Outlook

Re: Concerns Regarding Brown Act Violations and Denial of Public Comment Rights

From Lee Tannenbaum <lee.tannenbaum@gmail.com>
Date Fri 5/30/2025 6:34 PM
To David A Livingston <david.livingston@edcgov.us>; Vern R. Pierson <vern.pierson@edcda.us>
Cc Lee Tannenbaum <lee.tannenbaum@gmail.com>

Mr. Livingston,

Thank you for your thorough response regarding the concerns I raised about the May 13, 2025 meeting of the El Dorado County Board of Supervisors. Although it took me some time to dig all this up, I wanted to circle back to you. While I appreciate your effort to explain the County's interpretation of the Brown Act, I must respectfully disagree with your conclusion that the public's rights were upheld. In fact, two serious concerns remain:

1. The public (I) was denied the right to comment prior to the adoption of the agenda and consent calendar—a bundled legislative action under the County's own procedures. I was summarily cut off when I tried to comment.
2. The description of Item 29 was misleading, concealing the scope and substance of a significant policy discussion under the guise of a routine informational report.

1. Public Comment Denied on Agenda and Consent Calendar
As you know, the Brown Act requires that public comment be allowed "before or during the legislative body's consideration" of any item on the agenda (Gov. Code § 54954.3(a)). This includes the consent calendar and agenda—regardless of whether it contains one item or thirty.

You argue that public comment is not required before the Board "sets its agenda," citing Coalition of Labor, Agriculture & Business v. Santa Barbara. But that case involved a Board declining to add a last-minute item to an agenda—not the adoption of a formal agenda and consent calendar as one consolidated motion, which is how El Dorado County handles it.

In fact, Policy H-3, adopted by the Board, specifically states:

"The Board Chair will call for a motion to adopt the agenda and approve the Consent Calendar with any changes made during discussion by request of a Board member, Chief Administrative Officer, or County Counsel. The motion to approve the agenda must be worded 'Motion to adopt the agenda and approve the Consent Calendar.'"

This is a legislative action that impacts dozens of items—including budget approvals, contracts, resolutions, and more. I attempted to make a comment before this motion was made, and I was cut off. There was no acknowledgment that the law or County policy even required it. That is a violation of both the Brown Act and a breakdown in public accountability.

2. Item 29 Was Misleadingly Described

Item 29 read:
"Planning and Building Department, Planning Division and Tahoe Planning and Building Division, recommending the Board receive and file a presentation on both Divisions' major accomplishments in Fiscal Year 2024/2025 and key priorities for Fiscal Year 2025/2026, and if needed, provide direction to staff."

This item title and summary do not indicate that the Board would be engaging in substantive discussion or providing policy direction related to cannabis land use, zoning priorities and other significant policy discussions—but that is exactly what occurred.

The agenda's language is vague and dismissive. "Receive and file" suggests an informational report—not a decision point. The tacked-on "if needed, provide direction to staff" does not meaningfully alert the public to the fact that active direction would be given—direction that, as discussed, could materially affect policy in the County.

Courts have made clear that agenda items must reasonably inform the public of what the Board may act on. (San Diegans for Open Gov't v. City of Oceanside, 2016). When agenda language conceals the scope of a discussion—or allows for key terms like "direction to staff" to operate as a blank check—it erodes public trust and fails the standard of transparency required by law.

Conclusion

It is not enough to say that the public was allowed to comment "later" on Item 29. The public must be allowed to speak when a legislative action is taken, including adoption of the agenda and consent calendar. And the public must be clearly informed of what a Board discussion will entail—not lured into complacency by vague or sanitized summaries.

In this case, the County failed on both counts.

I respectfully request that the County:
- Formally acknowledge that public comment must be accepted before adoption of the agenda and consent calendar per County Policy H-3 and the Brown Act;
- Commit to enhancing transparency in agenda descriptions, particularly when staff direction or policy guidance is likely to occur;
- And take immediate steps to ensure these basic public access rights are protected in all future meetings.

Thank you again for your time and attention.

Sincerely,

Lee Tannenbaum

Lee Tannenbaum
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EL DORADO
CANNABIS COMPANY

From: David A Livingston <david.livingston@edcgov.us>
Date: Thursday, May 15, 2025 at 11:24 AM
To: Lee Tannenbaum <lee.tannenbaum@gmail.com>, "Vern R. Pierson" <vern.pierson@edcda.us>
Subject: Re: Concerns Regarding Brown Act Violations and Denial of Public Comment Rights

Mr. Tannenbaum,

Thank you for sharing your concerns regarding the Board of Supervisors Meeting on May 13, 2025. I would be happy to provide some clarification on the Brown Act's requirements as they relate to that meeting. As I understand it, your concerns can be summarized as follows: (1) a concern that you were denied an opportunity to comment on the adoption of the Board's agenda in violation of Government Code 54954.3 and (2) a concern that the description of Item 29 (Legistar #25-0373) did not comply with Government Code 54954.2.

As to your first concern, as required by the Brown Act, the Board of Supervisors provided an opportunity for the public to comment on the approval of its consent calendar. You appear to take issue with your inability to comment on the Board's pro forma act of adopting its agenda. However, the Board's setting of its agenda is not an action requiring public comment. This was addressed by the Court of Appeal in *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Board of Supervisors* when a Board of Supervisors was considering adding an item to its agenda. The Court of Appeal stated as follows:

> The Legislature has left to the public agency the task of setting its agenda without public comment. There is nothing to indicate the Legislature's omission of public comment in setting the agenda was inadvertent.

(*Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors* (2005) 129 Cal.App.4th 205, 209 [28 Cal.Rptr.3d 198].)

Perhaps more importantly, as confirmed by your comments later in the meeting, your comments related to an item that was scheduled for discussion at a different point in the meeting – Item 29, which was included as part of the "Department Matters" portion of the Board's agenda. The Brown Act allows a legislative body to require that a speaker make comments about a particular matter at the time when that particular matter is called for discussion. This was addressed by the Court of Appeal in *Olson v. Hornbrook Community Services Distric*t as follows:

> Limiting public comment on items described in the agenda to the time when those items are being considered by the Board is not an unreasonable regulation. This ensures the Board has a clear and complete understanding of the public concern regarding an item of business on the agenda at the time that item is to be transacted or discussed. Allowing public comment on agenda items during general public comment may defeat this purpose because it necessarily requires members of the Board to remember the comment for later action despite addressing other topics of public concern before that action can be addressed.

(*Olson v. Hornbrook Community Services Dist.* (2019) 33 Cal.App.5th 502, 528 [245 Cal.Rptr.3d 236]; *see also White v. Norwalk* (9th Cir. 1990) 900 F.2d 1421, 1425 ["In the first place, in dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand."].)

Accordingly, the Board was permitted to instruct you to defer your comments until Item 29 was called for discussion. Indeed, it is worth noting that when Item 29 was later called for discussion, your and other members of the public were given *two* opportunities to comment on that item.

As to your second concern, the description for Item 29 reads as follows: "Planning and Building Department, Planning Division and Tahoe Planning and Building Division, recommending the Board

receive and file a presentation on both Divisions' major accomplishments in Fiscal Year 2024/2025 and key priorities for Fiscal Year 2025/2026, and if needed, provide direction to staff." The item clearly referenced both major accomplishments in the *current* fiscal year as well as key priorities for the *upcoming* fiscal year. It further contemplated that the Board may provide direction to staff. Although the County often provides agenda descriptions that include a level of detail that far exceeds the Brown Act's requirements, the agenda description for this item satisfies the requirement for a "brief general description" that "generally need not exceed 20 words." (Gov. Code 54954.2(a)(1); *see San Diegans for Open Government v. City of Oceanside* (2016) 4 Cal.App.5th 637, 644-645 ["so long as notice of the essential nature of the matter an agency will consider has been disclosed in the agency's agenda, technical errors or immaterial omissions will not prevent an agency from acting"].) Moreover, the Board did not take any action on the item beyond providing direction to staff as described. It is worth noting that even if the agenda description did not specify that direction to staff would be given, the Brown Act allows a legislative body to "take action to direct staff to place a matter of business on a future agenda." (Gov. Code 54954.2(a)(3).) Since staff was merely directed to explore certain matters and return to the Board for further action, you and other members of the public will have an opportunity to provide comment when those matters are agendized for further discussion or action.

In short, I believe that the Board's actions were consistent with the Brown Act. That being said, I appreciate you raising your concerns to me and, in the interests of continuous improvements to the Board's processes for public engagement, I invite you to do so in the future should further concerns arise.

DAVID A. LIVINGSTON | County Counsel

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From: Lee Tannenbaum <lee.tannenbaum@gmail.com>
Sent: Tuesday, May 13, 2025 3:53 PM
To: David A Livingston <david.livingston@edcgov.us>; Vern R. Pierson <vern.pierson@edcda.us>
Cc: Lee Tannenbaum <lee.tannenbaum@gmail.com>
Subject: Concerns Regarding Brown Act Violations and Denial of Public Comment Rights

Dear Mr. Livingston and Mr. Pierson,

My name is Lee Tannenbaum, a resident of El Dorado County. I am writing to formally express

serious concerns regarding potential violations of the Ralph M. Brown Act, as well as the denial of my First Amendment and statutory rights during public comment at a recent meeting of the El Dorado County Board of Supervisors.

At the May 13, 2025 meeting, I was denied the opportunity to speak during the public comment section of the adoption of the agenda by Supervisor Turnboo. Prior to cutting me off, Supervisor Turnboo stated that comments must be limited to the consent calendar. I asked specifically if I could speak about the agenda itself — not the consent calendar — and was explicitly told no by Supervisor Turnboo. After I was cut off, the subtitle on the broadcast was altered to read “public discussion on the agenda and consent calendar,” effectively changing the scope of public comment, and then disallowing me to speak again by being cut off as the Supervisor’s Parlin, Veerkamp and Turnboo stated something to the effect of, “we've seen his post on social media and don't need to hear it again.” Social Media is not the public record.

This sequence of actions — first imposing a restriction not supported by law, then retroactively modifying the scope of public comment, and finally silencing a speaker based on presumed content — appears to be a direct violation of Government Code Section 54954.3(a), which mandates:

"Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body."

Courts have consistently upheld the public's right to participate in open meetings. In Leventhal v. Vista Unified School District (1997) 973 F. Supp. 951, the court emphasized that restrictions on public participation must be viewpoint neutral and narrowly tailored. Denying me the opportunity to speak — particularly when my comments pertained directly to transparency, process, and agenda structuring — is not only unlawful, but appears retaliatory and discriminatory.

Additionally, I am concerned about a possible Brown Act violation related to Agenda Item #25-0373 (Item 29). As detailed in my comments to the Board of Supervisors during the item discussion itself, significant changes to the County's Long Range Planning (LRP) work plan were embedded within a vague departmental update presentation. These changes were not clearly disclosed in the agenda item title, and the item was not agendized as the standalone LRP update the County has historically provided. The comment was made by Director Gardner that it was properly noticed, but I believe this to not be entirely accurate. While it was buried in the item, the title of the agenda was misleading, to say the least.

This lack of proper notice and transparency undermines the public’s right to participate meaningfully in government decisions and may violate both the letter and spirit of the Brown Act. The use of vague agenda language to mask consequential policy shifts prevents the public from knowing what is truly being discussed and from offering timely and informed comment.

I request your offices investigate both matters:

1. The suppression of my public comment rights by Supervisors Parlin, Turnboo, and Veerkamp.
2. The legality of including significant LRP policy changes within a non-specific agenda item without separate agendization.

The Brown Act exists to ensure open government, not to serve as a procedural formality while meaningful decisions are made in the shadows or while dissenting voices are silenced. I trust

you will treat this matter with the seriousness it warrants.

Sincerely,
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