedural rules and regulations not inconsistent with [the] Charter.”

As a board of the County, albeit a unique one as it is given additional powers and authority pursuant to the Charter, it is still a board under the authority of the County Council and must still comply with Chapter 8, among other sections, of the County Code of Ordinances (Code).

Chapter 8, Article 1 provides that boards and commissions are intended to provide a forum for public

involvement and discussion but shall not "...make policy or to direct operational duties of county staff unless otherwise provided by law." Sec. 8-1. Further boards and commission cannot expend public funds or create liabilities on behalf of the County. Again, these provisions are affected by the Charter language which does provide that the BPU can make policy and expend public funds.

The current standing County boards include: "...arts in public places board; **board of public utilities**; historic preservation advisory board; labor management relations board; library board; lodger's tax advisory board; parks and recreation board; personnel board; planning and zoning commission; environmental sustainability board; transportation board; valuation protests board, variance board, and the community development advisory board." Sec. 8-4 (emphasis added).

As a County board, the BPU is subject to Sections 8-5 (Meetings), 8-8 (Quorum), 8-9 (Conflict of Interest), 8-10 (Public Statements), 8-11 (Officers), 8-12 (Minutes), and 8-13 (Council Liaison), 8-14 (Administrative Support), and 8-15 (Procedural Rules), **but not** Sections 8-6 or 8-7 as the Charter provides an alternative method of membership, term, and removal requirements.

Code § 8-15.

Section 8-15 is specifically relevant to this question because neither the BPU's *Policies and Procedural Manual* (PPM) or other "law" (e.g., charter or ordinance) provides the method or process for formation of subcommittees or ad-hoc committees. These processes are found in the County Council's *PROCEDURAL RULES FOR BOARDS AND COMMISSIONS (Procedural Rules)*, originally adopted on October 3, 2006, and as amended in May 2008, April 2014 and July 2016.

Subcommittees and Ad-Hoc Committees

Section V. of the Council's *Procedural Rules* provides the method for creation of subcommittees and ad-hoc committees. For clarity, Section 8-2 the Code defines "subcommittees" and "ad-hoc committees" as follows:

- *Board or commission subcommittee:* A subcommittee created by a board or commission that is subordinate to the original board or commission. Subcommittee membership can be limited to existing board or commission members or, as permitted by procedural rules, the board or commission can include volunteer citizens that are not currently serving as members of the board or commission.
- *Ad hoc committee or task force:* A temporary, single-purpose group of citizens and/or staff created by council action for a fixed term or project. An ad hoc committee or task force shall be governed by the county council action that creates or enables said body.

Alternatives

N/A

Fiscal and Staff Impact

None

Attachments

A - B&C Manual Section V. on Subcommittees

B - B&C Manual

C - Public Involvement Guide for Boards and Commissions