

public comment BOS COB
25-2034 #11
BOS Rcvd 1/5/20

 Outlook

Agenda Item 25-2034

From Lee Tannenbaum <lee.tannenbaum@gmail.com>
Date Sun 1/4/2026 9:37 PM
To BOS-Clerk of the Board <edc.cob@edcgov.us>

 2 attachments (51 KB)
Legistar 25-2034 Letter.pdf; Legistar 25-2034 Legal Summary.pdf;

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lee

Lee Tannenbaum
President, Taxpayers Association of El Dorado County
650.515.2484

Request to Pull Item from Consent Calendar and Reconsider Adoption of Consolidated Public Comment Policy

Legistar Item No.: 25-2034

Honorable Members of the Board of Supervisors,

I respectfully request that Legistar Item No. 25-2034, concerning the adoption and implementation of the Board's new consolidated public comment policy, be pulled from the Consent Calendar and scheduled for separate discussion and deliberation.

This request is made because the item represents a structural change to how the public participates in Board meetings, not a routine or ministerial action. Policies that redefine the public's role in governance warrant open discussion and careful legal consideration before adoption.

Consent Calendar Placement Raises Transparency Concerns

Consent Calendar items are intended for non-controversial, administrative matters. The new public comment policy alters how and when the public may speak on all non-hearing agenda items, consolidates comment across unrelated matters into a single, time-limited period, and requires public comment to occur before staff presentations and Board deliberation.

While not per se a Brown Act violation, placing a policy of this scope on the Consent Calendar raises transparency concerns under the spirit and purpose of Government Code section 54950.

Brown Act Risks Associated with the New Policy

The most significant legal concern is the foreseeable risk of noncompliance with Government Code section 54954.3(a), which guarantees the public the right to address the legislative body before or during its consideration of each agenda item.

Under the newly adopted policy, members of the public wishing to comment on more than one agenda item must divide a single three-minute allotment among multiple unrelated matters. In agendas containing dozens of items, this structure predictably forces speakers to forgo comment on some items altogether.

Courts evaluate Brown Act compliance functionally, not formally. In *Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063, the court held that procedures that technically allow public comment, but do not provide a meaningful opportunity to influence decision-making, are inconsistent with the Act's purpose.

Attorney General Guidance Raises Additional Concern

The California Attorney General's Brown Act guidance cautions that agencies must not only provide a formal opportunity for public comment but must do so in a manner that meaningfully allows the public to address specific agenda items.

The Attorney General has warned that limiting comment on agenda items to a single, consolidated public comment period may defeat the purpose of Government Code section 54954.3(a) if it effectively restricts the public's ability to comment on individual items as they are considered. Brown Act compliance is evaluated based on practical effect, not merely procedural form.

Timing of Public Comment Presents Additional Risk

The new policy requires public comment on non-hearing items to occur before staff presentations and Board discussion. While the Brown Act permits comment before or during consideration, requiring comment without access to staff analysis or Board deliberation raises a substantial risk that public participation becomes uninformed and ineffective.

Distinguishing *Olson v. Hornbrook Community Services District*

Olson v. Hornbrook Community Services District (2019) 33 Cal.App.5th 502 addressed whether public comment is required prior to the ministerial act of agenda adoption. It did not authorize restructuring public comment in a way that limits the public's ability to comment on multiple substantive agenda items.

Efficiency Claims Do Not Align with County Practice

County practice across California demonstrates that El Dorado County's new policy places it in a very small minority. More than fifty California counties take public comment when agenda items are heard. Only three counties—Alameda, Merced, and now El Dorado—explicitly consolidate agenda-item public comment into a single comment period for most non-hearing items.

Request and Suggested Alternatives

I respectfully request that the Board:

1. Pull Legistar Item No. 25-2034 from the Consent Calendar;
2. Reevaluate the policy's Brown Act risk under Government Code section 54954.3(a) and Attorney General guidance;
3. Preserve item-by-item public participation on substantive agenda items; and
4. Consider alternative efficiency measures, such as delegating routine or minor budget approvals to the Chief Administrative Officer's office.

Respectfully submitted,

Lee Tannenbaum

President - Taxpayers Association of El Dorado County

One-Page Legal Summary – Brown Act Risk Analysis

Legistar Item No.: 25-2034

Issue Presented

Whether the Board of Supervisors' adoption of a consolidated public comment policy presents legal risk under the Ralph M. Brown Act prior to implementation.

Applicable Law

- Government Code § 54950 – Declares the Legislature's intent that actions and deliberations of local agencies be conducted openly.
- Government Code § 54954.3(a) – Guarantees the public the right to address the legislative body before or during consideration of each agenda item, subject to reasonable regulations.
- *Galbiso v. Orosi Public Utility District* (2008) 167 Cal.App.4th 1063 – Holds that public comment procedures must provide a meaningful opportunity to influence decision-making, not merely a technical opportunity.
- *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502 – Clarifies that public comment is not required prior to ministerial agenda adoption but does not authorize limits on comment for substantive agenda items.

Identified Legal Risks

1. **Aggregation of Comment Time**
Requiring members of the public to divide a single time allotment among multiple unrelated agenda items risks rendering the right to comment illusory in practice, particularly when agendas contain numerous substantive items.
2. **Timing of Comment**
Requiring public comment to occur before staff presentations and Board deliberation increases the risk that public input becomes speculative rather than responsive, undermining the purpose of § 54954.3(a).
3. **Functional, Not Formal, Compliance**
Courts assess Brown Act compliance based on whether procedures meaningfully preserve public participation. A structure that predictably limits effective comment across multiple items presents avoidable legal exposure.

Conclusion

While the policy has not yet been implemented and therefore does not constitute a per se Brown Act violation, it presents foreseeable and avoidable legal risk under Government Code § 54954.3(a) as interpreted by California courts.

Recommended Action

Pull Legistar Item No. 25-2034 from the Consent Calendar and reconsider the policy

through public discussion, with modifications that preserve item-by-item public comment while pursuing efficiency through alternative means.

Public Comment #11
BOS RCVD 1/5/2026

From: [DEAN GETZ](#)
To: [BOS-Clerk of the Board](#)
Cc: [BOS-District I](#); [BOS-District II](#); [BOS-District III](#); [BOS-District IV](#); [BOS-District V](#); [David A Livingston](#); [Sue Phillips](#); [Bill Carey](#); [Bob Severin](#); [Cheryl Bly-Chester](#); [David Smythe](#); [George Nungresser](#); [James Lemire](#); [jars45@email.com](#); [Brian DeBerry](#); [Laurel Brent-Bumb](#); [Leo Bennett-Cauchon](#); [Lyle Curry](#); [Michael Ranalli](#); [Pat Dwyer](#); [Paul Freeman](#); [Bob Kamrath](#); [Ruth Michelson](#); [Cathy Severin](#); [Steve Ferry](#); [Lexi Boeger](#); [Lauren Hernandez](#); [Ken Schoniger](#); [Debbie Manning](#); [Lee Tannenbaum](#)
Subject: Regarding: BoS Legistar Item No. 25-2034 – Consolidated Public Comment Policy
Date: Monday, January 5, 2026 9:12:39 AM
Attachments: [Outlook-d4n4oymx.png](#)
[Outlook-5lhm5old.png](#)
Importance: High

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Honorable Members of the Board of Supervisors and County Staff (cc: Taxpayers Association of El Dorado County)

I submit this comment to express concern regarding the proposed consolidated public comment policy and the legal risks it presents under the Ralph M. Brown Act, Government Code section 54954.3(a).

The Brown Act guarantees members of the public the right to address the legislative body before or during its consideration of each agenda item. While the Act allows reasonable regulations governing the time, place, and manner of public comment, **those regulations may not be structured in a way that predictably undermines the public's ability to meaningfully participate.**

The proposed policy requires members of the public wishing to comment on non-hearing agenda items to divide a single, limited time allotment across all such items, regardless of number or subject matter. In agendas containing numerous unrelated items, this structure foreseeably forces speakers to forgo comment on some items altogether. **As a practical matter, this converts a**

guaranteed right to address agenda items into a requirement that speakers prioritize and self-censor.

Courts evaluate Brown Act compliance functionally, not formally. Procedures that technically allow public comment, but do not provide a realistic opportunity to influence decision-making, are inconsistent with the Act's purpose. A policy that predictably suppresses item-specific comment through consolidation and time compression raises substantial risk under that standard.

The timing requirement further compounds this risk.

Requiring public comment to occur before staff presentations or Board discussion deprives speakers of the context necessary to respond to the issues actually under consideration. While the Brown Act permits comment before or during consideration, a structure that routinely requires comment without access to staff analysis or deliberative context risks rendering participation perfunctory rather than meaningful.

As previously cited in other comments, *Olson v. Hornbrook Community Services District* (2019) 33 Cal.App.5th 502 does not authorize this approach. *Olson* addressed whether public comment was required prior to the ministerial act of agenda adoption. It did not approve consolidating public comment in a manner that limits the ability to address multiple substantive agenda items, **nor did it endorse policies that reduce meaningful participation through structural constraints.**

Finally, the policy itself is not ministerial. It represents a substantive redefinition of how the public may participate in Board meetings across all non-hearing items. Changes of this

scope warrant separate consideration, deliberation, and careful legal analysis, rather than adoption through the Consent Calendar.

Requested Action

To reduce legal risk and preserve meaningful public participation while addressing meeting efficiency, I respectfully request that the Board:

1. Remove Legistar Item No. 25-2034 from the Consent Calendar and consider it as a discussion item;
2. Direct County Counsel to provide a written Brown Act analysis addressing Government Code section 54954.3(a) and relevant case law;
- 3) Reconsider the requirement that multiple agenda items be addressed within a single, fixed time allotment;

Evaluate alternative approaches that maintain item-specific public comment while managing meeting length, such as streamlined consent calendars or administrative delegation of routine matters.

Respectfully submitted,

Dean Getz

DEANGETZ.COM
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From: Lee Tannenbaum <lee.tannenbaum@gmail.com>

Sent: Sunday, January 4, 2026 8:41 PM

To: BOS-Clerk of the Board <edc.cob@edcgov.us>

Cc: bosone@edcgov.us <bosone@edcgov.us>; bostwo@edcgov.us <bostwo@edcgov.us>; BOS-District <bosthree@edcgov.us>; BOS-District <bosfour@edcgov.us>; bosfive@edcgov.us <bosfive@edcgov.us>; David A Livingston <david.livingston@edcgov.us>; Sue Hennike <sue.hennike@edcgov.us>; Bill Carey <bcarey123@hotmail.com>; Bob Severin <bobseverin@gmail.com>; Cheryl Bly-Chester <cherylblychester@aol.com>; David Smythe <david.smythe@sbcglobal.net>; George Nungresser <georgelovespeggy@cs.com>; James Lemire <jlemire0118@yahoo.com>; jars45@email.com <jars45@email.com>; Brian DeBerry <bkdeberry@yahoo.com>; Laurel Brent-Bumb <chamber@eldoradocounty.org>; Leo Bennett-Cauchon <leobennettcauchon@gmail.com>; Lyle Curry <lyle63@hotmail.com>; Michael Ranalli <Mike@ranallivineyard.com>; Pat Dwyer <rpd123@att.net>; Paul Freeman <tatoosh2@comcast.net>; Bob Kamrath <robertkamrath@comcast.net>; Ruth Michelson <ruthmichelson@sbcglobal.net>; Cathy Severin <severincathy6@gmail.com>; Steve Ferry <Stephen.Ferry@me.com>; Lexi Boeger <lexiboeger@gmail.com>; Dean Getz <dean@deangetz.com>; Lauren Hernandez <LaurenMontezHernandez@gmail.com>; Ken Schoniger <schoniger@sbcglobal.net>; Debbie Manning <debbie@eldoradohillschamber.org>

Subject: Agenda item 25-2034

Madame Clerk,

Please include the attached to the agenda item mentioned above for the BoS meeting on 1/6/26. Thanks much.

lee

Lee Tannenbaum
President, Taxpayers Association of El Dorado County

650.515.2484

public comment #
25-2034 BOS Recd
1/5/26

 Outlook

Agenda item #25-2034 - Board Policy H-3 - 01.06.2026

From kevinwmccarty@pm.me <kevinwmccarty@pm.me>
Date Mon 1/5/2026 2:47 PM
To BOS-Clerk of the Board <edc.cob@edcgov.us>
Cc BOS-District I <bosone@edcgov.us>; BOS-District II <bostwo@edcgov.us>; BOS-District III <bosthree@edcgov.us>; BOS-District IV <bosfour@edcgov.us>; BOS-District V <bosfive@edcgov.us>; David A Livingston <david.livingston@edcgov.us>; 'Lee Tannenbaum' <lee.tannenbaum@gmail.com>; info@hjta.org <info@hjta.org>; Vern R. Pierson <vern.pierson@edcda.us>

 1 attachment (214 KB)
Agenda Item 25-2034 - Public Comment - McCarty - 01.05.2026 - Signed.pdf;

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ATTN: Clerk, Chair, and Members of the Board of Supervisors of El Dorado County,

Happy New Year – I hope you are all doing well.

Attached is a letter submitted as public comment for Agenda Item #25-2034, regarding proposed revisions to Board Policy H-3, (Consent Calendar).

Please ensure this public comment is added to the record and included for consideration at the Board meeting set for tomorrow, January 6th, 2026.

Regards,
Kevin W. McCarty
Secretary, Taxpayers Association of El Dorado County





January 6, 2026

El Dorado County Board of Supervisors
330 Fair Lane
Placerville, CA 95667

Re: Item 25-2034 — Proposed Revisions to Consent Calendar / Public Comment Policy (H-3)

Honorable Chair and Members of the Board,

I submit this comment in my capacity as Secretary and Director of the El Dorado County Taxpayers Association, and as a resident concerned with the preservation of transparency, accountability, and public trust in County governance.

I respectfully urge the Board to reject the proposed revisions to Policy H-3, or, at a minimum, pull this item from the Consent Calendar and schedule it for full consideration as a noticed agenda item with public discussion. The proposal represents a substantive change to how the public participates in Board decision-making and should not be adopted without deliberate review and meaningful public input.

I. Revised Policy Exceeds the Proper Scope of Consent Calendar

Government Code section 54954.3(a) provides that:

“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.”

The operative threshold in this provision is public interest, not administrative convenience.

While it is both reasonable and appropriate to consolidate truly routine, ministerial, or low-impact departmental matters for efficiency, the Consent Calendar is not an appropriate venue for consideration of Agenda Item 25-2034, which fundamentally restructures how the public may engage with the Board on *all* non-hearing agenda items going forward.

Policies that redefine the public’s role in governance—particularly those affecting how and when the public may speak—are inherently matters of public interest and should be treated as such.

II. Structural Moral Hazard Created by Proposed Revisions

Beyond questions of technical compliance, the proposed policy introduces a structural moral hazard that warrants careful consideration.

By consolidating public comment across all Consent Calendar and Closed Session items into a single, time-limited opportunity, the revised policy materially reduces public scrutiny of any item placed on Consent. As a result, the structure itself creates an incentive, however unintended, for substantive matters to be routed through the Consent Calendar when expediency or avoidance of controversy is desired.

This risk is particularly concerning for matters involving:

- public finance and expenditures,
- land use and development decisions,
- contracts, agreements, and policy amendments with long-term administrative or fiscal consequences.

The issue is not one of intent or character. Rather, it is a matter of system design. When procedural rules reward reduced scrutiny, even well-intentioned actors are nudged toward outcomes that weaken transparency over time.

III. Discretionary Safeguards vs. Structural Transparency

It may be argued that any Supervisor retains the ability to pull an item from the Consent Calendar, thereby preserving accountability. In practice, this is an inadequate safeguard.

Such a framework:

- shifts the burden of transparency from the public to individual Supervisors,
- relies on discretionary intervention rather than clear procedural rights,
- and normalizes reduced public engagement as the default condition.

In a healthy democratic system, transparency is not dependent on discretionary action; it is embedded in the structure of the process itself.

IV. Efficiency is Not a Standalone Constitutional Justification

Efficiency is frequently cited as the rationale for the proposed changes. While efficiency is a legitimate administrative goal, it cannot stand alone as a justification for curtailing public participation.

Democracy is not designed to be maximally efficient, and deliberately so. Our constitutional system accepts friction, deliberation, and public inconvenience as necessary costs of self-government. History demonstrates that consolidation of power is

often justified in the name of efficiency and expedience, yet such justifications have never been sufficient to override First Amendment protections.

The Brown Act embodies this principle. It does not exist to optimize meeting length; it exists to ensure that governance remains open, responsive, and accountable to the people it serves.

V. Legal and Institutional Risk

Even if the proposed policy is ultimately upheld, it increases the County's exposure to:

- as-applied Brown Act challenges,
- public distrust and civic disengagement,
- recurring disputes over agenda placement and public comment adequacy.

California courts evaluate Brown Act compliance functionally, not formally. A policy that predictably diminishes the effectiveness of public participation, particularly when applied to multiple substantive items, creates avoidable legal and institutional risk.

VI. Request for Action

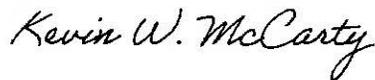
For these reasons, I respectfully request that the Board:

1. Reject the proposed revisions to Policy H-3 as drafted; or, at a minimum,
2. Pull Item 25-2034 from the Consent Calendar; and
3. Reschedule it as a properly noticed agenda item with full public discussion, recognizing its significance to public participation and public trust.

This matter warrants thoughtful deliberation in the open, not adoption by default.

Thank you for your consideration and for your continued service to the residents and taxpayers of El Dorado County.

Regards,



Kevin W. McCarty
Secretary & Director
El Dorado County Taxpayers Association

cc: Jon Coupal, President, Howard Jarvis Taxpayers Association
Vern Pierson, District Attorney, El Dorado County