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DANIEL C. CEDERBORG  
County Counsel

August 17, 2020

Sent Via E-mail Only

Phoebe Seaton  
Co-Director and Attorney at Law  
Leadership Counsel for Justice  
and Accountability  
2210 San Joaquin Street  
Fresno, CA 93721

RE: Your Correspondence dated August 4, 2020 and August 11, 2020

Dear Ms. Seaton:

The County is in receipt of your correspondence dated August 4, 2020 and August 11, 2020 containing various allegations of violations of the Brown Act and raising certain other concerns about the conduct of Fresno County Board of Supervisor meetings. Essentially, your complaints can be summarized as following:

1. You claim the County of Fresno is violating the Ralph M. Brown Act by utilizing the exception for threat to the security of public buildings, facilities and services under Government Code § 54957(a) in several of its Board of Supervisor meetings that included the Public Health Officer and the Director of the Department of Public Health. You allege that discussions and decisions are being made by the Board of Supervisors that should be made in open session.
2. You advocate for allowing live web-based or telephonic participation by the public in Board of Supervisor meetings insinuating that the failure to provide that level of electronic access somehow is inconsistent with the Brown Act. You also suggest this practice could violate the Americans with Disabilities Act.
3. The fact that the County of Fresno does not provide real-time translation of Board meetings into languages other than English is alleged to be a violation of the Dymally-Alatorre Bilingual Services Act (Cal. Gov't Code § 7290 et seq.) or to be a civil rights violation.

**1. The County of Fresno Has Complied with the Brown Act**

In addressing the first of these allegations, the County faces a disadvantage. While you are free to speculate as to all kinds of things that may have gone on in a closed session, County employees cannot disclose matters that were discussed in closed session. I can assure you, however, that no deliberations or actions on any item were taken by the Board of Supervisors under the threat to public services items on the closed session agendas.

While as you point out, the Brown Act closed session exceptions must be narrowly construed, it is not true as you assert that the threat to public services exception is limited to terrorist or criminal threats. The unprecedented challenges presented in the current pandemic has involved many issues threatening the continuance of basic County services and operations, discussions of which in closed session are covered by the exception under Government Code § 54957(a). Briefings may need to be provided to Board members concerning vulnerabilities in the operations of the County including the maintenance or extension of online or telework capabilities. Also the unique circumstances of the current emergency and the stresses it has put on the supply chain for vital food, medical supplies and the provision of protective personal equipment can also justify confidential briefings where to disclose certain information may affect the supply chain or expose certain vulnerabilities.

With respect to the inclusion of the Public Health Officer and Department of Public Health personnel in the closed session briefings, this has been specifically authorized by the Governor in the Executive Order N-35-20, issued March 21, 2020, which allows members of a local legislative body even if meeting together to receive briefings on the pandemic emergency "including but not limited to, updates concerning the impacts of COVID-19, the government response to COVID-19, and other aspects relevant to the declared emergency...." Further, members of the Board "may ask questions of those federal, state, and local officials, in order for members of the legislative body to stay apprised of emergency operations and the impact of the emergency on their constituents." These briefings have been critical to keeping the Board of Supervisors up to date on the actions of the County Administrator, the Public Health Department and other County departments in responding to the current crisis. The Governor's order does not allow members of the legislative body to deliberate amongst themselves or take any action during these briefings and that has not occurred here with the Board of Supervisors. This practice is consistent with that utilized by many counties throughout the State.

The one incident you point to at the July 7, 2020 meeting, when the Board emerged from closed session to handle its decision to send a letter to the Governor seeking more flexibility for individual counties in reopening businesses, schools and churches was actually an effort to comply with the Brown Act's requirement that such actions be taken

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in open session unless covered by a statutory exception. I admit that the Board's action to send such a letter signed by all Board members should have been made more clear in open session. But no final decision on that issue was made until the Board came out into open session. You can point to no other deliberation, action or direction to staff that was made by the Board of Supervisors during the challenged sessions because there has been no such violation of the Brown Act by the Board of Supervisors.

Instead of spending a great deal of time making public pronouncements and passing additional ordinances or regulations on top of those being issued by State and local health officials, the Board of Supervisors has focused on supporting the efforts of the Health Officer, the Department of Public Health, the Department of Behavioral Health, the Department of Social Services and other County departments in providing critical aid to County residents in the form of social services, shoring up the medical system infrastructure and support for essential sectors of the economy. The goal of the Board of Supervisors has been to empower and provide necessary tools and resources to those health and social service professionals who are on the front lines of this pandemic. Ironically, this has been partially responsible for the unfair accusation that the Board of Supervisors has not been sufficiently transparent during this crisis. The Board has tried to support to the greatest extent possible the County employees and public health professionals whose daily activities directly impact the health and security of County residents. The vast amount of work being done by various County departments in keeping basic social services going in addition to the extraordinary actions by the Public Health Department in providing testing, contact tracing and direct support to the medical infrastructure of the County takes place largely out of the view of the press and the public. This has resulted in the mistaken impression (as demonstrated by your letter) that the Board of Supervisors is accomplishing all this through decisions and actions taken in closed session. Nothing could be further from the truth.

The Board has been active (in open session) approving necessary contracts to maintain the operation of the social safety net programs, for purchases of personal protective equipment that primarily go to first responders and medical providers, COVID-19 testing or provision of services to the homeless. As you are aware the Board is going to consider proposals for rental and mortgage relief as well as additional grants to small businesses. In addition, there have been other discussions of impacts of the COVID-19 in open session including but not limited to reports on the spending of the federal CARES Act monies.

I will note that at the last Board of Supervisors meeting on August 4, 2020, although there was a threat to public services item on the agenda for closed session (Agenda Item No. 17), no briefing of the Board took place under that item. In addition, there is no threat to public services item on the agenda for closed session for the August 18, 2020 meeting. While the County may continue to utilize that exception for proper COVID-19 related

issues in the future, the expectation is that such instances will be far less frequent from now on.

The Board of Supervisors also has an open session a briefing from the Public Health Department regarding COVID-19 set for the August 18, 2020 meeting at Agenda Item No. 7. The County Administrator anticipates including an open session briefing from the Public Health Department more frequently in the future. The County has recognized that the public (as well as Board members) would like more public discussion of the County's responses to the COVID-19 pandemic.

**2. Conducting Live Board of Supervisor Meetings Does Not Violate Either the Brown Act or the Americans With Disabilities Act.**

The County appreciates your frustration with the lack of sophisticated streaming meeting technology for the Board of Supervisor meetings but that is not practical now given the current facilities and resources available to the County. There is certainly no violation of the Brown Act by the County based on it allowing live in-person participation by members of the public and media at the Board of Supervisor meetings. To suggest otherwise is simply ridiculous. In addition to the current limitations with the County's facilities and equipment I point out that the experience of other counties in allowing public participation via internet or telephone has not been uniformly successful. In some counties they have had limited positive experiences with it. In others it has led to excessive time being taken up by persons from far away locations as well as leading to a lack of civility compared to when live in-person public comment is allowed. In any event since the Fresno County Board of Supervisors is meeting in person and allowing members of the public to comment in person, there is no violation of the Brown Act. In addition, written comments received prior to the Board meetings are forwarded to the Board and made part of the public record.

On the ADA issue I refer you to the legally compliant notice contained in every Board of Supervisors agenda that allows anyone needing assistance under the ADA to request a reasonable accommodation. There have been no requests for accommodation made to the Clerk of the Board under the ADA this year. The County is committed to fulfilling its obligations under the ADA and will make any reasonable accommodation for individuals upon request.

**3. Translation of Board Meetings is Not Required by California Law.**

You have also raised allegations that the fact that the County does not provide live translation of its Board of Supervisor meetings may violate the Dymally-Alatorre Bilingual Services Act (Cal. Gov't Code § 7290 et seq.) or to be a civil rights violation. The County is of course very sensitive to the fact that a large portion of the residents of Fresno County have as their primary or sole language a language other than English. In compliance with

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the Bilingual Services Act and other state and federal regulatory requirements, the County spends millions of dollars a year providing for employees who can communicate in the various languages of County residents and in translating materials, notices and forms into languages other than English in order to ensure that all Fresno County residents have necessary access to the services and information they need and are entitled to.

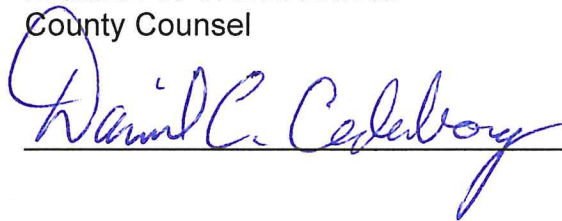
In an ideal situation, there would be adequate resources and technical ability to live stream Board of Supervisor meetings in additional languages other than English. Unfortunately, those resources are not available under current circumstances. Moreover, nothing in the Bilingual Services Act nor any other state or federal law requires that the Board of Supervisors conduct its business in a language other than English. In particular situations, the County does provide some translation services during Board meetings such as it did for the Truth Act Forums or other specialized meetings where such translation services would be most beneficial. In addition, at Board meetings that involve a due process hearing such as land use matters or other appeals before the Board, the County makes every effort to provide translation for the parties if it is necessary and not otherwise available. In this regard the County is in compliance with all federal and state requirements.

In the future, as improvements are made to the Board chambers and more financial resources are available, the County will certainly consider further improvements to the Board of Supervisor broadcast stream and hopefully better translation capabilities can be added. In the meantime, and given the County's limited resources particularly during this time of health and financial crisis, the County is doing the best that it can.

If you have any questions regarding the above, please feel free to contact me.

Very truly yours,

**DANIEL C. CEDERBORG**  
County Counsel

A handwritten signature in blue ink that reads "Daniel C. Cederborg". The signature is written in a cursive style and is positioned above a horizontal line.

cc: Members, Fresno County Board of Supervisors  
Jean M. Rousseau, Fresno County Administrative Officer  
Jordan Scott, Fresno County Public Information Officer