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March 13, 2017

City of El Cajon
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Re: Item 6.4 on City Council Agenda for March 14, 2017 City Council Meeting

Dear Honorable Mayor and Esteemed City Councilmembers:

I write to express concern regarding Agenda Item 6.4 on the March 14, 2017 El Cajon City Council Agenda, entitled “Discussion of City Council Policy Regarding Placing Items on the Agenda.” This agenda item appears to contemplate adopting policy that violates provisions of the Brown Act requiring that a single member of the city council be able to take action to place items on agendas. In addition to likely violating the Brown Act, any action to limit the ability of city council members to agendaize items for discussion threatens to limit, rather than promote, political discussion. Indeed, once the City converts to a district-based election system, the proposed policy threatens to stifle the ability of an entire district to have its council representative place an item for discussion on the agenda if the City Council representatives from the other districts do not wish the item to appear. In light of these concerns, and given the City’s commendable commitment to empowering every segment of the City through the districting process, I encourage the City to reject the proposed policy.

Background

According to the Agenda Report for Item 6.4, the City is contemplating a policy that would require a City Councilmember to require the concurrence of a second City

Councilmember if he or she wishes to put more than one item per quarter on a City Council agenda. While I respect and understand how the City's limited resources require some form of prioritization of its work, this proposal seeks to address those challenges in a way that may violate the Brown Act and will stifle the democratic process.

Analysis

The Ralph M. Brown Act (Gov. Code § 54950, *et. seq.*) provides, in relevant part, that “*a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may... take action to direct staff to place a matter of business on a future agenda.*” Gov. Code § 54954.2(a)(3) (emphasis added). While this section contemplates that the ability of a single member to place an item on a future agenda may be subject to certain “rules or procedures” regarding the *manner* in which an item maybe placed on an agenda, I do not believe it permits those rules and regulations to entirely override the ability of a councilmember to place items on the agenda. Yet that is what the proposed policy would do. If a single councilmember – who in the near future will represent a specific geographic portion of El Cajon that will rely on that councilmember to raise that community's issues before the entire council – feels that more than one item per quarter merits the opportunity for public dialogue in a full City Council meeting, the proposed policy threatens to entirely thwart his or her ability to place that item on the Council's agenda.

I am aware of no case reading the Brown Act to allow a city's “rules and procedures” to entirely subvert a single councilmember's power to place a matter on the agenda in this way, and it is unlikely a court would do so under commonly accepted canons of statutory construction. *See People v. Gilbert*, 1 Cal. 3d 475, 480 (1969) (“A cardinal rule of construction is that a construction making some words surplusage is to be avoided.”); *see also Mahdavi v. Fair Employment Practice Com.*, 67 Cal. App. 3d 326, 334 (Ct. App. 1977) (“It is a well established rule of statutory construction that every word, phrase or provision is presumed to have been intended to have a meaning and perform a useful function.”). Yet the proposed policy would contradict the plain language of the Brown Act entirely, requiring that once a councilmember has placed an item on the agenda for the quarter, he or she may not “take action to direct staff to place a matter of business on a future agenda” if he or she cannot find a second councilmember to join the request. This is clearly incompatible with a plain reading of section 54954.2(a)(3).

Regardless of whether the proposed policy would violate the Brown Act, it would also limit, rather than encourage, robust political discourse on issues facing the City. If, in the future, the councilmembers representing four districts of El Cajon determine that the concerns of a fifth district do not warrant public discussion, they would essentially have veto authority over that district's ability to have its representative agendize matters for public discussion. One of the great benefits of switching to district elections, as the City has admirably committed to doing, is to help ensure that minority voices are not stifled. However, the proposed policy threatens to do just that.

Conclusion

While the need to prioritize the city's limited resources is understandable, the proposed policy, if it would successfully address that need at all, threatens to do so in violation of law and at the expense of the democratic process. Issues of prioritization can be addressed without entirely stifling political dialogue. The ACLU of San Diego and Imperial Counties encourages the City to reject the proposed policy.

Sincerely,

/s Bardis Vakili

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